“NEUTRALITY” TEST ON WEB 2.0 PLATFORM FOR ITS INTERMEDIARY LIABILITY IN CHINA AND IN EUROPE

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Abstract

In this user-led content generation, there are more and more national and international cases regarding the liability of web 2.0 platform for infringing content generated by users. From the existing rules and cases in Europe and China, we can see that it’s generally recognised that web 2.0 platform is a kind of intermediary, neither a publisher like newspaper nor a broadcaster like TV in the traditional sense. This affords web publishing a form of immunity from liability for user generated content or a kind of special treatment, but most importantly, this “safe harbor” requires the platform in question to be neutral without involvement with third-party content. The Chinese approach to the “neutrality” test is not the same with the European one, which may result in different court decisions for similar cases. I will introduce the legal status of web 2.0 platform in each legal framework along with case decisions, and then I will conduct a comparative study on existing cases from which we can see how courts made the operating model analysis and financial benefit analysis of web 2.0 platform when deciding its liability for user generated content. These two factors, which have a great influence on deciding if the neutral status is disqualified, have been repeatedly examined by both Chinese and European courts.

Author’s Bio

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Born in China (1983), is a third year PhD student in Italy. Her research interests lie broadly in the field of intellectual property law, information law and media law. Currently, she is focusing on comparison of the liability of social media platforms in China, the EU and the US. She received her bachelor degree in law and master degree in civil & commercial law at China University of Political Science and Law in Beijing. She has joined several research projects, including the EU-China European Studies Centre's Program which supported her to visit Münster University in 2007. She has also stayed in the Information Law Institute at University of Amsterdam for a short-term visit in 2010. Besides, she has published several papers in Chinese and in English, and presented her papers in three international conferences.