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A Comparative Study of Administrative Enforcement of Copyright Protection in China and Europe

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INTRODUCTION

Social media platforms are now key spaces for user-generated content and video monetization. AI technology increasingly supports dispute resolution, including internal content claims, notice-and-takedown procedures and ODR services. AI can be applied in civil or criminal enforcement to implement blocking injunctions and facilitate alternative administrative blocking mechanisms. However, questions persist regarding the reliability and legal clarity of AI-powered content moderation tools in these procedures.

In Europe, content owners can address copyright infringement by first using social media platforms' internal content claim services. If unresolved, they may initiate a notice-and-takedown procedure, pursue alternative or online dispute resolution (ADR/ODR), or, as a last resort, file a civil or criminal lawsuit, or both.

In most countries, service providers are responsible for managing notice-and-takedown procedures. In China, rightsholders also have access to administrative enforcement through the National Copyright Administration of China and its branches.¹ This administrative system is often more time effective in resolving complaints compared to civil litigation, as it requires fewer documents and less evidence from complainants.² A key drawback of China's administrative enforcement system is the lack of consistent processes across provinces, leading to varying outcomes.³ For highly complex cases or when complainants are seeking damages, court litigation remains the only route, as administrative

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¹ Administrative Enforcement of Intellectual Property in China: Guidance for British companies seeking administrative enforcement against IP infringements in China, 13 November 2023 available at <<https://www.gov.uk/government/case-studies/uk-china-cooperation-on-intellectual-property>> last accessed 31 March 2025. (This factsheet was written for the British Embassy Beijing and the UK Intellectual Property Office by Joshua Mandell on 23 October 2023).

² *Ibid*, p.2.

³ Factsheet on Administrative Enforcement of Copyright in China, 6 December 2019 available at <https://assets.publishing.service.gov.uk/media/5f5b4f488fa8f5106910058d/Administrative_Enforcement_of_Copyright_-_IP_in_China_Factsheet.pdf> last accessed 31 March 2025.

enforcement can only provide infringement findings, cease-and-desist orders, or fines.⁴

In contrast to China, neither the UK nor the EU has an administrative enforcement system within their respective copyright offices. In the United Kingdom (UK), there is general academic interest in establishing an 'administrative justice' framework for disputes between individuals and the state⁵ within the context of the modern administrative system.⁶ Similar debates occur in the US over granting administrative adjudicative authority to copyright offices for resolving online video-sharing disputes,⁷ as administrative agencies' expertise could enhance copyright enforcement. In the EU, while the Copyright Directive 2019 in its Recital (66) acknowledges the role of administrative authorities in issuing injunctions under national law, it primarily focuses on liability mechanisms for content-sharing service providers rather than users uploading content.⁸

This paper explores a potential administrative justice framework for copyright protection in the UK and EU by examining how digital technologies are transforming administrative justice in China through digital case management and AI-powered decision automation and execution, while also evaluating the possibility of granting adjudicative authority to copyright offices based on insights from China's system. It recommends legal and technological improvements to notice-and-takedown procedures for generative-AI copyright disputes, advocating for stronger platform regulations, more efficient digital case management, and the use of explainable AI-powered content moderation tools. This paper advocates for streamlining the notice-and-takedown process across administrative and civil justice systems to create a more efficient and accessible dispute resolution mechanism, promoting a fairer balance between rightsholders and platform providers. It seeks to promote collaboration among policymakers and stakeholders for harmonized best practices on copyright protection and enforcement.

AI-POWERED CONTENT MODERATION: THE NEED FOR HARMONISED ADMINISTRATIVE ENFORCEMENT

Constraints of AI-powered Content Moderation

AI-powered content moderation tools embed AI technology including machine learning and natural language processing to analyse audio and video to detect and manage online content automatically, assisting the enforcement of guidelines and removal of harmful and copyright infringing materials. While

⁴ *Ibid*, p.3.

⁵ Partington, TM (1999) 'Restructuring administrative justice? The redress of citizens' grievances' 52 *Current Legal Problems* 173-179.

⁶ Anthony, G (2015) 'Administrative Justice in the United Kingdom' 7(1) *Italian Journal of Public Law* 9-33.

