

# **Criminal Liability in Copyright Infringement through Website-Based Distribution of Art Works: The Boundary between Legal and Illegal Sharing**

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**Abstract**

In the digital age, the prevalence of online content sharing blurs the line between copyright-infringement crimes and legal sharing. The determination of copyright-infringement crimes faces challenges such as diverse profit-making motives due to Internet development, inapplicability of traditional harm-assessment methods in the digital context, difficulty in evidence collection caused by the concealed online environment, and ambiguity in defining "reproduction" and "distribution" in network communication. Meanwhile, legal sharing under fair-use regulations has practical issues like unclear boundaries, unpredictability, and inconsistent judicial application. This paper analyzes the elements of copyright-infringement crimes, fair-use provisions, and takes website-based film, TV, and music dissemination as an example. It concludes that accurately defining these boundaries is crucial for protecting copyright holders, promoting the cultural industry, and regulating online activities. Continuous refinement of legal applications is essential to balance copyright protection and the public's access to knowledge, ensuring fairness in the copyright field.

## **1. Introduction**

In the digital era, the exponential growth of online content sharing platforms has precipitated a significant jurisprudential challenge: distinguishing between criminal copyright infringement and permissible sharing under fair-use doctrines. The proliferation of unauthorized film, television, and music dissemination via websites has blurred the boundary between lawful public access to knowledge and felonious conduct. This paper addresses the complex interplay between subjective intent, conduct patterns, and harm assessment in determining criminal liability, while concurrently examining the ambiguities inherent in fair-use determinations under Chinese copyright law.

The criminalization of copyright infringement in China hinges on the "profit-making purpose"

requirement under Article 217 of the Criminal Law of the People's Republic of China (CLPRC), yet the digital economy has spawned novel monetization models—such as advertising revenue, membership subscriptions, and indirect user conversion—that evade traditional definitions of commercial gain. Simultaneously, the expansion of the "information network communication right" under the Copyright Law of the People's Republic of China (CPLPRC) has created a doctrinal schism between offline distribution and online dissemination, complicating criminal adjudication. This tension is further compounded by cross-border jurisdictional disputes and the algorithmic sophistication of infringement concealment, which undermine evidentiary integrity and enforcement efficacy.

Against this backdrop, the paper argues that a nuanced analytical framework is essential to balance copyright holders' rights with the public interest in knowledge dissemination. By interrogating the subjective, objective, and contextual elements of website-based infringement, this study contributes to the refinement of legal standards that accommodate technological innovation while upholding the sanctity of intellectual property.

## **2. Literature Review**

The demarcation between criminal copyright infringement and legal sharing has been a focal point of scholarship, yet existing research reveals critical gaps in addressing digital-era complexities.

### **2.1 Criminal Liability in Copyright Infringement**

Scholars have extensively analyzed the constitutive elements of copyright crimes under the CLPRC, emphasizing the primacy of the "profit-making purpose" (Liao, 2010; Deng, 2024). However, studies by Li and Yuan (2017) and Yao (2022) highlight the inadequacy of traditional profit metrics in capturing indirect monetization strategies, such as traffic generation for affiliate marketing. This gap is particularly pronounced in cases involving "non-commercial" platforms that derive intangible benefits, like brand building or user data accumulation.

The conceptual ambiguity of "reproduction" and "distribution" in network contexts has also drawn scrutiny. While U.S. jurisprudence equates digital dissemination with distribution under the Copyright Act (Xiong, 2024), Chinese law distinguishes "distribution" (physical transfer) from "information network communication" (virtual dissemination), which creates inconsistencies in criminal liability (Gao & Wang, 2007). This doctrinal bifurcation has led to divergent judicial interpretations, as courts grapple with whether online sharing constitutes "reproduction and distribution" under Article 217 CLPRC (Li & Yuan, 2017).

### **2.2 Fair-Use Determinations in the Digital Age**

Research on fair use has underscored the rigid application of closed-ended rules in the CPLPRC, which struggle to accommodate transformative uses like parodies or data mining (Huang, 2024; Shao, 2023). Although the 2020 amendment introduced a general clause and the three-step test, scholars criticize its failure to provide clear guidance on algorithmic or AI-generated content (Gao, 2023). Empirical studies further reveal regional disparities in judicial application, with courts in Beijing adopting flexible interpretations of "current affairs news" while others narrowly conflate news with written works (Liu, 2023).

### **2.3 Evidentiary and Jurisdictional Challenges**

The literature identifies systemic hurdles in prosecuting online infringement, including

jurisdictional conflicts arising from overseas servers and encrypted content (Dong, 2023; Zou, 2016). Studies also highlight the vulnerability of digital evidence to rapid deletion, necessitating specialized forensic techniques to preserve probative value (Gao, 2017). These challenges are compounded by the absence of international harmonization in copyright enforcement, exacerbating cross-border evasion (Dong, 2023).

