

网络著作权纠纷典型案例评析 ——网络服务提供者责任的确定

Determining the Liability of Internet
Service Providers (ISPs) in Online
Copyright Disputes: An Analysis of
Typical Cases

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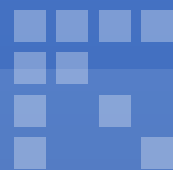
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一、网络著作权案件的观察

I. Overview of Online Copyright Cases

互联网传播方式的变革

Transformation of internet-enabled communication



随着互联网技术的飞速发展，信息传播方式发生了深刻变革。从传统的电台、电视台、报刊、杂志单一渠道分离式传播，转向依托互联网平台实现全方位、多角度的“全内容”传播。链接技术和平台分发技术的应用，实现了“人找信息”向“信息找人”的转变。传播方式的深刻变革，依赖于网络服务的不断推陈出新。

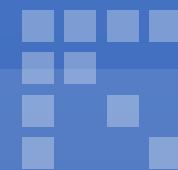
Rapid advances in internet technologies have profoundly shifted the ways in which information is disseminated. The traditional model of distribution through one or more isolated channels, such as radio, television, newspapers, and magazines, gave way to all-round, multi-dimensional “full-content” communication enabled by internet platforms. The application of links and cross-platform distribution has enabled the change from “people chasing information” to “information chasing people.” These fundamental shifts in our mode of communication rely on continuous innovation in internet services.

对案件的影响 | Impact on the cases



在网络著作权纠纷案件中，网络服务的种类不断增加，涉及网络服务提供者的案件成为著作权司法审判中最受关注、最具有挑战性的方面之一。权利人维权的方向也从向内容提供者维权，转向追究服务提供平台的责任。

The widening variety of internet services present in online copyright disputes has made the cases involving internet service providers (ISPs) one of the most watched and challenging types of copyright trials. Rather than targeting content providers, rights holders increasingly defend themselves by attempting to hold service-providing platforms liable.



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二、网络服务提供者责任案件的审理思路

II. How to Approach Trials
Involving ISP Liability

内容提供与服务提供的区分

Distinguishing between content and service provision



在涉及网络服务提供者责任的案件中，首先要区分内容提供与服务提供。内容提供者直接提供和控制侵权内容，承担直接侵权责任；服务提供者则不直接提供内容，其责任认定需要根据具体情况来判断，是否适用“避风港”规则，是否构成帮助侵权或者教唆侵权。

The first step in any ISP liability case is to make the distinction between content and service provision. A content provider directly provides and controls infringing content, making them liable for direct infringement; an ISP, on the other hand, does not provide content directly, and its liability is determined based on the specific circumstances, i.e., whether the “safe harbor” principles are applicable, and whether the ISP’s actions constituted aiding and abetting infringement.

网络服务提供者的类型 | Types of ISPs



《信息网络传播权保护条例》规定的网络服务提供者的类型包括自动接入和自动传输服务、自动缓存服务、信息存储空间服务、搜索和链接服务四类。

As stated in the Regulations on the Protection of the Right of Online Dissemination, the four types of ISPs are providers of automatic access and transmission services, automatic caching services, information storage services, and searching and linking services.

《中华人民共和国民法典》1194–1197条对网络服务提供者的责任和免责事由作出一般性规定。

Articles 1194–1197 of the Civil Code of the People's Republic of China contain general provisions on ISP liability and exemptions.

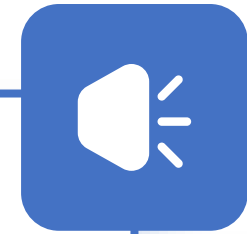
服务内容和方式的确定

Determining the content and model of service



确定网络服务的具体内容和提供方式是判断网络服务提供者责任的重要步骤。不同的服务内容和方式，其责任认定也会有所不同。服务提供的具体内容和方式对于是否存在明知或者应知的过错，以及在接到有效通知后如何采取制止侵权行为的“必要措施”都将产生影响。

Defining the specific content and delivery model of an internet service is an important step in establishing ISP liability, which varies depending on what service is provided and how. These specific factors will also affect the determination of wrongs that were known or should have been known, and what “necessary measures” to take upon receipt of effective notice to stop the infringement.

