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Determining Copyright Infringement Liability for Algorithmic Recommendation on Short-Video Platforms

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Abstract

The widespread use of algorithmic recommendation on short-video platforms has shifted platforms from passive storage providers toward active distributors of content, making the traditional notice-and-takedown framework increasingly difficult to apply when courts assess whether a platform "should have known" of infringement. By comparing two representative cases—the Shanghai Conan case and the Beijing Documentary case—this article finds that the apparently different outcomes rest on a broadly shared judicial logic. Algorithmic recommendation, by itself, does not determine whether a platform bears liability. What matters is the degree to which the platform intervened in the dissemination of the infringing content and the extent of its knowledge of the infringement. The first factor asks what the platform actually did; the second asks what the platform knew. Together, they inform the statutory assessment of whether the platform "should have known" of the infringement. Algorithmic recommendation is therefore neither a sufficient condition for imposing liability nor a sufficient basis for exemption.

Keywords

algorithmic recommendation, short-video platforms, copyright infringement, duty of care, should have known

1. Introduction

As algorithmic recommendation has become a core feature of short-video platforms, these platforms no longer simply store whatever users upload. They increasingly decide, through automated systems, what content is shown to whom. Unauthorized film and television clips and reposted videos can therefore be distributed with unusual precision and speed, increasing the risk of copyright infringement. Data released by the Beijing Internet Court in 2026 indicate that between 2021 and 2025 the court accepted 83,575 online copyright-infringement cases, more than 24,000 of which involved platform companies; short-video distribution was among the major factual settings. The current notice-and-takedown framework, however, was built largely around the assumption that platforms function as passive storage providers. Its fit becomes less obvious when a platform's algorithm actively distributes content.

This tension has also produced disagreement over a central question: does algorithmic recommendation, in itself, mean that a platform "should have known" of infringement? This article argues that it should not. Nor should the use of an algorithm automatically excuse a platform from liability. The inquiry should instead return to two concrete factors: the platform's degree of intervention in the infringing content and the extent to which it knew, or had reason to know, of the infringement. On that basis, the article reviews the principal judicial

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disagreements and develops an analytical framework for determining platform liability in algorithmic-recommendation settings.

2. Practical Patterns and Institutional Background of Copyright Infringement in Algorithmic Recommendation

2.1 How Algorithmic Recommendation Operates and How the Platform's Role Has Changed

In simple terms, algorithmic recommendation works by collecting behavioral data such as clicks, viewing time, likes, and other forms of engagement, then using predictive models to identify content a user is likely to prefer. The legal significance of this process lies in the platform's changing role. A platform is no longer merely saying, in effect, "I store what users upload." Through recommendation systems, it increasingly decides which content particular users are likely to see.

This change requires a fresh look at platform responsibility. If an allegedly infringing video is actively delivered to users through an algorithm, can the platform still maintain that it had no knowledge of the video's presence or character? The answer cannot be derived from the technology alone; it depends on how the recommendation mechanism interacts with the platform's control over content and with the information available to it.

2.2 Current Infringement Problems and the Institutional Difficulty of Applying Existing Rules

Copyright disputes involving short-video platforms have become increasingly prominent. The 2026 data released by the Beijing Internet Court identify short-video distribution as one of the recurring scenarios in platform-related copyright litigation. In algorithmic environments, the notice-and-takedown system faces at least three practical difficulties.

First, the process is slower than the circulation of short-video content. By the time a right holder locates an infringing video, prepares a notice, and obtains removal, the video may already have accumulated substantial traffic. Second, the same work can be uploaded repeatedly. Removing individual links without taking meaningful action against a repeat infringer may do little to prevent recurrence. Third, while the law still reflects a model of passive hosting, contemporary platforms actively distribute content through recommendation systems. The resulting gap has made the "should have known" standard difficult to apply consistently and has contributed to divergent judicial outcomes.

3. Judicial Divergence in Copyright Cases Involving Algorithmic Recommendation

As discussed above, algorithmic recommendation has moved short-video platforms away from purely passive storage, while the legal standard for determining when a platform "should have known" of infringement remains unsettled. Courts have therefore reached different conclusions on whether recommendation activity is sufficient to support a finding of fault. Scholarship has likewise observed continuing disagreement over why a platform should bear a higher duty of care, what specific duty it has breached, and what form the resulting liability should take [1]. Clarifying these disagreements is necessary before a workable standard can be developed.