## 2.4 Gaps in Existing Scholarship

Notwithstanding these contributions, prior research has yet to synthesize the interplay between subjective intent, conduct patterns, and harm assessment in website-based infringement. Additionally, the role of indirect monetization in criminal liability remains underexplored, as does the impact of fair-use ambiguity on content creators' incentives. This paper addresses these lacunae by analyzing the *Huo Moumou* case and library digitization dispute, offering a framework that integrates doctrinal analysis with empirical insights to advance jurisprudential clarity.

By bridging criminal law and copyright scholarship, this study contributes to the development of standards that balance deterrence with access, ensuring that legal boundaries evolve alongside technological innovation.

## 2.5 Innovation Summary

This study enriches scholarly discourse by constructing a multidisciplinary analytical framework integrating criminal law and copyright jurisprudence, focusing on three interlocking dimensions: subjective criminal intent, typology of infringing conduct, and harm quantification model. Departing from reductionist approaches in extant literature, this research introduces a context-sensitive evaluative matrix for profit-making intent, expanding the doctrinal scope of Article 217 CLPRC's "profit-making purpose" to encompass non-pecuniary economic benefits such as user traffic monetization and brand equity accretion. This theoretical innovation addresses the challenges posed by digital-era monetization models, which frequently defy traditional legal categorization.

The study further ameliorates doctrinal fragmentation arising from China's statutory bifurcation between "distribution" (Article 10(6) CPLPRC) and "information network communication" (Article 10(12) CPLPRC) through a functional equivalence test for cyber dissemination. Grounded in comparative analysis of U.S. and Chinese jurisprudence, this test evaluates whether digital sharing substantially prejudices copyright holders' economic interests, thereby aligning criminal liability standards with technological evolution. This approach mitigates judicial disharmony stemming from literalistic interpretations of "reproduction and distribution" under the CLPRC.

In the realm of fair use, this research advances a proportionality-based adjudicative framework that balances transformative uses against market prejudice, addressing algorithmic challenges identified in Gao (2023) and Shao (2023). By emphasizing the teleological construction of the Berne Convention's three-step test, the study establishes a normative-analytical paradigm for evaluating emerging uses such as AI-generated content, while preserving the integrity of copyright protection. Collectively, these contributions enhance legal doctrinal exactitude to accommodate digital-era complexities, ensuring a constitutionally consonant equilibrium between copyright enforcement and the public interest in knowledge diffusion.

### **3. Legal Definition of Criminal Copyright Infringement and Difficulties in Its Identification**

Criminal copyright infringement refers to the act of, for the purpose of profit-making, violating the laws and regulations on copyright management, infringing upon others' copyright without the permission of the copyright owner, with a relatively large amount of illegal earnings or other serious circumstances. Generally, it needs to meet four elements: subject, object, subjective aspect, and objective aspect (Kuвано, 2010). The subjective imputation condition requires a profit-making purpose, meaning that the actor hopes that the harmful consequences of copyright infringement will bring certain economic benefits to himself/herself, and has the volitional factor of actively pursuing the occurrence of such consequences. Compared with the Copyright Law of the People's Republic of China, the scope of criminal acts stipulated in the Criminal Law of the People's Republic of China is narrower. Moreover, the scope of copyright protection in the Criminal Law of the People's Republic of China places more emphasis on the protection of property rights, while neglecting the protection of personal rights and neighboring rights (Liao, 2010). The main difficulties in defining the crime of copyright infringement are as follows:

#### **3.1 Difficulty in Defining the Profit-making Purpose Subjectively**

With the development of digital networks, the cost of copyright infringement has been significantly reduced, leading to diverse purposes and motives among infringers. For instance, some individuals may repost copyrighted articles or film and television works, or even misappropriate the names of copyright holders to gain more attention or build an IP image (Liao, 2010; Deng, 2024). In such cases, although it may seem that the infringers do not directly obtain traditional property-based profits, this is not actually the case.

Take the example of building websites to share unauthorized film, television, and music works. Many such operators do not directly charge users or require membership fees or pay-per-view charges. However, they are not without gains (Yao, 2022). For example, cooperative enterprises may receive advertising fees. Some more covert operators may use the platform to secretly share accounts of other companies, subtly converting users into their potential customers (Deng, 2024). In the long run, the profits obtained from these methods are not less than traditional property-based earnings. Nevertheless, it is difficult to directly determine that they have a "subjective profit-making purpose," thus making it impossible to regulate them under Criminal Law of the People's Republic of China.

#### **3.2 The Complexity of Determining Harmful Consequences**

According to Article 217 of the Criminal Law of the People's Republic of China, a relatively large amount of illegal earnings or other serious circumstances serve as the criteria for convicting the crime of copyright infringement (Cui, 2015). In judicial practice, the amount of illegal earnings has become the primary yardstick for conviction (Luo, 2014). However, with the advent of the Internet era, it has become challenging to estimate the harm using existing calculation methods.

For example, in the online dissemination of audio-visual works, website operators attract users to their websites by providing free movie viewing, hoping that users will purchase products sold on the site. In such cases, it is impossible to directly calculate the illegal earnings or the illegal business volume generated by the dissemination of film and television works.

The Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on

Several Issues Concerning the Specific Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights in China stipulates that sales volume or quantity can be used as a standard to measure the harm. But in the digital age of copyright, without physical media, adhering to illegal earnings or sales quantity as the standard for measuring harm is neither practical nor economical in practice (Gao & Wang, 2007). Similarly, in the digital media era, relevant works can be easily disseminated paperlessly via the Internet, and the requirement in relevant judicial interpretations of the People's Republic of China that the total number of copies should be more than 1,000 can be easily circumvented.

### **3.3 Difficulty in Evidence Collection and Identification**

Due to the unique nature of the network environment, infringement acts are often concealed, making criminal activities difficult to detect. Suspects may use technical means to hide their true identities or register under false names, causing discrepancies between the registered person and the actual perpetrator, thus increasing the difficulty of tracking and identifying infringers (Yao, 2022).

In addition, infringing content can be quickly deleted or transferred, resulting in the loss of evidence. For example, an infringing work posted on a website may be removed shortly after being discovered, making it challenging for law-enforcement agencies to obtain complete and valid evidence (Gao, 2017).

Unlike traditional means of dissemination, the speed of network dissemination grows exponentially. Whether the damage caused by the infringing works reproduced and disseminated by the perpetrator should be attributed to the consequences of the first infringement requires further consideration (Gao & Wang, 2007).

### **3.4 Difficulty in Defining "Reproduction" and "Distribution"**

From the perspective of establishing websites to disseminate musical and audiovisual works, whether information network dissemination constitutes "distribution" remains a contested issue in comparative copyright jurisprudence. U.S. courts and academic circles generally recognize that public dissemination of works via digital networks satisfies the statutory definition of "distribution" under copyright law (Xiong, 2024). In contrast, China's Copyright Law establishes the "right of communication through information networks" as an independent statutory right, creating a doctrinal separation between traditional "distribution" and digital dissemination within its legal framework (Li & Yuan, 2017).

Under China's criteria for determining copyright infringement offenses, judicial interpretations require strict adherence to the Copyright Law's categorical distinctions. This statutory demarcation establishes "distribution" and "information network communication" as mutually exclusive legal categories under Chinese civil copyright law. However, judicial interpretations in criminal cases present conceptual complexities. The Supreme People's Court's interpretation stipulates that disseminating protected works to the public through information networks—including literary, musical, cinematographic, and software works—shall be deemed as "reproduction and distribution" under Article 217 of the Criminal Law (Gao & Wang, 2007).

This jurisprudential tension creates substantial interpretive challenges in criminal adjudication. The precise delineation between "distribution" and "reproduction" constitutes critical threshold requirements for establishing copyright infringement offenses. Notably, the doctrinal ambiguity surrounding digital dissemination modalities directly impacts the determination of constitutive elements under criminal copyright provisions. Judicial authorities must navigate this conceptual dichotomy between civil law categorizations and expansive criminal interpretations when

evaluating the legal nature of network-based dissemination activities.

## **4. Situations of Legal Sharing and Practical Difficulties**

Fair use represents a quintessential discretionary right-demarcating rule. When determining fair use, factors such as the purpose of use, the mode of use, and the implications for copyright holders must be taken into account (Huang, 2024). In 2010, Article 22 of the Copyright Law of the People's Republic of China (2010 Amendment) listed 12 scenarios of fair use. In 2020, Article 24 of the Copyright Law of the People's Republic of China added a general clause. Additionally, the three-step test was introduced in the general provisions as a general criterion for judgment (Gao, 2023).

Notwithstanding, this amendment "has still not transformed the closed-ended nature of the fair-use determination rules". Given the rapid technological advancements in the digital age, it remains ill-equipped to grapple with the question of whether novel forms of use qualify as fair use (Huang, 2024).

In practice, our determination of fair use mainly considers the following aspects:

### **4.1 Purpose of Use**

Sharing for purposes such as personal study, research, or appreciation, introducing or commenting on a work, explaining a problem, reporting news, or for school classroom teaching or scientific research, usually falls within the scope of legal sharing as long as it does not involve public dissemination and commercial motives (Hao, 1995). Generally, sharing with a non-profit purpose is more likely to be regarded as legal. However, the absence of profit-making income does not necessarily mean it is "sharing for non-profit purposes" (Yi, 2022).

If the sharing is for commercial purposes, such as attracting traffic to gain advertising revenue by sharing works (Xiong, 2024), even if the amount of income cannot be determined, since the subjective intention is for commercial activities, it does not fall under fair use.

### **4.2 Content of Sharing**

The content slated for sharing is required to adhere to legality, being entirely free of any illegal, infringing, or detrimental elements, such as pornographic, horror-themed, violent, or false information (Cui, 2015). Even when authorization from the copyright holder has been procured, if the original information itself is illegal, there will likely be attendant legal ramifications.

Once a work transitions into the public domain, it becomes available for unrestricted use and sharing. However, the moral rights of the author, encompassing the right of attribution, the right to amend, and the right to safeguard the work's integrity, remain safeguarded perpetually (Hao, 1995).

