



Case Analysis and Reflections on the Determination of Infringement of Information Network Dissemination Rights

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Date of Submission: 08-03-2025

Date of Acceptance: 23-03-2025

ABSTRACT: As a product of the rapid development of modern information technology, the legal concept of the right to information network dissemination has a relatively short history in China, leading to numerous issues that hinder the creation and dissemination of excellent works. This paper begins with the origin of the right to information network dissemination, analyzes the case of iQIYI vs. ByteDance, and delves into the determination of infringement by network service providers regarding the right to information network dissemination.

KEYWORDS: The right of Information Network Dissemination, Copyright, Infringement Determination

I. Introduction

The right of information network dissemination is a crucial aspect of property rights in copyright in China. However, as a product of the rapid development of modern information technology, the legal concept of the right of information network dissemination has a relatively short history in China. This has led to difficulties in identifying many infringements related to this right, which may weaken the protection of creators' rights in the internet world, thereby hindering the creation and dissemination of excellent works. In the long run, this is detrimental to the development of civilization. This article explores the origin of the right of information network dissemination, investigates its practical application, and analyzes the case of iQIYI vs. ByteDance, delving into the determination of infringement by network service providers regarding the right of information network dissemination.

II. The Derivation and Application of the Right of Information Network Dissemination

The right of communication through information networks was established to address the challenges posed by the internet to copyright protection. Before the advent of the internet,

traditional dissemination of works was conducted unilaterally by performers through live performances, radio, television, exhibitions, etc., providing content for public appreciation. Since the public could only access the works at fixed times, traditional dissemination was a passive, one-way communication. With the emergence of the internet, network dissemination brought revolutionary changes to the mode of communication. As long as the server remains connected, any user can watch or download works online at any time and from any location, placing the initiative to access works in the hands of the users, thereby achieving "interactive communication," or "on-demand streaming."

Article 8 of the WIPO Copyright Treaty, concluded in 1996, stipulates the "right of communication to the public" applicable to all types of works: "Authors of literary and artistic works shall enjoy the exclusive right of authorizing any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them."^[1] Among these, the right "to make available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them" is a sub-right of the "right of communication to the public" specifically aimed at interactive communication. This right is also the direct source of the right of information network dissemination in China's Copyright Law. The specific system of the "right of communication to the public" is shown in Figure 1. Therefore, to enhance the protection of copyright in the network environment, China has stipulated the right of communication to the public on information networks in accordance with Article 8 of the WIPO Copyright Treaty: "the right to make available to the public, by wire or wireless means, in such a way that members of the public may access these works from a place and at a time individually chosen by them."

