

The Legal Regulation of Online Live Streaming Infringement: Platform Liability

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Abstract. With the rapid development of live streaming in the digital economy, new transaction models such as live-streaming sales have improved transaction efficiency while also giving rise to infringement risks such as false advertising and misleading marketing. Compared with traditional e-commerce, live streaming on the Internet is highly dependent on the technical architecture, rule design and algorithm distribution of the platform. The generation and spread of its infringement risks show characteristics such as multiple subjects, complex scenarios and rapid dissemination. Although the current legal framework has provided a basic basis for the governance of online transaction infringement, there are still application predicaments in aspects such as the determination of platform responsibility, the division of obligation boundaries, and the operation of relief mechanisms. Based on this, this paper analyzes the legal regulation of online live-streaming infringement. On the basis of sorting out the current predicament of online live-streaming infringement, it focuses on discussing the deficiencies of the current system from the perspective of platform responsibility, and proposes to take the platform's risk control ability as the core. Through the institutional improvement path of typified configuration of responsibility structure, strengthening the obligation of risk prevention and control in advance, improving the internal governance mechanism of the platform, and promoting the collaborative governance of multiple subjects. This article aims to provide normative analysis and institutional references for the legal governance of online live-streaming infringement.

Keywords: Online live streaming infringement; platform responsibility; obligation of security guarantee legal regulation digital platform governance.

1. Introduction

With the rapid development of the digital economy, live streaming on the Internet has gradually become one of the important business forms. Relying on the Internet platform, live-streaming activities are playing an increasingly important role in product promotion, information dissemination and consumer decision-making. However, while the live-streaming economy is expanding rapidly, false advertising, misleading marketing and other infringement behaviors are also constantly emerging, causing a real impact on the protection of consumers' rights and interests and market order. How to effectively regulate related infringement behaviors while promoting the development of new business forms has become an important issue that urgently needs to be addressed in the current field of civil and commercial law.

In online live-streaming transactions, a multi-level and multi-subject interwoven interest structure has been formed among the hosts, platforms and merchants. Compared with traditional transaction models, live-streaming scenarios feature high immediacy, interactivity and emotional mobilization. Consumers are often at a disadvantage in terms of information and are more susceptible to the influence of improper business practices. In practice, some business entities commit infringement by exaggerating the efficacy of their products, concealing key information or creating a false transaction atmosphere, while the role of platforms in traffic distribution, content review and rulemaking has become increasingly prominent. The issue of liability determination thus triggered not only involves the logic of liability attribution at the level of tort law but also poses new challenges to the current platform governance system.

From a systemic perspective, although laws such as the Civil Code and the E-commerce Law have made principle-based provisions on the responsibilities of platforms and the obligations of operators, in the highly dynamic business scenario of live streaming on the Internet, there are still problems such

as unclear application boundaries and ambiguous responsibility allocation of relevant rules. Especially in terms of whether the platform should bear a higher degree of duty of care and how to define its legal status in infringement, the theoretical and practical circles have not yet reached a unified understanding.

Based on this, this paper intends to take online live-streaming infringement as the research object. On the basis of sorting out relevant legal norms and judicial practices, it systematically analyzes the types and legal characteristics of online live-streaming infringement, focuses on discussing the logic and institutional predicament of platform liability determination, and on this basis, puts forward path suggestions for improving relevant legal regulations. Through the research on the above-mentioned issues, the aim is to provide theoretical references with practical value for the legal governance in the field of online live streaming.

2. Types and Legal Characteristics of Online Live Streaming Infringement

With the rapid development of the online live streaming industry, while its business model has stimulated market vitality, it has also continuously given rise to various forms of infringement. Compared with traditional transaction models, live streaming on the Internet has the characteristics of immediacy, interactivity and high commercialization, which makes the manifestations of infringement more complex and poses new challenges to its legal determination. A systematic review of the types of online live-streaming infringement can help clarify the relevant legal relationships and lay the foundation for subsequent liability determination.

2.1. The Main Types of Online Live-Streaming Infringement

From the perspective of practical experience, the infringement behaviors in online live streaming mainly focus on the following aspects.

First of all, false advertising and misleading marketing are the most common types of infringement. In live-streaming scenarios, hosts often induce consumers to make transaction decisions by exaggerating the functions of products, fabricating usage effects, and selectively disclosing information. Such behavior may manifest in form as verbal expression or situational creation, but in essence, it may infringe upon consumers' right to know and even violate the principle of good faith.

