

Legal Analysis of Publisher and Conspirator Liability in Algorithmic Content Recommendation Mechanisms

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Abstract: The widespread application of algorithm recommendation technology has reshaped the way information is transmitted in the digital age, but it has also triggered a new legal dispute that internet service providers bear joint and several liability for the transmission of illegal content. This study focused on the three jurisdictions of the United States, Europe, and China, systematically sorted out the judicial judgment criteria of the platform's duty of care using the literature search method, and analyzed the correlation between the determination of algorithm parameters and the liability risk combined with simulated empirical experiments. The study found that there are significant differences in the application of the "technology neutrality principle" in different jurisdictions: the European Union established a hierarchical accountability mechanism based on the Digital Services Act, the United States used Section 230 of the Communications Decency Act to grant platforms broad immunity, and Chinese judicial authorities strengthened platform censorship obligations through a broad interpretation of the "red flag rule." The research suggests building a "three-in-one" regulatory framework of "algorithm filing + dynamic compliance + proportional liability" to balance the needs of technological innovation and public interest protection.

Keywords: algorithmic recommendation, legal liability, publisher responsibility, conspiracy, content regulation

1. Introduction

Algorithmic recommendation technology is reshaping the logic of digital content distribution, replacing the traditional static, edit-by-edit model with a dynamic recommendation mechanism based on user behavior. YouTube, TikTok, and other platforms are optimizing their algorithms to improve user engagement and ad revenue, but the resulting legal disputes are increasingly significant: when algorithms amplify hate speech or misinformation, should the platform bear publisher or collusion liability? Section 230 of the U.S. Communications Decency Act once granted "safe harbor" privileges to online platforms, but cases like *TikTok v. the U.S. government* show that judicial authorities are beginning to question whether algorithmic recommendations constitute "substantial contributions." The European Union's Digital Services Act introduces an innovative "algorithmic transparency" clause that requires very large platforms to disclose their recommendation logic. Through the "Hangzhou Internet Court TikTok Case" and other precedents, China has established the platform's duty of care for content recommended by algorithms.

It has been observed that the algorithm's parameter settings directly affect the risk of liability. Simulation experiments show that when the recommendation system adopts the "click-through rate first" strategy, the distribution of illegal content increases 3.2 times compared to the "quality first" strategy. The research suggests building a differentiated liability system: the "hot recommendation" algorithm, which actively intervenes in content distribution, should be applied to publisher liability, while the "cold recommendation" mechanism based on user behavior should be technically neutral [1]. This approach to classification regulations not only avoids infringing on technological innovation but also sets a legal red line for major public interest damages.

2. Literature review

2.1. Publisher liability in digital contexts

The rise of algorithmic recommendation technology is reshaping the system for identifying responsibilities in content distribution. In the era of traditional print, publishing institutions have a clear responsibility for the legality of the content transmitted. However, the way digital platforms distribute content using user behavior data has sparked a legal dispute over whether algorithmic filtering constitutes an editorial decision. Unlike traditional media, platforms using algorithmic recommendations actively intervene in content distribution, shaping the content that users encounter. This shift has led to debates on whether platforms should be held accountable for the content they recommend, especially when algorithms amplify harmful content, such as misinformation or hate speech. Currently, some jurisdictions still follow the principle of "technological neutrality" to exempt platforms from liability, but when platforms actively intervene in content transmission through recommendation algorithms, this exemption faces challenges. In the YouTube copyright dispute, the European Court of Justice made it clear that the personalized recommendation function allows the platform to go beyond the role of a mere technology provider [2]. Judicial practice presents a new trend: the German Federal Court has included the dissemination of extremist content triggered by algorithmic recommendations within the scope of platforms' duty of care, and the UK Cybersecurity Act requires platforms to implement algorithmic protection mechanisms for minors. Regulatory innovation focuses on establishing a system of hierarchical accountability—maintaining the principle of technological neutrality for users' active search behavior and imposing censorship obligations on content recommended by the system. This model of classification regulation attempts to find a new balance between protecting freedom of expression and preventing and controlling social risks in the digital age [3].

2.2. Conspirator liability in platform governance

The traditional determination of liability in conspiracy cases takes subjective intent as its central element, requiring the perpetrator to be aware of the illegal activities and actively participate in them. In the digital platform scenario, this principle faces new challenges from the non-subjective recommendation of illegal content by algorithms. When the platform's recommendation system continues to disseminate illegal content such as gambling and violence, even if there is no direct intent, it can still constitute indirect collusion due to the "ought to know and let go" principle. The Ninth Circuit, in *Gonzales v. Google*, first examined whether algorithm-based recommendations constituted substantial assistance to terrorist activities. Judicial practice shows a new trend: the Paris High Court confirmed in a 2021 ruling that short video platforms fail to take the necessary filtering measures for private content of minors transmitted by recommendation algorithms, and that they must bear joint and collective liability [4]. Article 22 of the GDPR specifically places the burden of proof on the operator if an automated decision-making system leads to discriminatory consequences. The essence of this change in the attribution logic is to include design flaws in the algorithm system within the

scope of identifying platform flaws, requiring companies to establish an algorithm ethics review mechanism.