In relation to an individual's original creations, they are generally amenable to unrestrained sharing. Nevertheless, it is of paramount importance to exercise due caution so as not to transgress the pre-existing rights of others (Hao, 1995). This necessitates a comprehensive comprehension of the relevant legal frameworks and ethical norms. For example, when sharing original research outcomes, one must guarantee that any data or concepts sourced from other works are appropriately credited, and that the presentation does not misappropriate the intellectual property of others. Such scrupulousness not only upholds the legal entitlements of all parties involved but also bolsters the integrity and fairness within the academic and creative arenas.

### **4.3 Quoting Methods and Scope**

According to the provisions on fair use in the Copyright Law of the People's Republic of China, even in cases of fair use, certain rules must be adhered to. Take citation for the purpose of introducing or commenting on a work or explaining a problem as an example. The cited part should not form the core or fundamental part of the referenced work (Yi, 2022).

For instance, during the process of writing an article, publishing a review, or conducting academic research, one can appropriately quote others' published works to support their viewpoints or explain issues. However, extensive copying does not fall under fair use (Hao, 1995).

Except for special cases like laws and regulations, the author's name or title, and the work title and other source information should be specified to respect the author's right of attribution (Hao, 1995). In practice, actors may use the guise of fair use of works protected by Copyright Law of the People's Republic of China, but actually misappropriate or steal, infringing on the author's personal rights such as the right of name and copyright (Gao & Wang, 2007).

#### **4.4 Difficulty in Defining the Boundaries of Fair Use**

Regardless of technological advancements, fair use cannot be algorithmized (Shao, 2023). In other words, the determination of fair use is highly subjective, and it is difficult to use fixed rules to address the flexible and diverse issues in reality.

In practice, network builders often plead "personal learning" or "appropriate citation" as defenses. However, with the change in the operation models of Internet platforms, the economic benefits brought by traffic far exceed the entertainment benefits, conflicting with the fundamental connotation of "personal use" (Zou, 2016). Meanwhile, there is no clear quantitative standard for "appropriate citation", and in practice, considerations of the purpose and extent of citation rely more on judicial discretion (Huang, 2024).

Formatting the boundaries of fair use may lead to rigid application of the fair-use system (Li, 2022), causing a dilemma between copyright protection and safeguarding the free expression of the public. If judges are given excessive discretion in determination, it may lead to unfairness.

#### **4.5 Unpredictability of Fair Use**

The fair-use system holds a unique and complex position within the legal framework, with flexibility being its prominent characteristic. This also renders it highly reliant on case-by-case determination *ex post* (Shao, 2023).

Unlike legal provisions with clear rules and predictable outcomes in advance, when faced with specific situations, the fair-use system makes it difficult to anticipate its application boundaries and judgment directions beforehand (Huang, 2024). It is not a legal rule with a definite extension and clear boundaries, nor does it have a one-size-fits-all established standard. Instead, it is a flexible legal standard (Yi, 2022), which requires comprehensive consideration of factors such as the purpose of use, the nature of the work, the degree of use, and the impact on the original work's market (Guo & Ming, 2001).

These factors interweave in different forms and degrees in various cases, making the judgment of the fair-use system in practice full of uncertainties, lacking the predictability of regular legal rules, and increasing the difficulty of determining fair use.

#### **4.6 Fair-Use Uncertainty from Divergent Court Applications**

A comprehensive search of relevant Chinese judicial documents uncovers a notable issue: courts throughout China exhibit inconsistent interpretations and applications of the fair-use clauses within the framework of the Copyright Law of the People's Republic of China related to

news. Some local courts adopt a rather rigid stance when determining fair use (Huang, 2024). For instance, in certain judicial practices, some courts mechanically equate "current affairs news" with "news works" (Liu, 2023). They narrowly believe that both are confined to written news and fail to encompass other forms of works, such as news photos. This narrow interpretation overlooks the diverse nature of news dissemination in the modern media landscape, where visual and multimedia elements play a crucial role.

Conversely, in more developed regions like Beijing and Guangzhou, the intellectual property courts have initiated a shift towards more flexible interpretations (Liu, 2023). These courts recognize the evolving nature of news and media and take into account a broader range of factors when applying fair-use clauses. However, while the judgments of these different courts are all rendered within the bounds of the law, the significant variation in results creates substantial uncertainties for copyright holders in safeguarding their rights. Copyright holders may find it perplexing to anticipate the legal outcome when their works are involved in news-related fair-use disputes, depending on the geographical location of the court.

## **5. Legal Boundary Analysis of Website-Mediated Publication of Audio-Visual and Musical Works**

### **5.1 Judgment Based on Subjective Intent**

Subjectively, the subjective element of the crime of copyright infringement requires "for the purpose of making a profit", otherwise it is considered fair use (Liao, 2010). "For the purpose of making a profit" means, as the name implies, that the website builder obtains certain benefits (Deng, 2024). Common profit-making methods include implanting numerous advertisements on website pages to earn revenue from user clicks, setting up a membership system where users pay to watch more film and music works, and selling links to film and music resources on the website (Xiong, 2024).