Secondly, the infringement of consumers' legitimate rights and interests is also quite prominent. Some live-streaming sales activities have problems such as goods not matching the description, lack of after-sales service, and an incomplete return and exchange mechanism. Consumers often encounter obstacles such as difficulties in obtaining evidence and unclear responsibility subjects during the process of safeguarding their rights. Such problems not only harm the interests of individual consumers but also have an adverse impact on normal market orders.

Finally, some live-streaming activities may also involve unfair competition practices. For instance, by means of false transaction data, order manipulation and review manipulation, false prosperity is created, disrupting the fair competition order and infringing upon the legitimate rights and interests of other business operators. Such behaviors often have the characteristics of strong concealment and high technicality, which increases the difficulty of legal regulation.

2.2. The Subject Structure and Liability Forms of Online Live-Streaming Infringement

The complexity of online live-streaming infringement is also reflected in the diversified structure of the responsible parties. Unlike traditional transaction models, live streaming on the Internet often involves multiple subjects such as hosts, platform operators, and providers of goods or services, and their rights and obligations are highly intertwined.

On the one hand, as the direct subject carrying out promotional activities, the live-streamer has the basic duty of care and the obligation to make true statements during the live-streaming process, and their actions may directly constitute infringement. On the other hand, the platform holds a core position in terms of technical support, traffic distribution, and rulemaking. Whether it should bear

corresponding responsibility for the actions of the entities that have joined has become the focus of current controversy. In addition, in some cases, there is cooperation or interest connection between the product provider and the live-streamer, and the boundary of their responsibility also needs to be determined in combination with the specific transaction structure.

Against this backdrop, merely analyzing online live-streaming behavior based on traditional tort liability theories often fails to comprehensively address the complex issues in practice. The special status of the platform in terms of technical control, information management and risk prevention make its responsibility form present characteristics distinct from those of general civil subjects, which urgently needs to be clarified at the legal level.

2.3. Analysis of the Legal Characteristics of Online Live Streaming Infringement

Overall, online live-streaming infringement exhibits several notable characteristics in terms of legal nature. Firstly, its actions are highly dependent on technology and platforms. Infringement often relies on platform algorithms and traffic distribution mechanisms to be realized. Secondly, the consequences of infringement are characterized by their infusibility and concealment. Once they occur, they often have a wide range of impacts and are difficult to obtain evidence. Secondly, there is overlap among the responsible entities, making it difficult for the traditional “actor - victim” dual structure to be fully applicable.

For this reason, relying solely on traditional tort liability theories is no longer sufficient to comprehensively address the new problems presented by online live-streaming infringement. Against this backdrop, how to rationally define the responsibilities of platforms and improve the infringement relief mechanism through institutional design while respecting market vitality has become an important issue that urgently needs to be addressed in current theory and practice.

3. Determination of Platform Responsibilities under the Current Legal Framework

3.1. The Legal Basis of Platform Liability

In online live-streaming transactions, platforms no longer merely play the passive role of information intermediaries but exert substantive influences in aspects such as content presentation, transaction matching, and rulemaking. As the status of platforms in the digital economy continues to rise, their functions in information circulation and market order have also undergone significant changes. Some studies have pointed out that platforms are gradually transforming from “neutral technical tools” in the information dissemination structure to market entities with governance attributes, and their legal status is no longer fully explained by traditional intermediary theory [1].

From the perspective of current legal norms, laws such as the Civil Code and the E-commerce Law have made principle-based provisions on the responsibilities of platforms, but most of the relevant provisions remain at the level of general obligations. Especially in the context of live streaming on the Internet, platforms deeply engage in the transaction process through algorithmic recommendations, traffic distribution and other means, and their influence on transaction results has significantly exceeded the scope of general information intermediaries. Some scholars have pointed out that in this context, the platform’s control ability and risk prediction ability should be important bases for measuring its scope of responsibility, rather than merely using whether it directly commits infringement as the judgment criterion [2].

3.2. Criteria for Determining Platform Responsibility

At the level of responsibility determination, the academic community generally holds that whether the platform has fulfilled its reasonable duty of care should be the core criterion for judgment. With the wide application of technologies such as algorithmic recommendation and content distribution, the position of platforms in the information dissemination chain has become increasingly crucial, and

their ability to predict and intervene in risks has also been enhanced accordingly. Some studies have pointed out that under the condition that a platform has the ability to effectively manage content dissemination, if it fails to take reasonable preventive measures, it should bear corresponding responsibilities for the resulting damages [3].