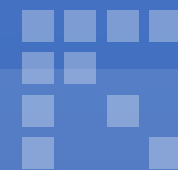


过错的判定 | Determining fault



判断网络服务提供者的过错，是案件争议的关键。过错判断通常涉及是否明知或应知侵权行为，以及是否履行了通知—必要措施义务。过错判断并不存在统一的标准，需要根据服务内容和方式、传播作品的知名度、监管能力、是否直接获得经济利益、是否采取合理必要措施等予以综合判断。

Determining the fault of the ISPs is the critical issue in dispute. This usually involves determining whether the infringement was known or should have been known, and whether the obligation of “notification and necessary measures” was fulfilled. There is no uniform criteria for such determination, which must be based on a comprehensive assessment of various factors, including the content and model of service, the popularity of the disseminated works, the ability of supervision, whether economic benefits were obtained directly, and whether reasonable and necessary measures were taken.



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三、算法推荐提供者的 责任认定

III. Determining the Liability of
Algorithmic Recommendation
Providers

案件基本情况 | Facts of the case



原告公司享有电视剧《延禧攻略》的信息网络传播权，被告公司未经授权在其运营的APP上利用信息流推荐技术传播网络用户上传的《延禧攻略》的短视频。

The plaintiff company holds the right to distribute the TV series *Story of Yanxi Palace* online, while the defendant company has disseminated, without authorization, user-uploaded short-form videos of the series through recommendations feed on the app it operates.

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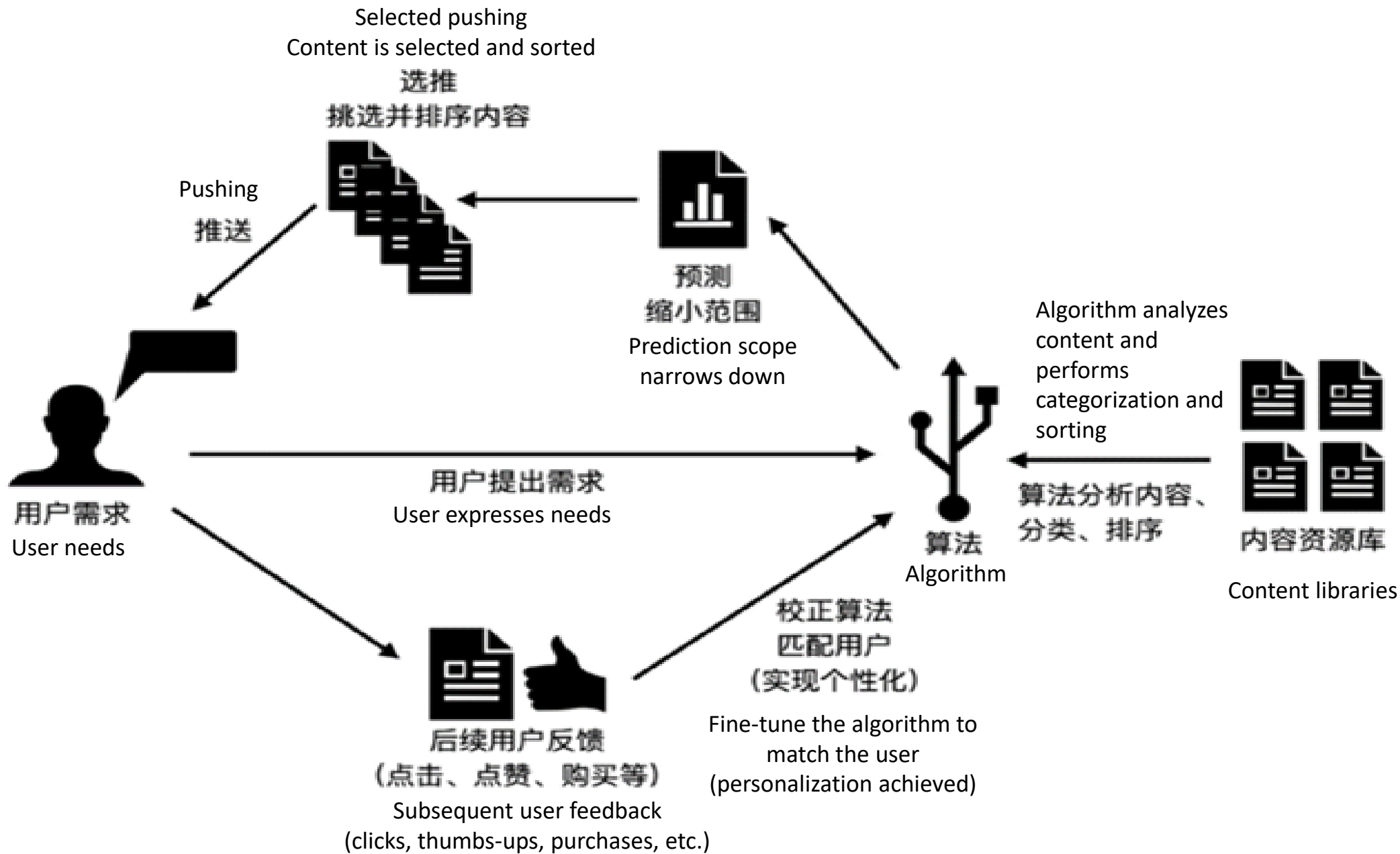
案件基本情况 | Facts of the case



