

Legal Provisions and Practical Effects of Burden of Proof in Online Copyright Infringement Cases Under China's Copyright Law

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Abstract

This paper explores the legal provisions and practical effects of the burden of proof in online copyright infringement cases under China's Copyright Law. With the rapid growth of digital technology and the increasing prevalence of online platforms, copyright infringement has become a significant challenge in China. The paper examines the specific rules set forth in the Copyright Law, particularly those that allow for a shift in the burden of proof upon the presentation of preliminary evidence by the copyright holder. It analyzes the impact of these provisions on both plaintiffs and defendants, highlighting the benefits of empowering copyright holders and the challenges associated with procedural fairness, evidentiary standards, and judicial consistency. The paper also discusses the evolving use of digital evidence, such as blockchain technology, and the need for clearer guidelines to balance the rights of all parties. Ultimately, it argues for continued refinement of the legal framework to ensure effective and equitable copyright enforcement in the digital age.

Keywords: online copyright infringement, burden of proof, digital evidence

1. Introduction

With the rapid advancement of digital technology and the widespread use of the internet, the enforcement environment for copyright law has undergone significant changes worldwide, and China is no exception. The rise of online platforms and digital content distribution has led to a substantial increase in copyright infringement cases, presenting complex challenges for rights holders and the judicial system. Within this context, China's legal framework, rooted in the Copyright Law and supplemented by the Civil Procedure Law and various judicial interpretations, aims to balance the interests of copyright owners, users, and the broader public. However, the complexities of the digital environment—such as the ease of copying, distributing, and modifying works—make the enforcement of these rights particularly challenging, especially in terms of the allocation of the burden of proof. The Copyright Law, particularly after its 2010 amendment and subsequent updates, establishes a foundational structure for adjudicating copyright infringement cases, generally requiring the plaintiff, typically the copyright holder, to prove that the defendant engaged in unauthorized use. Yet, due to the characteristics of digital infringement—often involving anonymity, cross-border elements, and sophisticated technological methods—the burden of proof can become a formidable obstacle for the plaintiff. To alleviate this challenge, the Chinese legal system has introduced various mechanisms, such as presumptions of infringement and shifting the burden of proof when the right holder presents preliminary evidence, as outlined in judicial interpretations by the Supreme People's Court in 2012 and revised in 2020. These rules have led to a growing acceptance by courts of digital evidence and the use of technological methods like blockchain for evidence authentication. However, the implementation of these burden of proof rules also reveals practical challenges, such as the potential for procedural unfairness or abuse by plaintiffs. This essay examines the actual effects of these legal provisions, analyzes their effectiveness in protecting copyright in the digital environment, and identifies areas where further reforms may be needed to enhance fairness and efficiency in the legal process.

2. Legal Provisions on Burden of Proof in Copyright Infringement Cases

The burden of proof in copyright infringement cases in China is anchored in the broader principles of civil litigation as defined by the Civil Procedure Law of the People's Republic of China. Article 64 of this law establishes that “a party shall have the responsibility to provide evidence for its claims or defenses.” This principle places the initial burden on the plaintiff—typically the copyright holder—to prove both the existence of their copyright and that the defendant's actions constitute infringement. However, the specific application of this general rule in the context of online copyright infringement cases is further shaped by provisions within China's Copyright Law and various judicial interpretations.

2.1 Specific Provisions in China's Copyright Law

China's Copyright Law, particularly following its third amendment in 2010 and further revisions in 2020, provides explicit guidelines concerning the burden of proof in copyright disputes. Article 49 of the Copyright Law stipulates that the right holder must demonstrate that the alleged infringer has engaged in unauthorized acts, such as copying, distributing, or otherwise using their copyrighted material. The law recognizes the inherent challenges faced by copyright holders in proving infringement in an online context, where the evidence is often elusive due to the anonymous nature of digital platforms, the ease with which infringing material can be disseminated, and the frequent involvement of international elements. To address these challenges, the law incorporates mechanisms that adjust the burden of proof to accommodate the complexities of digital infringement. One such mechanism is the presumption of infringement, which can be invoked under certain conditions. For instance, if the plaintiff can provide preliminary evidence of infringement—such as digital copies, screenshots, or notarized records that suggest unauthorized use—the court may shift the burden to the defendant to prove that their activities were lawful or did not constitute infringement. This approach is intended to counterbalance the evidentiary difficulties that plaintiffs often face in cases where the infringing party controls critical evidence or where such evidence is otherwise difficult to obtain.