Furthermore, the determination of a platform's responsibility does not merely depend on whether it directly commits infringement, but more attention should be paid to its functional positioning within the overall transaction structure. Relevant research suggests that when a platform plays an organizational, controlling or guiding role in the transaction process, its legal status has surpassed the traditional intermediary category, and a higher standard of duty of care should be applied [2]. This view provides theoretical support for breaking through the binary division of "direct infringement - indirect infringement".

3.3. The Practical Predicament of Platform Responsibility Determination

Although the academic community has reached a certain consensus on the theoretical basis of platform responsibility, it still faces many difficulties at the practical level. On the one hand, if the responsibility of the platform is overly emphasized, it may force the platform to take excessive censorship or even content blocking measures, thereby compressing the space for information dissemination and affecting market vitality. On the other hand, if the responsibility setting is too lenient, it may lead the platform to respond passively to infringement, thereby infringing upon the legitimate rights and interests of consumers. Some scholars have pointed out that the current platform responsibility system has not yet formed an effective connection between public law supervision and private law relief, and the ambiguity of responsibility boundaries has become a prominent problem in the operation of the system [4].

To sum up, although the current laws provide a basic institutional framework for platform responsibility, in the highly complex application scenario of live streaming on the Internet, it is still necessary to further refine the standards for determining responsibility in order to achieve reasonable regulation and effective guidance of platform behavior.

4. The Practical Predicament of Regulating Online Live Streaming Infringement

4.1. The Diversification of Responsible Entities

Online live-streaming infringement is usually not caused by the actions of a single entity, but rather the result of the joint participation of multiple parties such as platforms, live-streamers (including teams/institutions), and merchants. The functional positioning of different entities in live-streaming activities may overlap: the platform not only provides technical and transaction infrastructure but also influences transactions through rulemaking and traffic distribution. The live-streamer may either be an information publisher or be involved in product selection, pricing and after-sales service. As providers and operators of goods, merchants may directly control the content of their promotions and the quality of their performance. Previous studies have pointed out that the basic structure of e-commerce live-streaming sales is supported by three major subjects: "e-commerce platforms - live-streaming sales hosts - consumers". Among them, "live-streaming sales hosts" have the digital characteristics of being scenario-based and real-time. Therefore, it is necessary to more precisely define the identity of the hosts and the responsibilities of each subject in combination with different models and transaction scenarios [5].

Meanwhile, the diverse live-streaming models (such as platform self-operation, brand self-broadcasting, third-party entry, and MCN incubation, etc.) have led to significant differences in the relationships among the subjects in different cases. If there is a lack of refined identification of the types of subjects and transaction structures, judicial decisions are prone to problems such as inconsistent standards or even different judgments for the same case, reducing the predictability of

legal norms. It is precisely because the ambiguous positioning of the subject boundaries can easily lead to problems such as damage to consumers' rights and interests that some scholars emphasize that a systematic review of e-commerce live-streaming hosts and trading platforms should be conducted, and multiple risks in the live-streaming sales transaction system should be regulated and governed [5].

4.2. The Blurred Boundary Between the Platform's Duty of Care and the Duty of Review

The core of the platform's responsibility determination lies in the duty of care and the duty of risk prevention and control. However, the current system's provisions on the level, scope and triggering conditions of the obligations that the platform should undertake are rather general. In the context of online live streaming, there is a lack of clear and unified judgment standards for whether platforms should undertake higher review obligations for the promotional content of hosts, whether they should adopt stricter pre-examination for high-risk categories, and under what circumstances there is a risk of "should have known" infringement. From the perspective of empirical judgment, a study that conducted a full-sample analysis of civil judgments involving Article 38 of the E-commerce Law pointed out that in practice, "a unified judgment standard for platform security guarantee obligations has not yet been formed", and at the level of legal application, an overall understanding of Article 38 should be made to address the issue of "partial absence" of the normative basis [6].