For instance, a website operator builds a comprehensive film and music website and uploads a large number of popular movies, TV dramas, and pop songs without authorization. The website pages are filled with various advertisements, with an average of 5-8 ad spaces per page. The operator gets a certain share of the advertising revenue for each user click. Also, the website offers a membership service. For a monthly payment of 30 yuan, members can enjoy ad-free viewing, high-definition video playback, and priority access to newly released works. Through these means, the website operator earns tens of thousands of yuan per month. Such profit-seeking behavior seriously violates the legitimate rights and interests of copyright holders and meets the subjective constitutive requirements of the crime of copyright infringement (Deng, 2024).

However, it should be noted that in practice, such benefits are not limited to the economic benefits directly charged from customers. For example, someone builds a website and shares copied film and music works on it without obtaining economic benefits through membership settings, advertising implantation, etc. Their main purpose is to increase their own popularity (Zou, 2016), convert users into potential customers in the future, or even make users mistake the shared content for their original works. This approach is different from pure film and music sharing. Although there is no direct profit, in the long run, building the website still serves the purpose of making a profit. Therefore, when judging the subjective purpose, comprehensive consideration is needed and it cannot be simply judged by whether property is obtained.

### **5.2 Judgment Based on Mode of Conduct**



According to relevant statistics, some large-scale pirated film-and-television websites can add dozens of new video resources daily, covering a wide range of popular domestic and foreign film and television works. Additionally, some other websites, by means of technical methods, capture and transplant legitimate film and music works, integrating them into their own platforms. Such actions seriously disrupt the normal order of the film-and-television market (Li & Yuan, 2017).

Permission is essential for copying and using others' works. Some websites acquire film and music resources through either legal or illegal channels and then upload these resources intact to their servers for users to download for free or watch online, thus clearly infringing upon the copyright of the right-holders (Hao, 1995). However, in practice, infringements resulting from the use of authorized works are also prevalent. For instance, a website may sign a cooperation agreement with a film company, being authorized to broadcast some of the company's works within a specific time frame. But after the authorization period expires, the website continues to air the relevant works without renewing the agreement (Zou, 2016). Or when the agreement restricts the broadcast to a particular region, the website circumvents the geographical limitations through technical means to offer playback services to global users. Or when the original authorization only permits online viewing, the website unilaterally provides download services. All these acts exceed the scope of authorization and violate the rights of copyright holders.

Not all re-processing activities fall outside the realm of fair use (Hao, 1995). For example, when some renowned film critics publish movie reviews on their personal websites, they might insert exciting dialogue or musical score clips from the movie, with the duration ranging from a few seconds to dozens of seconds. This is done to assist readers in better understanding the movie's plot and artistic features. Such citation not only enriches the content of the article but also does not cause substantial harm to the interests of copyright holders, so it is legal (Xiong, 2024).

### **5.3 Judgment Based on Profit-making Circumstances and Harmful Consequences**

#### **5.3.1 Criminality in Cases of High Profit or Severe Harm**

**Substantial Profits or Severe Harm Constituting a Crime:** When a website builder earns substantial profits from releasing film and music works or causes severe consequences such as significant losses to copyright holders, it constitutes the crime of copyright infringement (Liao, 2010). According to relevant judicial interpretations, an illegal income of over RMB 30,000 is considered "a relatively large amount of illegal income". Here, illegal income should be understood as the total revenue of the actor, including advertising revenue and membership fees charged to users (Gao & Wang, 2007). When considering other serious circumstances, the harm caused to copyright holders should also be taken into account. For example, a pirated music website illegally uploaded a large number of popular songs, attracting a large number of user visits. The website operator earned over RMB 500,000 in a year through advertising alliances and paid downloads. Meanwhile, due to the existence of this website, the legitimate sales of relevant music works were severely affected, causing record companies to suffer economic losses of up to several million yuan. The actions of the website operator not only brought huge profits but also severely damaged the economic interests of copyright holders, thus constituting the crime of copyright infringement.

#### **5.3.2 Legal Sharing in the Absence of Substantial Profit and Severe Consequences**

**Minor Profits or Absence of Profits and Lack of Severe Consequences Constituting Legal Sharing:** In the context of the Copyright Law of the People's Republic of China, consider the scenario of some personal blog websites. Here, bloggers share links to certain of their favorite music works. They earn a negligible income, typically ranging from a few Chinese yuan to

several dozen yuan, derived from a small quantity of advertising revenue on the site. Additionally, owing to the restricted influence and low traffic volume characteristic of these blogs, their actions have no discernible impact on the normal dissemination of the music works in question, nor do they impinge upon the interests of the copyright holders. Such sharing behavior can be deemed legal.

It is important to note that legal sharing, as per the principles enshrined in the relevant Chinese legal framework, must be a bona-fide act. If an act has the latent potential to cause severe harm, even if, in the final analysis, no severe consequences materialize, it falls outside the purview of legal sharing as defined by the law (Hao, 1995). This is because the legal system aims to strike a balance between allowing for reasonable sharing and safeguarding the legitimate rights of copyright holders, ensuring that any form of sharing does not pose a significant threat to the normal operation of the music market and the economic and moral rights of the original creators.