2.2 Judicial Interpretations and Shifting the Burden of Proof

The Supreme People's Court of China has further elaborated on these provisions through judicial interpretations, most notably those issued in 2012 and revised in 2020. These interpretations serve as authoritative guidelines for lower courts in handling copyright disputes, particularly those involving online infringements. According to these judicial interpretations, when a right holder presents preliminary evidence of infringement, the courts may invoke a shift in the burden of proof, compelling the defendant to demonstrate the legality of their actions. The 2012 judicial interpretation established key precedents by emphasizing the need for flexibility in assessing digital evidence. For example, it explicitly recognized that in cases where it is “objectively difficult” for the plaintiff to collect direct evidence of infringement due to the control of such evidence by the defendant or third parties (such as internet service providers), the burden of proof may be partially or fully shifted to the defendant. This interpretation also acknowledges the admissibility of various forms of electronic evidence, such as screenshots, transaction records, or blockchain-authenticated records, provided they meet certain criteria for authenticity and relevance. The revised 2020 interpretation expanded on these principles by providing more concrete guidelines on what constitutes preliminary evidence sufficient to shift the burden of proof. It clarified that evidence such as website source code, server logs, and digital forensic reports could be used to substantiate a plaintiff's claims. Additionally, it underscored the importance of notarization and forensic authentication in establishing the credibility of digital evidence. By setting these standards, the court aimed to reduce ambiguity in lower courts' application of the law, ensuring more consistent handling of online copyright infringement cases.

2.3 Presumptions and Evidence Standards in Online Contexts

The introduction of evidentiary presumptions is another critical aspect of China's approach to managing the burden of proof in online copyright disputes. When a plaintiff establishes a *prima facie* case of infringement—meaning they have provided enough initial evidence to suggest that infringement is likely—the burden shifts to the defendant to disprove the claim. This can include proving that they had authorization to use the copyrighted material, that the use falls under an exception or limitation (such as fair use), or that the material in question does not actually infringe upon the plaintiff's rights. By allowing for a shift in the burden of proof based on preliminary evidence, the courts aim to facilitate a more equitable resolution process that accounts for the inherent difficulties in obtaining direct evidence in digital environments. This provision is particularly crucial in online copyright infringement cases, where infringing activities are often conducted in ways that make it challenging for plaintiffs to gather conclusive proof without cooperation from the defendant or third parties like internet service providers.

2.4 Balancing Interests: Rights Holders vs. Defendants

While these provisions and interpretations aim to enhance the enforceability of copyright in the online domain, they also attempt to balance the interests of both parties involved in a dispute. The shifting burden of proof

serves to prevent plaintiffs from being unduly disadvantaged in cases where critical evidence is beyond their reach. However, this mechanism also ensures that defendants have a fair opportunity to rebut claims of infringement, thus maintaining the principle of procedural fairness. Concerns remain about potential abuses of these provisions by copyright holders, particularly in the context of strategic litigation where parties may exploit the burden-shifting mechanism to pressure defendants into settlements, regardless of the merits of their claims. To counteract this, Chinese courts are increasingly emphasizing the importance of judicial discretion in applying the burden-shifting rules, carefully scrutinizing the preliminary evidence presented by plaintiffs to prevent frivolous or vexatious litigation.

3. Practical Effects of Burden of Proof Provisions

The practical implementation of the burden of proof provisions in China's Copyright Law reveals both the strengths and challenges of enforcing copyright in the digital age. The effectiveness of these rules in online copyright infringement cases can be analyzed through several critical aspects:

Evidentiary Challenges and Judicial Practices: The digital nature of online copyright infringement introduces substantial evidentiary challenges for plaintiffs. Evidence such as server records, website logs, IP addresses, and transaction histories are often controlled by the defendants or third-party intermediaries like internet service providers, making it difficult for the copyright holder to obtain direct proof of infringement. The legal framework, which allows for a shift or sharing of the burden of proof, partially addresses these challenges. Courts have increasingly accepted various forms of electronic evidence, such as screenshots, HTML source code, digital forensic reports, and blockchain-based evidence, to establish a *prima facie* case of infringement. However, this has led to further complications in practice. For example, the quality and authenticity of electronic evidence are often disputed by defendants, who may argue that such evidence has been tampered with or is unreliable. The courts, therefore, need to engage in a thorough examination of the authenticity and reliability of the evidence, which can lead to prolonged litigation and increased costs for both parties. Additionally, while judicial interpretations encourage flexibility in accepting electronic evidence, inconsistent application across different courts has created uncertainty for both plaintiffs and defendants.