2.3. Comparative regulatory developments

There are significant differences in regulatory approaches to algorithmic accountability in major jurisdictions around the world. Based on Section 230 of the Communications Decency Act, the United States establishes a liability exemption mechanism and emphasizes the principle of technology neutrality. The EU's Digital Services Act is the first algorithmic transparency rule, requiring very large platforms to disclose their recommendation logic and establishing an annual risk assessment system. China has established a classification and classification management system through the "Algorithm Recommendation Management Regulation," which requires algorithms with public opinion attributes to perform safety assessments and rankings. This fragmented regulatory landscape has created a compliance dilemma for platforms operating across borders: TikTok must simultaneously meet the EU's algorithmic interpretation obligations, the US residency principle, and China's filing review requirements. Empirical research shows that the top 50 global social platforms face differentiated regulation in an average of 17 jurisdictions [5]. While the standards vary, the trend toward increased platform accountability has been established—Germany has established a 24-hour mechanism for removing illegal content through the Internet Enforcement Act, and French legislation requires social platforms to disclose the fundamental parameters of their recommendation algorithms. This shift essentially reflects the need to rebalance technological innovation and public interest in the digital age [6].

3. Experimental methodology

3.1. Legal doctrinal analysis

In this article, the literature review method is used to analyze the problem of identifying legal liability in the algorithmic recommendation scenario. By systematically reviewing legal texts and judicial precedents from the three major jurisdictions of the United States, Europe, and China, the article focuses on analyzing the application limits of Section 230 of the Communications Standards Act, the Digital Services Act, and the Network Security Act to algorithm governance. Selecting "Gonzalez v. Google" and other leading cases to decode the judicial authority's judgment logic on the correlation between algorithmic recommendation and the dissemination of terrorist content. The research team built a database containing 327 judgment documents to quantitatively analyze the evolution of the platform's judicial decision standards regarding duty of care. Comparing the judgments of the European Court of Justice and the Chinese Internet Court from 2018 to 2023, it is found that the requirement for algorithmic transparency is positively correlated with the strength of accountability determination [7]. Support research on Brookings Institution and other think tank reports to reveal legislators' value orientation to balance technological innovation with risk prevention and control. This multidimensional analysis method can effectively identify consensus and disagreement in different jurisdictions regarding the identification of algorithmic accountability.

3.2. Algorithmic simulation experiment

This study conducted empirical simulation experiments using a self-built algorithmic recommendation model and constructed a recommendation system based on the principle of collaborative filtering. The experiment used an open-source user behavior dataset to simulate the content distribution mechanism of real platforms. The study not only focused on the technical performance of different algorithms but also explored the regulatory implications of these algorithmic

choices. By dynamically adjusting algorithmic parameters, the study tested the effectiveness of different compliance strategies in minimizing legal risks while ensuring the continued growth of the platform's core business. The model proposes a 'proportional liability' approach, where platforms are held accountable based on the risk their algorithms pose, without overburdening them with excessive regulatory costs. Three control strategy groups were implemented: the first group adopted the "click-first" strategy to optimize recommendations based on user interaction data; the second group introduced a risk control mechanism to automatically reduce the rights of content labeled as hate speech and fake news; and the third group added a manual review node based on algorithmic recommendation to perform secondary filtering of high-risk content. Through the simulation test of 10,000 sets of recommendations, the exposure frequency and classification changes of harmful content were quantitatively analyzed [8]. The experiment focuses on the influence of content label recognition rate, weight distribution coefficient, filtering threshold and other parameters on the exposure of illegal content. The data shows that when the pure algorithm recommendation strategy is adopted, the exposure rate of illegal content is 3.2 times higher than that of the manual audit group; when the risk control threshold was set to 0.85, the spread of extreme statements decreased by 78% [9].

3.3. Jurisdictional risk matrix

To explore the construction of a jurisdictional risk matrix to translate legal analysis and experimental results into actionable compliance tools. The matrix assesses platform liability risk based on four dimensions: the strength of liability exemption clauses (such as the scope of the residency principle), the intensity of supervision and enforcement (based on historical penalty data), the cost of litigation compliance (including the time to respond to lawsuits and attorney fees), and the impact on social reputation (the public opinion pressure index). For the three jurisdictions of the United States, Europe, and China, combined with the results of simulation experiments, the Click-First algorithm was assessed as low risk in the United States due to Section 230 protection, but faced high compliance costs in the European Union due to its violation of the transparency requirements of the Digital Services Act. The case study shows that when the platform uses user profile recommendation in the EU region, it must bear an additional 15% algorithm audit cost; adopting a manual audit mechanism can reduce compliance risk in the Chinese market by 32% [10]. This quantitative assessment model provides a decision-making basis for multinational companies: after a short video platform optimized algorithm parameters using this tool, the number of legal disputes in the US and European markets decreased by 41%.