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算法推荐服务是一种通过算法预测用户偏好，并向用户推荐感兴趣内容的技术。在理想状态下，推荐的优先级和用户感兴趣程度成正比。用户被推送内容后，可以根据点击、播放、点赞、购买等后续用户行为评估预测的准确性，并根据评估结果进一步校正或训练算法。

An algorithmic recommendation service uses algorithms to predict user preferences and suggest content they might find interesting. Ideally, the priority for recommendation is proportional to the potential interest of the user. After the content is pushed to the user, the accuracy of the predictions can be assessed based on subsequent user behaviors such as clicks, plays, thumbs-ups, and purchases. The results of the assessment are then used for continued fine-tuning or training of the algorithms.



算法推荐服务提供者的责任认定问题

Establishing the liability of an algorithmic recommendation service provider



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算法推荐是否属于网络服务 | Determining whether algorithmic recommendation is an internet service

在著作权领域，认定平台是否属于网络服务提供者，以平台是否参与到内容提供为标准。算法推荐虽然在传播阶段影响了内容的传播路径或传播范围，但不直接控制内容。 | In copyright law, the ISP status of a platform is determined by whether the platform participates in content provision. Even though they affect the path and reach of content dissemination, recommendation algorithms do not control the content directly.

算法推荐服务提供者的责任认定问题

Establishing the liability of an algorithmic recommendation service provider



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算法推荐是否区别于人工推荐

Algorithmic vs. human recommendation

算法推荐涉及的环节包括内容搜集、内容分析（内容分类和标签提取）、内容审核、用户标签提取（身份特征、行为特征和兴趣特征）、内容推荐、内容复审。算法推荐的本质是特征标签匹配，并不涉及内容的具体识别和判断，区别于网络服务提供者人工对内容进行选择、编辑、修改并统一向所有用户进行推荐的行为。 | Algorithmic recommendation involves a series of steps, such as content collection, content analysis (classification and label extraction), content review, user label extraction (identity, behavior, and interest-related characteristics), content recommendation, and content re-examination. On the fundamental level, algorithmic recommendation is about matching features and labels, which is different from human-performed ISP recommendation activities where the content is manually selected, edited, modified, and recommended to all users in a centralized pathway.

算法推荐服务提供者的责任认定问题

Establishing the liability of an algorithmic recommendation service provider

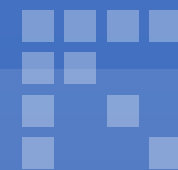


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算法推荐服务提供者的注意义务

The duty of care of algorithmic recommendation service providers

更加先进和高效的服务也存在着提高侵权传播效率、扩大侵权传播范围、加重侵权传播后果的风险。与不采用算法推荐而仅提供信息存储空间服务的其他经营者相比，算法推荐服务提供者理应对用户的侵权行为负有更高的注意义务。 | More advanced and efficient services carry the risk of allowing the infringing content to spread faster and wider with more serious consequences. Unlike operators who only offer information storage services, algorithmic recommendation providers should be held to a higher duty of care regarding infringement by its users.