3.1 The Position Imposing Liability on the Platform

In the dispute between a Shanghai cultural company and a Beijing internet company over infringement of the right of communication through information networks, referred to here as the Shanghai Conan case [2], the court held the platform liable. Some of the infringing videos had been viewed more than 100,000 times, and certain uploader names included expressions such as "anime resource station," making the suspicious nature of the content relatively apparent. The platform failed to take reasonable preventive measures despite circumstances that called for heightened attention.

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The court also emphasized that the platform placed Japanese-language training advertisements directly on pages containing the infringing anime videos. This commercial placement suggested more than neutral storage: the platform was deriving economic value from the dissemination of the videos. The court therefore treated the situation as one in which the platform obtained direct economic benefits from works supplied by users and was correspondingly subject to a higher duty of care.

The case does not establish that algorithmic recommendation automatically creates liability. Rather, it treats the way in which the platform intervenes in the distribution process—including monetization, presentation, and other forms of active involvement—as relevant to the degree of care expected of it. This approach is consistent with Feng Xiaoqing's argument that algorithmic recommendation should not be insulated from copyright liability simply by invoking "technological neutrality" [3].

3.2 The Position Declining to Treat Algorithmic Recommendation Itself as Sufficient for Liability

In the dispute between a Beijing company and a Shanghai company over infringement of the right of communication through information networks, referred to here as the Beijing Documentary case [4], the court took a more cautious view of algorithmic recommendation. It held that recommendation technology has substantial non-infringing uses and is, in principle, subject to the doctrine of technological neutrality. Automated recommendation alone was not equated with a platform's conscious selection, editing, or promotion of a particular work, and therefore did not automatically transform the platform into a content provider.

This distinction also appears in the academic literature. Xian Zhuoming notes that the "recommendation" traditionally discussed in judicial practice usually refers to affirmative, platform-directed promotion, whereas algorithmic recommendation is an automated matching process based on users' historical behavior and should not be treated as legally identical [5].

At the same time, the Beijing Documentary case recognized an important exception. The same user uploaded infringing copies of the same work on five occasions. After receiving four valid notices, the platform repeatedly removed individual links but never imposed stronger measures such as account suspension. The court held that a "necessary measure" must be not only timely but also effective. Where a platform already has clear knowledge of repeated infringement, mechanically repeating notice-and-takedown may not be enough. The platform was therefore ordered to bear compensation liability [6].

3.3 What the Two Cases Actually Disagree About

At first glance, the two cases appear to take opposing positions. A closer reading, however, reveals a substantial common ground. Neither court treated algorithmic recommendation alone as sufficient to establish infringement, and neither regarded algorithmic recommendation as an automatic safe harbor. Both focused on the platform's concrete conduct.

Two factors recur in both decisions. The first is the degree of intervention in the infringing content. In the Shanghai Conan case, targeted advertising on infringing-video pages reflected a comparatively high degree of active involvement. In the Beijing Documentary case, ordinary algorithmic matching by itself was treated as a relatively low level of intervention.

The second factor is the extent of the platform's knowledge of infringement. In the Beijing Documentary case, the same user infringed repeatedly, and the platform continued to remove only individual links after receiving multiple valid notices. The platform therefore possessed substantial knowledge but failed to respond proportionately.

The real difference between the two cases is thus not a basic disagreement about whether algorithms are inherently culpable. It lies in the more concrete questions of when platform intervention becomes strong enough to support a finding that it "should have known," and what measures are required once the platform's knowledge has become sufficiently specific. Those questions provide a more useful basis for a general analytical framework.

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4. An Analytical Framework for Platform Liability in Algorithmic-Recommendation Settings

The comparison above suggests that courts assessing whether a short-video platform "should have known" of infringement are, in practice, examining two distinct but related factors: the platform's degree of intervention in the content and the extent of its knowledge of the infringement.

4.1 Degree of Intervention: Identifying Active Platform Involvement in Infringing Content

The "degree of intervention" refers to whether the platform went beyond ordinary technical storage and became actively involved in the treatment or dissemination of the allegedly infringing content. The comparison between the Shanghai Conan case and the Beijing Documentary case shows that courts first ask what the platform actually did.

In the Shanghai Conan case, the decisive fact was not simply that the platform used an algorithm. The platform placed Japanese-language training advertisements directly on pages containing infringing anime content. That placement showed meaningful contact with the content and suggested that the platform was commercially benefiting from its dissemination. By contrast, the Beijing Documentary court treated ordinary automated recommendation as different from deliberate platform selection, editing, or endorsement, and therefore as a lower level of intervention.