Due to the immediacy, massive volume and variability of live-streaming content, platforms often claim that their review obligations should be moderate on the grounds of technical limitations and cost pressure. From the perspective of consumer protection and risk governance, the role of platforms in algorithmic recommendation, traffic inclination and transaction matching endow them with stronger risk control capabilities. The tension between the two logics makes it difficult to stabilize the boundaries of platform obligations, thereby affecting the consistency of responsibility determination and the regulatory force of the rules. In terms of regulatory construction, some scholars have pointed out that the expansion of security obligations to the field of online transactions under Article 38, Paragraph 2 of the E-commerce Law is an important institutional innovation, and they also emphasized that the security obligations of platforms have specific restrictions and hierarchical structures in terms of scope and standards: Its scope is limited to safeguarding the life and health safety of consumers, and in terms of standards, it may be higher than the general monitoring and inspection obligations derived from Article 38, Paragraph 1 "should have known" [7].

4.3. The High Cost of Consumer Relief

Live-streaming infringement on the Internet often occurs within a short period of time and relies on real-time interaction, immediate commitment and emotional marketing. Consumers are vulnerable to information asymmetry in transaction decisions, and after infringement occurs, they face difficulties in providing evidence: live-streaming content may be deleted or cannot be traced back, and the transaction chain involves multiple subjects and multiple platform entry points, making it difficult for consumers to obtain complete evidence to prove the promotional content, causal relationship and damage consequences. Some research directly points out that the "online transaction characteristics" of live-streaming sales significantly increase the difficulty for consumers to provide evidence. In addition, the "high cost of judicial rights protection" has led to a relatively small number of consumers choosing to protect their rights or even through judicial means in live-streaming sales [8].

Furthermore, even if consumers can prove the infringement facts, the dispersion of the responsible parties will increase the cost of relief: consumers may need to repeatedly confirm the responsibility attribution among the platform, the live-streamer and the merchant, encountering a situation of "mutual buck-passing". Although the internal complaint mechanism of the platform provides a convenient channel to a certain extent, its transparency and the intensity of relief may still be insufficient, resulting in low efficiency in consumers' rights protection. From the observation of data on rights protection behaviors, some literature also cites consumer surveys indicating that the

proportion of consumers encountering problems in live-streaming shopping is not low, but the actual complaint rate is relatively low. The reasons are mainly concentrated on factors such as “low cost-effectiveness of rights protection” and “complex process”, further reflecting the gap between the relief mechanism and its availability [8].

4.4. The Fragmented Application of Rules and Governance Mechanisms

Live-streaming infringement on the Internet has a significant intersection of public and private laws: on the one hand, it involves public interest goals such as consumer rights protection and market order maintenance; On the other hand, it is manifested as specific civil rights infringement and claims for damages. In the current governance structure, administrative supervision, industry self-discipline and civil relief often operate independently, lacking effective institutional connection, which easily leads to problems such as overlapping responsibilities, inconsistent standards or disconnection between supervision and judiciary. To some extent, platform rules and industry norms have taken on the function of “quasi-governance tools”, but their formulation procedures, implementation standards and external supervision mechanisms are not sufficient, which may lead to unstable governance effects. In response to this, some research, after observing the relevant judicial paths stipulated in Article 38, pointed out that although the judicial “path awareness” has to some extent clarified the connotation of platform security obligations and defined their scope of application, the assumption of responsibility still presents a diversified form. It is necessary to build a more stable dual-layer obligation system based on value measurement and risk allocation. To enhance the predictability of rule application [6].

5. Institutional Improvement Paths for the Governance of Online Live Streaming Infringement

5.1. Centering on the Platform’s Risk Control Capabilities, Promote the Typified Configuration of the Responsibility Structure

The positions of online live-streaming platforms in the trading system vary significantly, and their abilities to identify risks, control risks, and the depth of their involvement are not the same. If the same responsibility standard is uniformly applied to all platforms, it may not only lead to excessive expansion of responsibility but also weaken the regulatory effect of the system. Therefore, it is necessary to categorize and configure the platform’s responsibilities with the platform’s actual control ability over the transaction process as the core. Some studies have pointed out from the perspective of regulating e-commerce market entities that the legal status of platforms in the transaction structure is not fixed. The allocation of their responsibilities should be distinguished in combination with the actual functions of the platforms in rulemaking, technical control and transaction organization, which provides an institutional basis for the typological construction of platform responsibilities [9].

Specifically, for platforms that only provide basic technical services and do not actually get involved in the transaction process, emphasis can be placed on their obligation to handle the situation after receiving the notice. For platforms that deeply engage in live-streaming trading through rulemaking, algorithmic recommendation or profit-sharing, their duty of care and risk prevention and control requirements should be correspondingly raised. Establishing a hierarchical responsibility structure helps to achieve a relative match of responsibilities and capabilities among different platform forms.