Presumption of Infringement and Rebuttals: The introduction of a presumption of infringement once a *prima facie* case is established has facilitated a more efficient handling of cases by shifting the burden of proof to the defendant. This procedural shift often leads to quicker settlements or resolutions, as defendants may find it challenging to provide concrete evidence proving that their use was lawful or non-infringing, especially in complex digital environments where full transparency over evidence may be lacking. However, the presumption of infringement can sometimes unfairly disadvantage defendants, particularly small businesses or individuals who may lack the resources to mount a robust defense. In cases where alleged infringement is unintentional or occurs without the defendant's direct knowledge (e.g., user-generated content on platforms), the defendant may be placed in a precarious position, needing to prove the absence of liability or lawful use without sufficient access to exonerating evidence. This can lead to increased litigation costs for defendants and, in some cases, may encourage settlements even when defendants believe they are not liable, simply to avoid the financial and reputational costs associated with litigation.

Impact on Copyright Holders and Infringers: The legal provisions regarding the burden of proof have significantly empowered copyright holders. By lowering the threshold for proving infringement and allowing for broader acceptance of digital evidence, these rules have enabled right holders to initiate more lawsuits against alleged infringers. This has led to an increase in the number of copyright infringement cases filed in Chinese courts, as plaintiffs now have greater confidence in their ability to present a viable case. However, this empowerment has also created potential for misuse. There are concerns that some copyright holders may exploit these provisions to file frivolous or opportunistic lawsuits, particularly targeting smaller entities or individuals who may lack the resources to defend themselves adequately. This has led to criticism that the legal provisions, while strengthening copyright enforcement, may also result in overreach and abuse of the legal system. Balancing the need to protect legitimate copyright interests with preventing misuse of the legal framework is an ongoing challenge in practice.

Role of Notarization and Forensic Authentication: Notarization and forensic authentication of digital evidence have become critical components in online copyright infringement cases in China. Courts often require that digital evidence, such as screenshots, videos, or digital logs, be notarized to be admissible in court. This requirement serves to provide an initial layer of credibility and authenticity to the evidence presented by the plaintiff. However, notarization can be costly and time-consuming, adding to the overall complexity of litigation. Furthermore, the evolving technological landscape has introduced new methods for authenticating digital evidence. Blockchain technology, for example, provides a secure and tamper-proof method for verifying the authenticity of digital content. While blockchain-based evidence is gradually gaining acceptance in Chinese courts, its practical application remains in the early stages. The courts are still developing guidelines and

standards for evaluating such evidence, and its impact on the burden of proof is yet to be fully understood. The adoption of new technologies like blockchain presents both opportunities and challenges for the judicial system in handling online copyright infringement cases.

Judicial Discretion and Consistency in Application: The role of judicial discretion in applying the burden of proof provisions cannot be understated. Courts must navigate complex evidentiary landscapes while balancing fairness to both parties. Judges are granted significant discretion in determining whether the plaintiff's evidence is sufficient to shift the burden of proof and in evaluating the admissibility and weight of digital evidence. This flexibility allows courts to adapt to the unique circumstances of each case, but it also introduces variability and potential inconsistency in rulings. Different courts may apply the same legal standards differently, depending on their interpretation of the evidence's credibility or the plaintiff's efforts in gathering evidence. This inconsistency can lead to unpredictable outcomes, reducing the overall predictability and reliability of the legal process.

4. Evaluation of Impact on Case Handling

The impact of the burden of proof provisions in online copyright infringement cases under China's Copyright Law reveals both significant benefits and substantial challenges in the handling of cases. These provisions have substantially influenced how courts approach copyright disputes in the digital environment, shaping both procedural dynamics and substantive outcomes.

4.1 Strengthening the Position of Copyright Holders

The burden of proof provisions have undoubtedly strengthened the position of copyright holders by lowering the evidentiary barriers to bringing infringement cases to court. The allowance for preliminary evidence—such as screenshots, digital copies, or website records—to shift the burden of proof has enabled copyright holders to enforce their rights more effectively. This procedural flexibility is especially crucial in online environments where direct evidence of infringement is often difficult to obtain. The legal framework's recognition of digital evidence as legitimate and the possibility of shifting the burden of proof to the defendant have encouraged a greater number of copyright owners to initiate lawsuits, contributing to a more robust legal regime for copyright protection in China. The courts' acceptance of various forms of digital evidence, including new technologies like blockchain, has facilitated more comprehensive enforcement of intellectual property rights. Blockchain technology, for example, offers a tamper-proof, verifiable ledger that can serve as compelling evidence of authorship or ownership of digital works, which is particularly useful in proving online infringements. By integrating these technological advancements, the courts are better equipped to handle complex cases that require digital forensic expertise, thereby promoting more effective copyright enforcement.