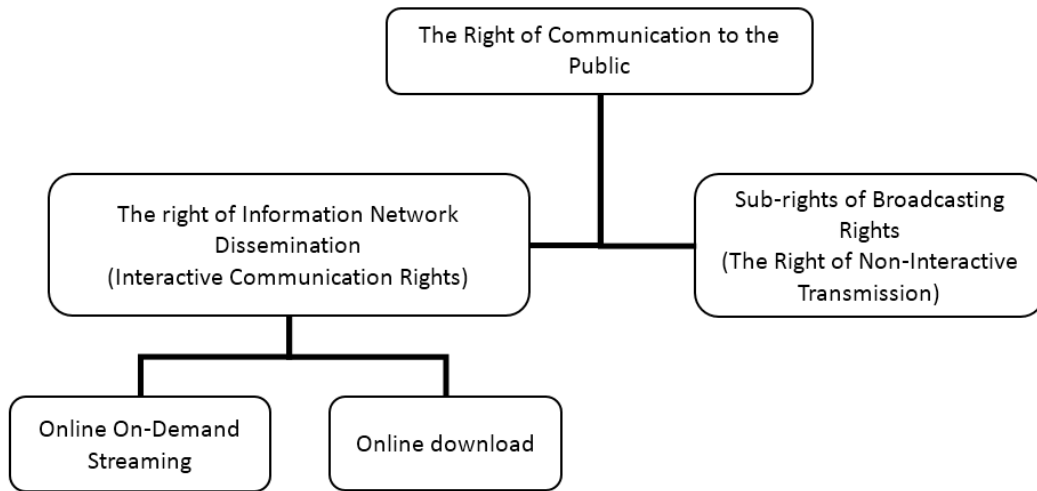


Figure 1: The "Right of Communication to the Public" System

According to the aforementioned provisions of the Copyright Law, the acts controlled by the right of communication through information networks are interactive network communication acts. Currently, there are three most typical interactive network communication acts in the network environment: first, website operators, i.e., network service providers, directly place digital works on open network servers for users to enjoy online or download; second, users upload digital works to open network servers for other users to enjoy online or download; third, users place digital works in the "shared area" designated by P2P software for users of the same P2P software to search and download. If uploaded without the permission of the copyright owner, it constitutes "direct infringement" of the right of communication through information networks. Technically, any "direct infringement" act occurring in the network environment cannot be separated from the hardware facilities and software systems of network service providers. The services provided by network service providers to others can be roughly divided into three categories: network access services, information storage space services, and information location services.

III. Case Analysis on the Determination of Infringement of Information Network Dissemination Rights

With the rapid development of network technology, judicial rulings on the infringement of the right to information network dissemination have increasingly become a focal issue in the industry. The duty of care is crucial in determining the liability of network service providers in China. Exploring the adverse consequences that should be borne by

network service providers who offer platforms to infringers for committing infringements will be more conducive to the proper use and continuous improvement of the right to information network dissemination, and more beneficial to the sustainable development of creative ecosystems in the cyber world. Therefore, taking the case of Beijing iQIYI Technology Co., Ltd. (hereinafter referred to as "iQIYI") suing Beijing ByteDance Technology Co., Ltd. (hereinafter referred to as "ByteDance") for infringing the information network dissemination rights of "Story of Yanxi Palace" as an individual case for analysis, it will provide significant guidance for future related case rulings.

Case Introduction

Plaintiff iQIYI, the operator of the online video platform "iQIYI," is exclusively authorized to legally possess the global information network dissemination rights for the film and television work "Story of Yanxi Palace" (hereinafter referred to as "Yanxi"), for which it has paid substantial copyright fees, and is entitled to legally protect its rights against infringement.

The defendant, Byte Company, is the operator of the "Today's Headlines" mobile application (hereinafter collectively referred to as Toutiao APP) and the Toutiao accounts. "Today's Headlines" is a personalized recommendation engine product based on data mining technology, which recommends valuable and personalized information to users. "Toutiao accounts" is an open content creation and distribution platform launched by "Today's Headlines," serving as a professional information publishing platform for media, national institutions, enterprises, and self-media, dedicated to



helping content producers efficiently gain more exposure and attention on the mobile internet.

Plaintiff iQIYI Inc. alleged that during the exclusive online broadcast period of the series "Yan" on its platform, the play count exceeded 15 billion, generating a significant hit effect. Defendant ByteDance Ltd., without authorization, during the peak broadcast period of "Yan," disseminated and recommended to the public short videos (hereinafter referred to as the involved short videos) extracted from "Yan" and uploaded by users through its operated Toutiao APP, utilizing algorithmic recommendation technology, achieving extremely high play counts, with the highest single video play count exceeding 1.1 million times, infringing upon iQIYI Inc.'s right to communicate works to the public via information networks. Therefore, iQIYI Inc. believes that ByteDance Ltd., knowing or should have known that users uploaded infringing content, failed to fulfill reasonable duty of care during the first broadcast, exclusive broadcast, and peak broadcast period of "Yan," and is subjectively at fault, requesting that ByteDance Ltd. be sentenced to compensate for economic losses of 29.216 million yuan and legal expenses of 784,000 yuan.

The defendant, ByteDance, argued that iQIYI's evidence is insufficient to prove its exclusive right to disseminate the drama series over information networks. Unauthorized clips of Yanxi Palace were disseminated through Toutiao's algorithmic feed, and ByteDance merely provided information storage space services. As a network service provider, ByteDance has fulfilled its reasonable duty of care, lacks any subjective fault for infringement, and therefore does not constitute infringement.

After deliberation, the court determined that Byte Company had sufficient conditions, capabilities, and reasonable grounds to be aware that a large number of its users were extensively engaging in the alleged infringing activities, which falls under the legally defined "should have known" scenario. From a formal requirement perspective, Byte Company took corresponding measures in this case; however, from a substantive requirement perspective, the measures taken by Byte Company did not reach the necessary level, failing to achieve the effect of stopping and preventing obvious infringements. Byte Company not only provided information storage space services but also offered information flow recommendation services, and thus should bear a higher duty of care regarding users' infringing activities. Ultimately, Byte Company's involved actions constituted contributory infringement, and it was ordered to compensate the plaintiff for economic

losses of 1.5 million yuan and reasonable litigation expenses of 500,000 yuan, totaling 2 million yuan.