5.2. Strengthen the Platform’s Obligation to Prevent and Control Risks in Advance and Shift the Focus of Governance Forward

Compared with the post-event accountability mechanism, pre-event risk prevention and control has more significant practical significance in the governance of online live-streaming infringement. The platform has inherent advantages in technical architecture, content review and transaction

management, and should assume corresponding prevention and control responsibilities during the stage when infringement risks are generated. Some scholars have pointed out from the theoretical perspective of “gatekeeper responsibility” that when a platform holds the key power of screening, sorting and releasing information before it enters the market, its legal obligations should be moved forward to the pre-review stage rather than merely remaining at the post-event handling level [10].

During this process, it is necessary to avoid simply understanding the platform’s obligations as comprehensive review obligations. Instead, differentiated prevention and control requirements should be set according to different types of risks. By embedding the obligation of risk prevention and control into the daily operation logic of the platform, it helps to promote the platform’s transformation from passive response to infringement to proactive governance.

5.3. Improve the Internal Governance Mechanism of the Platform and Enhance the Efficiency of Dispute Resolution and Relief

The internal governance mechanism of the platform plays an irreplaceable role in the governance of online live-streaming infringement. Compared with judicial relief, the internal complaint, negotiation and dispute resolution mechanisms of the platform have obvious advantages in terms of efficiency and cost. By improving complaint channels, clarifying handling time limits and enhancing the transparency of handling results, the problem of excessively high costs for consumers to protect their rights can be alleviated to a certain extent. From the perspective of information interest protection, some studies have pointed out that the effective implementation of the consumer protection responsibility of platforms depends on a stable, transparent and predictable internal governance mechanism; otherwise, the internal relief of platforms is difficult to truly play the role of “pre-filtering” [11].

Meanwhile, the platform should avoid arbitrariness in the process of rule operation by standardizing the formulation procedures and implementation methods of internal rules. By enhancing the predictability and superstability of platform rules, it helps to increase users’ trust in the platform’s governance mechanism and also helps to reduce the frequency of infringement disputes.

5.4. Promote Collaborative Governance Among Multiple Entities and Build a Comprehensive Regulatory System

Online live-streaming infringement has distinct systematic characteristics, and it is difficult to achieve effective regulation relying solely on a single governance subject. Therefore, it is necessary to promote coordinated cooperation among administrative supervision, judicial relief, industry self-discipline and platform autonomy, and build a comprehensive governance system with the participation of multiple subjects. Some scholars, when analyzing the evolution path of private power on platforms, have pointed out that the structural power formed by platforms through technological, rule-based and resource advantages is difficult to effectively restrain merely by post-event responsibility. It is necessary to introduce a comprehensive governance mechanism involving multiple subjects to achieve continuous regulation [12].

In this system, administrative supervision can form external constraints by formulating clear rules and strengthening law enforcement. Judicial judgments can enhance institutional expectations through stable judgment rules, and platform autonomy and industry self-discipline can help achieve refined governance at the daily operation level. Through multi-level and multi-subject coordinated operation, it is possible to effectively curb the risk of online live-streaming infringement while ensuring market vitality.

6. Conclusion

As a rapidly developing new form of transaction in the context of the digital economy, live streaming on the Internet has reshaped the way information is disseminated and the transaction structure and also made infringement risks present new characteristics such as multiple subjects,

complex scenarios and rapid spread. Compared with traditional e-commerce, live streaming on the Internet is highly dependent on the technical architecture and rule design of the platform. The generation and spread of its infringement issues are often closely related to the content distribution mechanism, transaction matching model and internal governance structure of the platform. As a result, relying solely on the existing theories of tort liability is no longer sufficient to fully meet the governance needs in the context of online live streaming.

This article conducts a systematic analysis on the issue of live-streaming infringement on the Internet. Based on a review of the types and legal characteristics of infringement, it focuses on discussing the theoretical basis and practical predicaments for the determination of platform liability under the current legal framework. Research shows that platforms no longer merely play the role of neutral intermediaries in online live-streaming transactions. Their crucial position in risk generation and control makes the issue of their liability significantly institutional complex. On the one hand, the diversification of responsible entities and the blurring of the boundaries of platform obligations have increased the uncertainty of judicial accountability. On the other hand, the difficulty in obtaining evidence and the high cost of relief have also, to a certain extent, weakened the effectiveness of consumer protection.

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