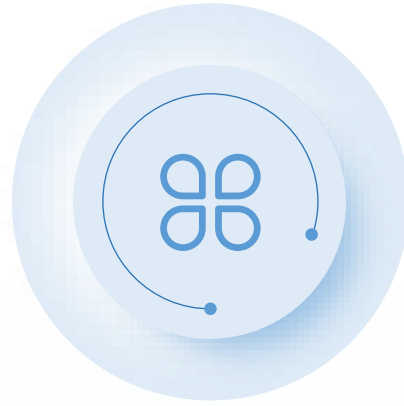


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四、云服务提供者的责任认定

IV. Determining the Liability of
Cloud Service Providers

案件基本情况 | Facts of the case



原告对游戏软件《我叫MT Online》享有著作权，被诉侵权的游戏《我叫MT畅爽版》非法复制了权利游戏的数据包，被诉侵权游戏存储于被告公司的云服务器中。 | The plaintiff, who holds the copyright of the game software *I Am MT Online*, alleged that its data was illegally copied by the infringing game *I Am MT Free Edition*, which was stored on the cloud server of the defendant company.

案件基本情况 | Facts of the case



云服务提供商是通过将基础设施虚拟化，使诸如光驱、硬盘等硬件成为随网服务。云服务器提供者有技术能力对其出租的云服务器进行整体关停或空间释放（即强行删除服务器内全部数据），却没有能力对存储在其出租的云服务器中的具体内容进行直接控制。云服务器租赁技术性质属于基础电信服务，不能跨过层级对内容进行控制。 | Cloud service providers virtualize infrastructure to turn hardware such as optical drives and hard disks into online services. Cloud server providers are technically capable of shutting down or releasing the space of (i.e., forcibly deleting all the data on) entire cloud servers they lease, but they do not have direct control over the specific content stored on these servers. Cloud server leasing is, essentially, a basic telecommunications service that does not allow control over higher-level content.

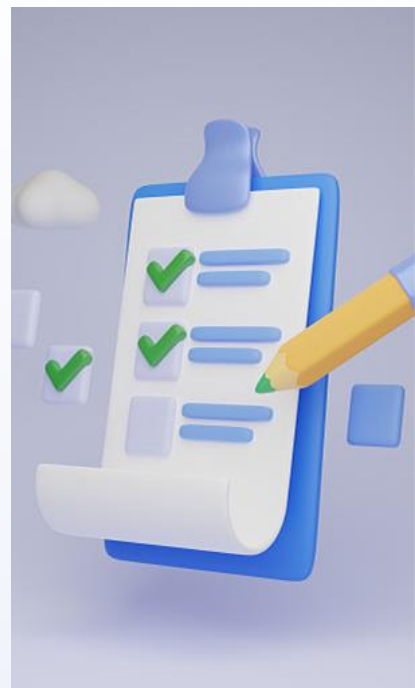
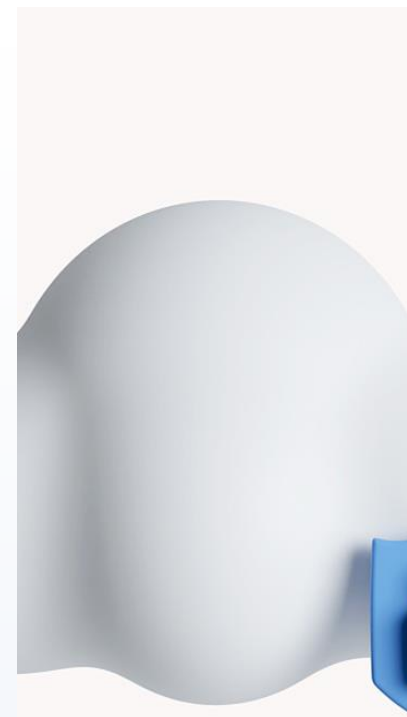
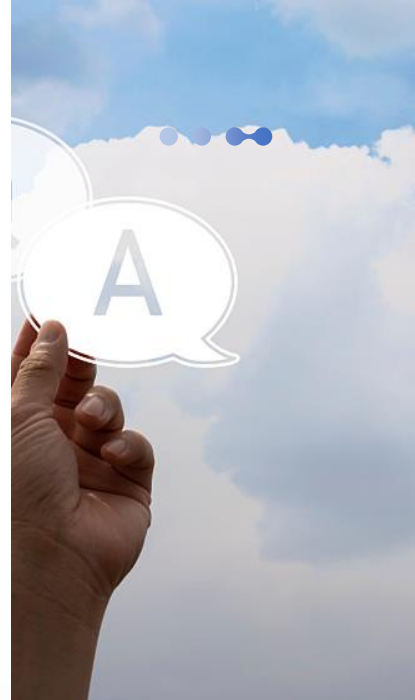
焦点问题 | Key issues