Controversial Focus

i. Does the plaintiff, iQIYI, have the right to file an infringement lawsuit?

According to iQIYI's confirmation, the infringement ceased on April 11, 2019. Therefore, this case is governed by the Copyright Law of the People's Republic of China (hereinafter referred to as the "Copyright Law"), which came into effect on April 1, 2010.

According to Article 15 of the Copyright Law: "The copyright of cinematographic works and works created by a process analogous to cinematography shall be enjoyed by the producer, and the copyright owner has the right to authorize others to exercise the rights they enjoy. In the absence of proof to the contrary, the citizen, legal person, or other organization whose name appears on the work shall be deemed the author."^[2]The end credits of the series clearly state that "the exclusive right to disseminate information via the internet belongs to iQIYI," and iQIYI has also submitted its exclusive licensing agreement. Therefore, in the absence of contrary evidence, the court, considering the aforementioned evidence, has determined that iQIYI has been granted the exclusive right to disseminate the series via the internet for the corresponding period, has the right to file this lawsuit, and is justified in sending a written notice to the infringing internet service provider in accordance with the "notice-and-takedown" principle, demanding necessary measures such as the removal of the infringing short videos.

ii. Whether the defendant, Byte Company, has infringed iQIYI's right of communication through information networks?

Firstly, the uploading and publishing of the short video in question were carried out by a Toutiao account user without legal authorization. Therefore, it should be determined that iQIYI's right to disseminate information over the internet regarding the drama has been infringed upon, and the Toutiao account user of ByteDance directly committed the alleged infringement. However, the biggest point of contention in this case is whether ByteDance, as a network service provider, constitutes joint infringement with the infringing user, or whether it is liable for providing assistance to the user's infringing activities.



1. Whether ByteDance constitutes joint infringement?

Although the users involved in the case utilized the network services provided by ByteDance to commit the infringements, and the short videos in question were disseminated via the Toutiao APP, objectively, as the operator of the Toutiao APP, ByteDance did not participate in the users' acts of uploading and publishing the infringing short videos. Subjectively, there is also a lack of evidence to prove that ByteDance had any communication of intent with the users involved, leading them to directly commit the infringements. The uploading and publishing of the short videos by the users, and the information flow recommendation by ByteDance, while objectively related to some extent, are independently decided and executed actions, and do not constitute a collaborative effort to jointly infringe upon the information network dissemination rights of the drama.

2. Does ByteDance constitute contributory infringement?

Due to the continuous expansion of the internet industry, copyright infringement cases on the internet are frequent. However, internet service providers do not have the capability to review whether the content uploaded by users infringes copyright. Therefore, based on the safe harbor principle, Article 23 of China's Regulations on the Protection of the Right to Network Dissemination (2006), which came into effect in 2006 in China, clearly stipulates: "Internet service providers who provide search or link services to users shall not be liable for compensation if they disconnect the links to infringing works, performances, or audio and video recordings according to the provisions of these regulations after receiving a notice from the copyright owner." However, according to the principle of the red flag, if the fact of infringement of the right to network dissemination of information is as obvious as a red flag, internet service providers cannot use the safe harbor principle to evade liability for infringement.^[3] Therefore, to determine whether ByteDance constitutes contributory infringement, the key lies in whether it knew or had reason to know that its users were committing infringements, yet failed to take necessary measures to stop the infringement and continued to provide technical support.^[4]

(1) Regarding whether ByteDance was aware of the infringement

In this case, although ByteDance's algorithm-based recommendation technology for information flow does not specifically identify the

content of individual short videos, and the notice sent by iQIYI to ByteDance did not include specific URLs or other precise information to locate the infringing works, it cannot be simply concluded that ByteDance was unaware of the infringing activities on the Toutiao app.

During the broadcast period of "Yan Drama," the total number of views exceeded 15 billion, and related media coverage pushed the public attention of "Yan Drama" to its peak, giving it high visibility and significant influence. Moreover, iQIYI has continuously issued warnings and notifications through warning letters and lawyer's letters. As the operator of the Toutiao APP, ByteDance has no reason to be unaware or uninformed of the infringements by its numerous Toutiao account users, which falls under the legal definition of "should have known" this situation.