## **5.4 Difficulties in Judicial Practice**

### **5.4.1 Difficulty in Obtaining Evidence**

In the online environment, infringement acts often possess strong concealment. Some websites evade supervision and crackdowns through means such as encryption technology and frequent domain-name changes (Dong, 2023). For instance, certain pirated film-and-television websites change their domain names daily, making it difficult for law-enforcement departments to track and seal them.

Moreover, obtaining evidence of infringement also encounters numerous difficulties. For example, website servers may be set up abroad, hampering effective evidence collection. Infringers may delete infringing content at any time, leading to the loss of evidence (Zou, 2016). In some cases, when law-enforcement officers are about to collect evidence from an infringing website, the website operator will quickly delete all infringing film and music works, making it hard to fix the evidence and posing a great challenge to subsequent judicial proceedings (Li & Yuan, 2017).

### **5.4.2 Cross-Border Evasion of Copyright Infringement Prosecution**

When an actor deliberately sets up a website with its server strategically located abroad, or when the copyright holders of the infringing film and music works hail from diverse countries, intricate disputes over jurisdiction inevitably arise. In such complex scenarios, China, constrained by the territorial limitations and specific stipulations within its Criminal Law of the People's Republic of China, cannot directly and comprehensively regulate these cases (Zou, 2016). For instance, a website operator might choose to host the server in a jurisdiction with lax copyright enforcement to evade Chinese legal scrutiny.

Currently, on the international stage, the absence of a unified standard for the jurisdiction and rules of application of law in cross-regional and trans-national infringement cases exacerbates the problem. Each country predominantly handles relevant cases based on its own domestic laws and the international treaties to which it is a party. This lack of harmonization leads to a fragmented legal landscape. Different countries may have varying definitions of infringement, thresholds for liability, and procedures for prosecution. As a result, it becomes extremely challenging to precisely determine infringement liability in these cross-border situations (Dong, 2023).

### **5.4.3 Determining the Actor's "Reproduction" and "Distribution"**

According to the explicit provisions of the Criminal Law of the People's Republic of China, for an act to be deemed as constituting the crime of copyright infringement, four essential

elements—namely the subjective intent, objective behavior, the subject involved, and the object of infringement—must be satisfied, and a certain quantum of profit must be amassed (Luo, 2014). In the context of building a website for the release of film and music works, a complex scenario emerges when the website builder and the network operator are distinct entities. There exists an ongoing and spirited controversy regarding whether such a setup also constitutes the crime of copyright infringement (Li & Yuan, 2017; Xiong, 2024).

Pure network cloud service providers, by their very nature, do not directly derive profits from individual users. Moreover, they have no direct bearing on the website's charging mechanisms and overarching business strategies. This leads to a highly debatable point: whether the commissions acquired by website builders for the construction and provision of film, television, and music sharing platforms ought to be tallied as part of the profit amounts (Zou, 2016). Similarly, in a situation where a third-party uploads unauthorized film and music works and reaps financial benefits from this act, yet solely engages in the act of distribution without partaking in the website's reproduction process, it remains ambiguous as to whether this meets the constitutive requirements of "reproduction and distribution" as defined in legal terms (Gao&Wang, 2007). For instance, in some cases, a third-party might use a cloud-based platform to distribute pirated content, and the lack of clarity in these legal definitions makes it challenging to determine liability accurately.

#### **5.4.4 Classifying Click-through/Traffic-Seeking as “Profit-Motivated”**

In the realm of copyright infringement crimes, the criminal amount holds a dual significance. It functions not only as a fundamental constitutive element of the crime but also stands as the most palpable manifestation of its underlying essence. As per the stipulations in legal practice (Cui, 2015), the criminal amount plays a pivotal and often decisive role in the conviction and sentencing processes related to the crime of copyright infringement. Conventionally, the gravity of the circumstances in such cases is predominantly gauged by the quantum of profit derived from the infringing activities.

However, with the ceaseless evolution of the Internet, the motives of those engaging in potential copyright-related offenses have become increasingly multifarious (Yao, 2022). A particularly contentious issue lies in the classification of "aiming to obtain website clicks and traffic" as a form of non-monetary profit-making. It remains uncertain whether this falls squarely within the ambit of "for the purpose of making a profit" as defined in the context of copyright infringement crimes (Li & Yuan, 2017). If it is indeed adjudged to be a profit-making pursuit, then the challenge of accurately determining the seriousness of the associated circumstances looms large. Conversely, if "aiming to obtain website clicks and traffic" is excluded from the purview of copyright infringement crimes, it gives rise to legitimate concerns regarding how to effectively safeguard the rights of copyright holders through legal means (Deng, 2024). For example, some content-sharing platforms may prioritize increasing their user traffic without directly monetizing through traditional means, yet the impact on copyright holders' works' exposure and potential revenue cannot be ignored. This complex scenario demands a more nuanced understanding and legal clarification.