4.2 Challenges in Balancing Plaintiffs' and Defendants' Rights

However, the practical implementation of these provisions has highlighted significant challenges in balancing the rights of plaintiffs and defendants. The shifting burden of proof, while advantageous for plaintiffs, may lead to an uneven playing field that places undue pressure on defendants, especially those with fewer resources or less access to legal expertise. In many cases, defendants, particularly small businesses or individuals, may lack the technological means or financial capacity to gather exonerating evidence, leading to a potential imbalance in the litigation process. For example, while a large corporation may have the resources to conduct a thorough digital forensic analysis or hire expert witnesses to challenge the plaintiff's evidence, smaller defendants may find these costs prohibitive, forcing them into unfavorable settlements or default judgments. The requirement for defendants to disprove allegations of infringement once a *prima facie* case is made can lead to procedural inequities. Defendants may find themselves in a defensive posture, needing to rebut claims without clear access to all the evidence. This dynamic can be particularly problematic in cases involving anonymous online activities or third-party platforms, where the defendant may not have direct control over the evidence or even awareness of the alleged infringing activities. These scenarios can create substantial hurdles for defendants, potentially leading to unfair outcomes if the burden of proof is applied too rigidly.

4.3 Evidentiary Challenges in Online Infringement Cases

The practical difficulties associated with obtaining and authenticating digital evidence continue to pose significant obstacles to fair and efficient case handling. Even though China's courts are increasingly accepting digital evidence, challenges remain regarding the standardization of such evidence and its verification. Issues such as data integrity, the risk of tampering, and the difficulty of establishing the chain of custody for digital files mean that courts must often rely on forensic experts or third-party certifications to assess evidence validity. This reliance can increase litigation costs and extend the duration of legal proceedings, making the process less accessible to parties with limited resources. The requirement for notarization or blockchain authentication of digital evidence, while aimed at ensuring its authenticity, can also add layers of complexity and expense. Notarization, for instance, can be a lengthy and costly process, particularly for plaintiffs who may need to notarize multiple pieces of evidence. Similarly, blockchain technology, while promising, is not yet universally

adopted or fully understood in all legal contexts, leading to inconsistencies in how courts evaluate such evidence. These factors can complicate case management and undermine the efficiency of the judicial process.

4.4 Impact on Litigation Dynamics and Judicial Consistency

The introduction of shifting burdens of proof and the acceptance of new forms of digital evidence have also had notable effects on litigation dynamics. On one hand, these provisions have incentivized copyright holders to pursue enforcement actions, resulting in a higher volume of cases being brought before the courts. This has, in turn, pressured the judiciary to develop more streamlined procedures for handling digital evidence and to improve judicial training on technological matters. However, the increased reliance on digital evidence and the discretion afforded to judges in assessing its admissibility and weight have also led to variability in judicial decisions. Courts across different jurisdictions may interpret the same types of evidence differently, leading to unpredictable outcomes. This inconsistency can erode trust in the judicial process and create uncertainty for both plaintiffs and defendants, potentially discouraging parties from pursuing legitimate claims or defenses.

4.5 Broader Implications for Copyright Enforcement

The burden of proof provisions have broader implications for copyright enforcement in China. By making it easier for copyright holders to initiate legal proceedings, these provisions have contributed to a more proactive approach to intellectual property protection. However, they also highlight the need for ongoing adjustments to ensure fairness and consistency in the legal process. There is a need for clearer guidelines on the standards for digital evidence, greater use of technological tools for evidence collection, and the development of best practices for courts in handling complex digital disputes. As digital technologies evolve, so too must the legal framework. The integration of advanced technologies like artificial intelligence and machine learning for digital forensics, automated evidence verification, and enhanced case management could further streamline the handling of online copyright infringement cases. However, such advancements must be carefully balanced against concerns about accessibility, fairness, and procedural justice to ensure that the rights of both plaintiffs and defendants are adequately protected.

5. Conclusion

The legal provisions on the burden of proof in online copyright infringement cases under China's Copyright Law reflect a significant step towards adapting to the unique challenges posed by the digital environment, where evidence is often elusive and infringement can occur anonymously or across borders. These provisions, particularly the mechanisms allowing for a shift in the burden of proof upon the presentation of preliminary evidence by the plaintiff, have strengthened the position of copyright holders and facilitated more proactive enforcement of rights. However, their implementation has also highlighted challenges, such as the potential for procedural unfairness to defendants who may lack the resources or access to digital evidence needed to disprove allegations, and inconsistencies in judicial interpretation and application across different courts. To enhance fairness and efficiency, there is a need for clearer guidelines on the standards for digital evidence, broader adoption of technological tools like blockchain for authentication, and continued refinement of the legal framework to balance the interests of copyright holders with the rights of defendants. Moving forward, China's legal system must remain flexible and responsive, integrating technological advancements while upholding the principles of justice and fairness to ensure that copyright enforcement in the digital age remains both effective and equitable.

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