(2) Regarding whether ByteDance has taken reasonable measures

Regarding reasonable measures, two aspects should be considered: the formal requirement, which is whether reasonable methods and means are adopted; and the substantive requirement, which is whether the consequences achieve the intended effect and purpose. The assessment of the effect should not solely rely on whether the content is removed and the duration of removal as the criteria, otherwise it will fall into an endless loop, causing serious losses to the copyright owner.

In this case, considering iQIYI's acknowledgment of the relevant facts, it can be determined that ByteDance has implemented measures such as deletion and blocking against the infringing acts of the involved users. However, it is still necessary to further assess whether the measures taken by ByteDance have reached the necessary level, that is, whether they have achieved the effect of stopping and preventing obvious infringement.

According to the court's statement, on one hand, after ByteDance claimed to have initiated proactive measures, the newly added infringing short videos still constituted the majority of infringing content and appeared during peak viewership periods. This fact indicates that the measures ByteDance claimed to have taken did not effectively and promptly prevent or stop obvious infringements in practice. On the other hand, ByteDance failed to provide any evidence during the trial to prove the effectiveness of the various measures it mentioned (including deleting infringing short videos and banning accounts of infringing users), and thus should bear the corresponding adverse legal consequences.



In summary, ByteDance, while being aware that its users were utilizing the information flow recommendation service provided on the Toutiao APP to commit infringements, did implement measures such as deletion and blocking, thereby meeting the formal requirements of taking appropriate actions as mandated by law. However, judging from the actual outcomes, the measures taken by ByteDance at the time did not meet the substantive requirements for effectively stopping and preventing obvious infringements. It should be concluded that the relevant measures taken by ByteDance in this case did not reach the level of being "necessary." Based on this, it is concluded that ByteDance still provided corresponding information storage space services and dissemination technical support to users who committed infringements, constituting contributory infringement, and should bear joint liability with its users.

iii. Obligations of Care Regarding Infringement in Algorithmic Recommendations

In this case, ByteDance provided users not only with information storage space services but also with information flow recommendation services. The widespread dissemination of the infringing short videos in question was the result of users' infringing actions combined with these two services. While ByteDance's technological advantages have indeed garnered more traffic and competitive market benefits for itself, the risks associated with more advanced and efficient services—such as increased efficiency of infringement dissemination, expanded scope of infringement dissemination, and aggravated consequences of infringement dissemination—cannot be overlooked. Given the coexistence of gaining more advantages and benefits with the potential for greater infringement risks, ByteDance, compared to other operators who do not use algorithmic recommendations and only provide information storage space services, should bear a higher duty of care regarding users' infringing actions.

IV. The contemporary significance of the iQIYI vs. ByteDance case

This case is a typical dispute involving the infringement of information network dissemination rights related to short video algorithm recommendation technology. As the "first algorithm recommendation case nationwide," it innovatively elucidates the infringement of information network dissemination rights among large internet companies from the perspective of the algorithm

recommendation era. The focus of the judgment is that ByteDance provides users not merely with information storage space services but also with information flow recommendation services. Furthermore, the object of contributory infringement that should be evaluated in this case is not the information flow recommendation technology with substantial non-infringing uses, but ByteDance as the applicator or tool user of this technology. Although algorithm recommendation is an indispensable and crucial part of service implementation, beyond the algorithm recommendation process, ByteDance can still improve by taking necessary measures in its service and operational processes to promptly stop and prevent obvious infringements and their consequences.

This ruling provides judicial guidance on how internet service providers can legally utilize algorithmic recommendation technology. It offers a reference for adjudicating similar cases in determining the contributory infringement of internet service providers regarding the right to disseminate works online, while also serving as a warning to build better online platforms.

REFERENCES

- [1] Guo Ruida. Research on the Protection of the Right to Information Network Dissemination—Against the backdrop of copyright law revision[J]. *Nan Fang Lun Kan*, 2021(06):69-71.
- [2] Wang Qian. *«Intellectual Property Law Tutorial»* [M]. Seventh Edition, China Renmin University Press, 2021:190-192.
- [3] Qiu Rong. On the Duty of Care of Internet Service Providers in Copyright Infringement[C]. *«Shanghai Legal Studies» Journal* Volume 23, 2021 - Southeast University Edition, 2021:246-252.
- [4] Liu Shuyu. Determination of Infringement Liability for Information Network Dissemination Rights of Internet Service Providers[D]. Northwest Normal University, 2022.