The degree of intervention can accordingly be assessed by asking whether the platform engaged in conduct such as selecting, editing, modifying, prominently ranking, labeling as "recommended," or otherwise treating the content in a manner that goes beyond the ordinary automated operation of a recommendation system. Where the platform provides only individualized automated matching and does not add manual or differentiated treatment, intervention is relatively weak. Where it adds targeted monetization, editorial ranking, curated lists, or explicit promotional labels, the inference that it "should have known" becomes stronger.

This approach also corresponds with the "digital technology for good" principle proposed by Zhang Jiyu and Wang Saifei. In their account, a recommendation-service provider should not escape responsibility merely by relying on technological neutrality. Whether copyright protection was affirmatively considered in the design and operation of the recommendation system is relevant to whether the platform exercised reasonable care [7].

4.2 Degree of Knowledge: Assessing the Platform's Awareness of Infringement

The "degree of knowledge" concerns the platform's actual cognitive position toward the infringement. Unlike intervention, which asks what the platform did, this factor asks what the platform knew. Courts can evaluate that knowledge through several types of evidence.

The first is the obviousness of the infringement. In the Shanghai Conan case, uploader names such as "anime resource station" and the concentration of uploads around well-known anime works made the risk of infringement relatively visible. Under such circumstances, the platform had greater difficulty arguing that it lacked awareness.

The second is the platform's response after receiving a valid notice. The appellate court in the Beijing Documentary case expressly treated review of repeated infringement as part of a network service provider's reasonable duty of care [8]. Once the platform receives a valid notice, it gains concrete information about both the protected work and the alleged infringer. Repeated uploads can then often be detected by searching information already supplied by the right holder.

In the Beijing Documentary case, the same user uploaded the same infringing work five times. Although the platform received four valid notices, it repeatedly removed only the individual links and never imposed stronger account-level restrictions. The court concluded that this mechanical repetition of notice-and-takedown did not satisfy the effectiveness requirement of "necessary measures." The case therefore illustrates an important relationship: as a platform's knowledge becomes more specific and reliable, the measures reasonably expected of it should become correspondingly stronger.

4.3 The Relationship Between Intervention and Knowledge

Intervention and knowledge are analytically distinct, but they frequently reinforce one another in practice.

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On the one hand, a high degree of intervention can itself provide evidence of knowledge. A platform that edits, promotes, monetizes, or otherwise actively manages a particular item of content is less able to claim that it was unaware of the content's existence or basic characteristics. In the Shanghai Conan case, targeted advertising on the infringing-video pages indicated both active intervention and a factual basis for inferring greater awareness.

On the other hand, greater knowledge can trigger a need for stronger intervention. In the Beijing Documentary case, liability arose because the platform possessed clear information about repeated infringement yet continued to take only link-level measures. Scholarship emphasizing the preventive function of tort law reaches a similar conclusion: allocating liability is not merely a matter of compensating loss after the fact, but also of controlling and preventing risks. Whether a platform has adopted preventive measures consistent with its information-management capacity is therefore relevant to infringement liability [9].

Taken together, the two factors serve different functions within the statutory "should have known" inquiry. Intervention focuses on conduct and asks what the platform did. Knowledge focuses on cognition and asks what the platform knew. As intervention increases, the platform's control over dissemination increases and the threshold for inferring constructive knowledge may fall. As knowledge increases, the urgency of taking effective measures also rises, making inaction more difficult to justify. Considered together, these factors provide a more concrete basis for determining whether a short-video platform should bear copyright-infringement liability in an algorithmic-recommendation setting.

5. Conclusion

The comparison of the Shanghai Conan case and the Beijing Documentary case shows that different judicial outcomes can still rest on a common underlying logic. Algorithmic recommendation, standing alone, does not determine whether a short-video platform is liable for copyright infringement. The more decisive questions are how far the platform intervened in the infringing content and how much it knew about the infringement.

The first inquiry is conduct-based and asks what the platform did. The second is knowledge-based and asks what the platform knew. Both feed into the statutory determination of whether the platform "should have known" of the infringement. Algorithmic recommendation is therefore neither a sufficient condition for liability nor a sufficient ground for exemption. A more stable approach is to examine the platform's actual role in dissemination, monetization, and content management together with the specificity of the information available to it and the effectiveness of the measures it took once infringement became apparent.

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