## **6. Analysis of Atypical Cases of the Crime of Copyright Infringement**

### **Case 1: The Case of Huo Moumou's Infringement of Copyright**

Huo Moumou, as a senior "bookworm", had long been addicted to pirated novel websites. In early 2018, with his university education and years of experience in browsing pirated websites, he

started to build a pirated website. In March 2018, Huo Moumou rented an overseas server and began to build the website based on a template. The next month, he purchased a "crawler" program to download works (Chen&Zeng,2022), and soon completed the construction of "Spare Tire Book House", which was launched in May(Wenzhou Municipal People's Government,2024).

"Spare Tire Book House" updated novels at an extremely fast speed and was very popular among pirated readers. Huo Moumou mainly made profits in two ways: one was to directly post a payment code on the website to guide readers to make donations; the other was to be active in "book-lover groups", share the website link in the group and attach a payment code to attract group members to make donations. By May 2019, when the website was investigated and dealt with, "Spare Tire Book House" had become well-known in the online piracy community. It infringed on the copyrights of well-known online writers such as Tang Jia San Shao and Tian Can Tu Dou, as well as more than 500 other writers, involving more than 4,000 works, and the cumulative number of disseminations and downloads exceeded 100,000 times.

In 2020, after trial, the court found that Huo Moumou reproduced and distributed the written works without the permission of the copyright owners, and the circumstances were particularly serious. His behavior had constituted the crime of copyright infringement. Huo Moumou was sentenced to three years in prison, a fine of 150,000 yuan, and the illegal income was confiscated.

This operation mode with the style of an online community enabled Huo Moumou to gain a large number of supporters. There were even many netizens sharing the pirated materials they collected on "Spare Tire Book House", further increasing the speed and quantity of piracy on the website. Huo Moumou seemingly only provided a communication and sharing platform for book-lovers. The "non-commercial" profit-making model, which was not directly for profit-making through commercial operations, made the infringing behavior of "Spare Tire Book House" highly concealed.

#### Case 2: The Case of the Reasonable Use of a Library

A company in Beijing legally obtained the copyright of "Making Farmers Rich" through signing a contract with the author. In order to optimize services, the public library digitized the the books involved in the case in its collection, provided full-text online reading for readers through the in-house local area network, and also provided a preview of the first 24 pages on the Internet. The company in Beijing believed that the library had infringed its reproduction right and the right of information network dissemination, so it filed a lawsuit. Eventually, the court ruled that the library should stop the infringing acts, including stopping providing full-text online reading through the in-house local area network and stopping providing the preview of the first 24 pages on the Internet. The court also determined the library's compensation for economic losses according to the circumstances of the infringement(The Beijing News, 2024).

This case shows that when determining whether the behavior of a public library constitutes reasonable use, traditional standards cannot be simply applied. On the one hand, as a public cultural service institution, the digital service aims to meet the needs of readers and disseminate knowledge, which is in line with the purpose of the copyright fair-use system to balance the interests of all parties (Wu, 2024). The court also recognized that the digital preservation of books by the library was a reasonable use and was fulfilling its function of document preservation.

On the other hand, providing full-text online reading through the in-house local area network, although limited to the library, might cause readers to stop borrowing or buying the original copies, directly damaging the market interests of the copyright owner and infringing on the company's right of information network dissemination in Beijing. Providing a preview of the first 24 pages on the Internet, due to the wide-spread nature of network dissemination, might affect the potential sales of the book and reduce the normal income of the copyright owner, also exceeding

the reasonable limit and infringing on the right of information network dissemination in copyright.

## 7. Conclusion

This paper undertakes an in-depth analysis of the demarcation between the crime of copyright infringement and legal sharing. In the realm of determining copyright infringement crimes, multiple challenges persist. Subjectively, the profit-making motive has diversified with Internet development, rendering its precise determination arduous. The assessment of harmful consequences, influenced by Internet characteristics, has faced impediments as traditional measurement criteria prove inapplicable in practice. The covert nature of the online environment exacerbates the difficulty of evidence collection and validation. Additionally, the concepts of "reproduction" and "distribution" are ill-defined in network communication, complicating the determination of criminal constitution.

Regarding fair use within legal sharing, despite existing legal provisions, practical issues such as ambiguous boundaries, unpredictability, and inconsistent judicial application remain. Analyzing the typical scenario of website-based dissemination of film, television, and music works, evaluating boundaries from aspects like subjective intent, conduct, financial gain, and harm exposes numerous judicial challenges. These include challenges in evidence collection, cross-border infringement regulation, and disputes over conduct classification. Atypical cases presented herein further illustrate the increasingly concealed nature of copyright-infringing acts and the need for a comprehensive consideration of multiple factors in fair-use determination.

Precisely delineating the boundaries between copyright-infringement crimes and legal sharing is crucial for safeguarding copyright holders' rights, fostering the healthy growth of the cultural industry, and regulating online communication. In the digital era, to balance copyright protection and the public's legitimate access to knowledge, continuous refinement of relevant legal applications and accurate grasping of these boundaries are essential to achieve equity and justice in the copyright domain.