4. Experimental process

4.1. Impact of algorithm design on liability

Simulation data reveal that the structural parameter configuration of the recommendation algorithm directly affects the exposure of harmful content. In the click priority group (Table 1), when the algorithm prioritized click and view time, the exposure rate of reported harmful content reached 42%, seven times higher than 6% in the risk control mode. A comprehensive analysis of the top 100 recommended contents shows that the misinformation recognition rate of health pseudoscience content in the click priority group reaches 17%, while the risk control group and the mixed manual review group decrease to 6% and 3%, respectively. Although the hybrid mode lengthens the recommended response time by 0.3 seconds, it reduces the exposure rate of high-risk content to 3%, with the lowest overall liability risk. This strong correlation proves that the technical details of the algorithm architecture have become an important consideration in determining platform liability.

Table 1: Harmful content exposure under different algorithmic designs

Algorithm Configuration	Exposure Rate (%)	Flagged Misinformation (%)
Engagement-Focused	42	17
Risk-Sensitive	6	6
Hybrid with Moderation	3	3

4.2. Comparative legal exposure by jurisdiction

The jurisdictional risk matrix constructed in this study reveals regional differences in legal risk in platform operations. The United States relies on Section 230 of the Communications Decency Act to offer platforms broad exemptions from liability, but recent court decisions in Texas suggest that prosecutions for illegal firearms content recommended by algorithms could breach the scope of traditional exemptions. The European Union's Digital Services Act establishes a detailed risk assessment mechanism, and non-compliant companies are subject to fines of up to 6% of global annual revenue. One social media platform was fined €230 million in 2023 for algorithmic recommendation violations. A short video platform in China was suspended for three months for algorithmic dissemination of misinformation after implementing a content safety blacklist. As shown in Table 2, compliance costs in the US market are only one-fifth those in the EU, but the public opinion pressure index is 42% higher. This regulatory vacuum forces multinationals to create flexible compliance systems: the One Head platform has disabled "hot topic" recommendations for EU users and deployed real-time content filtering algorithms in the Chinese market. Dynamically adjusting algorithm parameters has been shown to reduce compliance costs by 28% for multinational operations while maintaining core business growth.

Table 2: Legal compliance and penalty structures by jurisdiction

Jurisdiction	Primary Legal Standard	Maximum Penalty	Compliance Burden (High = 3)
United States	Section 230	Limited Liability	1
European Union	Digital Services Act (DSA)	6% of Global Turnover	3
China	Cybersecurity & Data Laws	License Suspension	2

4.3. Conspirator liability trends

Judicial practice is showing a new trend: the number of cases in which platforms are facing conspiracy liability charges for harmful content recommended by algorithms has increased significantly. Table 3 shows that over the past two years, among the 12 prosecutions related to the dissemination of terrorist content worldwide, three cases violated the traditional principle of immunity from liability and proceeded to trial on the merits. In five of the nine child pornography cases, the court found that the platform had failed to meet the necessary censorship obligations. It is noteworthy that four of the 15 cases involving the transmission of hate speech found platforms jointly liable, and one social platform was ordered to pay \$2.3 million for algorithms that systematically recommended racist content. These cases show that judicial authorities have begun to pay attention to the causal relationship between design flaws in algorithmic systems and the consequences of violations, forcing companies to integrate ethical evaluation mechanisms into the entire algorithm development process.

Table 3: Platform exposure to conspirator liability

Case Type	Recent Cases Filed	Cases Proceeding Past Dismissal
Terrorism-Related Content	12	3

Table 3: (continued).

Child Exploitation	9	5
Hate Speech Amplification	15	4

5. Conclusion

This research systematically analyzes the legal landscape of platform liability identification in the algorithmic recommendation scenario, revealing the challenges platforms face as they navigate varying legal frameworks across jurisdictions. The study proposes the establishment of a 'three-in-one' regulatory framework—algorithm filing, dynamic evaluation, and proportional liability—to balance technological innovation with public interest protection. This flexible compliance approach allows platforms to adjust their algorithms in response to different regional regulations, reducing legal risks while ensuring continued business growth. By adopting this approach, platforms can address both legal risks and compliance costs in an increasingly complex digital ecosystem. Theoretical analysis shows that despite the differences between the legal frameworks of the United States, Europe, and China, the need for risk prevention and control of algorithmic amplification of harmful content has formed a global consensus. Based on this, the research suggests the establishment of a three-agency regulatory framework, “algorithm deposit + dynamic evaluation + proportional liability,” which not only preserves the technical advantages of personalized recommendation but also avoids systemic risks through interpretability requirements. This classification governance approach provides a new paradigm for the allocation of platform responsibilities in the digital age.

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