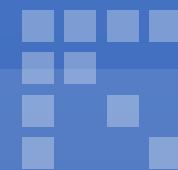
“ 云服务提供者是否适用通知—删除规则 | Whether the “notice and take down” rule applies to cloud service providers

云服务提供商从技术和商业伦理上均不能对侵权信息进行定位和处理。接到通知后即要求云服务提供商“关停服务器”或者“删除数据”有可能给云计算行业乃至整个互联网行业带来严重影响，通知-删除规则并不是界定云服务提供商著作权责任的适当规则。 | Both technical and ethical considerations prevent cloud service providers from locating or handling infringing information. Requiring them to “shut down the servers” or “delete the data” upon receipt of a notice may cause serious impact on the cloud computing industry and even the entire internet industry. This makes the “notice and take down” rule unsuitable for defining copyright liability of cloud service providers.

云服务提供者“必要措施”的范围 | The scope of “necessary measures” taken by cloud service providers

接到合格通知后，应当采取的“必要措施”不仅限于删除、断开链接，还包括转通知等其他行为方式。必要措施的认定，应结合场景和行业特点，秉持审慎、合理的原则。转通知作为云服务提供者的必要合理措施符合其服务特点和产业发展规律。 | The “necessary measures” that should be taken upon receipt of the qualifying notice not only include removing or disconnecting the links, but also forwarding the notice and other actions. These measures should be identified based on the characteristics of the scenario and the industry, in a reasonable and prudent manner. For cloud service providers, notice forwarding is a necessary and reasonable measure in line with the nature of their services and the evolution of the industry.





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五、网络服务提供者责任案件的展望

V. The Future of ISP Liability Cases

技术发展的挑战 | Challenges arising from technological progress



随着技术的发展，网络服务提供者的类型将不断丰富，网络服务提供者的责任问题会持续成为网络著作权案件审理的热点问题，责任认定将面临更多的挑战。

As technology progresses, the variety of ISPs will continue to expand, keeping ISP liability at the heart of online copyright cases and bringing additional challenges to its determination.

审理的重点 | Focus of the trials



- 1、案件审理中的首要问题应当是准确理解技术服务的内容和运行的原理。 | The primary issue in any trial should be to accurately understand the content and operational model of the technical service in question.
- 2、过错的判断将长期成为该类争议的核心问题。 | For a long time, determining fault will remain the central issue in these disputes.
- 3、网络服务提供者需要采取的“必要措施”不存在统一标准，将根据网络服务的性质和内容通过个案予以明确。 | In the absence of uniform standards, the “necessary measures” to be taken by ISPs will be determined by the nature and content of the internet services in each particular case.



对技术创新的影响 | Impact on technological innovation



网络服务提供者责任认定的合理性和公正性，将直接影响技术创新的发展。过于严格的责任认定可能会抑制技术创新，而合理责任认定将有助于推动技术创新。

The reasonableness and fairness of ISP liability determination has a direct impact on future technological innovation, which may be stifled by overly strict criteria or encouraged by a more balanced approach.

谢谢大家 | Thank you

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