## References

- Chen, Y. J., & Zeng, X. Z. (2022). Research on the criminal law regulation of web crawlers. *Social Sciences in Guangdong*, 5, 240–253.
- Cui, W. W. (2015). A discussion on the attempted form of the crime of infringement of copyright. *China Publishing Journal*, 8, 52–56.
- Deng, Y. H. (2024). A reexamination of the "for the purpose of profit-making" in the crime of infringement of copyright. In *Proceedings of the 2024 Symposium on Humanities and Technology Theme* (pp. 52–61). School of Law, Guiyang University of Humanities and Technology. <https://doi.org/10.26914/c.cnkihy.2024.008655>
- Dong, T. (2023). Research on the governance of crimes infringing intellectual property rights in the era of globalization. *Intellectual Property*, 10, 43–70.
- Gao, L. (2023). Review and reconstruction of the system of fair use of copyright in the digital age—Based on the theoretical analysis of technological neutrality. *Journal of Soochow University (Law Edition)*, 3, 41–52. <https://doi.org/10.19563/j.cnki.sdfx.2023.03.004>
- Gao, M. X., & Wang, J. P. (2007). Research on several issues in the identification of the crime of infringement of copyright. *Chinese Journal of Criminal Law*, 3, 3–9.
- Gao, Z. (2017). Seizing the source of counterfeits and locking in key evidence—A record of handling the case of infringement of copyright by Luo Kaiyu and others in Guangdong. *People's*

Procuratorial Semimonthly, 12, 62–64.

Guo, M. Z., & Ming, R. B. (2001). Fair use of copyright on internet. *Journal of Xi'an Jiaotong University (Social Sciences Edition)*.

Hao, C. L. (1995). A discussion on the issue of fair use of copyright in China. *Journal of Renmin University of China*, 4, 58–64, 127.

Huang, W. J. (2024). On the optimization of the rules of fair use of copyright—Based on the effective allocation of the cost of defining rights. *Academic Research*, 10, 67–72.

Kuwano, Y. (2010). The objective element of the crime of copyright infringement. *Shimane Law Review*, 54, 117–143.

Li, M. X. (2022). The dilemma and way out of the rigidity of the rules of fair use in the copyright law. *Publishing Panorama*, 11, 52–55, 87. <https://doi.org/10.16491/j.cnki.cn45-1216/g2.2022.11.010>

Li, Y. S., & Yuan, H. X. (2017). The criminal law response to the crime of infringement of copyright by network cloud service providers—The application of the doctrine of substantive interpretation of criminal law. *Journal of Jishou University (Social Sciences Edition)*, 2, 65–71. <https://doi.org/10.13438/j.cnki.jdxh.2017.02.013>

Liao, X. H. (2010). Improving the constituent elements of the crime of infringement of copyright. *Special Zone Economy*, 2, 254–256.

Liu, J. M. (2023). The application dilemma and countermeasures of the fair use provisions related to news in the new copyright law. *Cultural Industry Research*, 2, 385–396.

Luo, X. (2014). On the scope of criminal protection of copyright—A comparative analysis based on the copyright law and the criminal law. *Intellectual Property*, 10, 50–56.

Shao, H. H. (2023). Algorithmicization of fair use of copyright: Necessity, possibility, and limits. *Journal of Finance and Economics Law*, 4, 149–164. <https://doi.org/10.16823/j.cnki.10-1281/d.2023.04.011>

The Beijing News. (2024, October 15). Can libraries digitally copy their collections for readers to read? Beijing court cases clarify. Jinri Toutiao. <https://www.toutiao.com/article/7425857617966137882/>

Wenzhou Municipal People's Government. (2024, April 28). Wenzhou police crack the first case of infringing the copyrights of online writers in the city. Official website of Wenzhou Municipal People's Government. [http://www.wenzhou.gov.cn/art/2024/4/27/art\\_1217833\\_59245530.html](http://www.wenzhou.gov.cn/art/2024/4/27/art_1217833_59245530.html)

Wu, G. (2024). International comparison and enlightenment of the provisions on fair use of copyright with libraries as the special applicable subjects. *Library Development*, 5, 60–73, 86. <https://doi.org/10.19764/j.cnki.tsgjs.20230880>

Xiong, Q. (2024). The economic analysis paradigm of the identification of fair use of copyright in "secondary creation" behaviors. *Contemporary Law Review*, 1, 108–120.

Yao, W. Q. (2022). A review of the subjective purpose of the criminal law protection of copyright in the era of digital copyright. *Inner Mongolia Social Sciences*, 6, 96–103. <https://doi.org/10.14137/j.cnki.issn1003-5281.2022.06.014>

Yi, L. (2022). The constitutional interpretation of the system of fair use of copyright in China. *Nanjing University Law Review*, 1, 88–102. <https://doi.org/10.13519/b.cnki.nulr.2022.01.006>

Zou, S. F. (2016). Research on the indirect infringement liability of copyright of video sharing websites. *Journal of North China University of Water Resources and Electric Power (Social Sciences Edition)*, 2, 106–110. <https://doi.org/10.13790/j.cnki.issn1008-4444.2016.02.028>