⁷ Gocha, AJ (2018) 'Modern system for resolving online copyright infringement disputes: administrative rulemaking and adjudication, one-stop fix to the digital millennium copyright act. IDEA' 58(2) *The Journal of the Franklin Pierce Center for Intellectual Property* 131-172 at 168.

⁸ EC Copyright Directive 2019, Recital (66) and Article (29).

AI may improve efficiency, it may also struggle with contextual understanding.⁹ AI's current limited contextual understanding can lead to the wrongful removal or alteration of legal content, making human review essential for detected violations. When AI algorithms independently detect and remove infringing content, it raises concerns about determining liability and accountability for wrongful takedowns. The deployment of AI-powered moderation tools for self-executing copyright enforcement may be subject to technological, legal, and self-regulatory constraints.

*Technological Constraints*¹⁰

AI-powered content recognition/moderation tools may not accurately monitor or determine infringing content, in particular live streaming. Identifying specific music tracks, videos, or images is challenging due to various factors. Audio misrecognition can occur if the track is played at a different speed, has altered equalization, or includes background noise or echoes. Similarly, video misrecognition may result from changes in playback speed, frame cropping, colour adjustments or heavy compression.¹¹

Currently, AI technology remains limited in its ability to comprehend nuanced contexts, such as those involving fair use. Fair use generally entails the reproduction of a limited portion of an original work for a legitimate purpose, which often requires careful consideration of legal and contextual factors. Using the US legislation as an example, there are four consideration factors to determine fair use to unauthorised work of copyrighted work, which include the purpose and character of the use (i.e., educational use); the nature of the copyrighted work; the amount and substantiality of the portion used against the entire work; and the effect of such use (i.e., market value).¹² It was noted that in industries there were attempts to 'incorporate fair use metrics into copyright policing algorithms, both to protect against automated overdeterrence and to inform users of their compliance with copyright law' but with very limited success.¹³ In the case of *Lawrence Lessig v Liberation Music Pty Ltd*,¹⁴ it was argued that using automated takedown requests/notices often increases the number of requests/notices being wrongly flagged and investigated.¹⁵ This, in turn, may impose a significant burden on manpower, escalate costs, and negatively affect the well-being of the parties involved.

⁹ Wang, F (2017) *Online Arbitration* (1st ed.) Informa Law from Routledge at 94.

¹⁰ Wang, F (2022) Resolving Online Content Disputes in the age of Artificial Intelligence: Legal and Technological Solutions in comparative perspective (17, 2) *Journal of Comparative Law* 491-517 at 495.

¹¹ *Ibid.*

¹² 17 USC § 107.

¹³ Burk, DL(2019) 'Algorithmic Fair Use' (86, 2) *The University of Chicago Law Review* 283.

¹⁴ Case 1:13-cv-12028, *Lawrence Lessig v Liberation Music Pty Ltd*, 22 August 2013, United States District Court for the District of Massachusetts.

¹⁵ Williams, J (2015) 'Absurd Automated Notices Illustrate Abuse of DMCA Takedown Process' *Electronic Frontier Foundation* 24 February 2015, available at < <https://www.eff.org/deeplinks/2015/02/absurd-automated-notices-illustrate-abuse-dmca-takedown-process> > last accessed 31 March 2025.

The determination of fair use in a borderless digital environment is a complex process, as it will be subject to different national laws and culture interpretations. In addition, its assessment also needs to be contextual on a case-by-case basis. An AI algorithm would be able to determine which portion of the original work has been reproduced and therefore calculate the total proportion that had been reproduced. This may be only one factor in determining fair use. Identifying the reason for the reproduction may be far harder for an AI algorithm to determine. For example, identifying that a detailed commentary followed a reproduced movie clip would require an understanding of not just the words, but the context of the commentary relating to the clip. Likewise, if an audio clip was unreasonably reproduced for the purpose of providing a professional sounding video intro, it would also be difficult for an AI algorithm to determine whether this was the case.

Given the limitations of AI technology in accurately assessing infringing content online, it is worth considering whether current legislation adequately supports the use of AI-powered content moderation tools to address copyright infringement. Additionally, it raises the question of whether existing rules and provisions provide sufficient clarity and legal certainty.

Legal Constraints

CONSTRAINTS ON SUBSTANTIVE LAW

From a substantive law perspective, to hold AI legally accountable would require the recognition of AI as a legal entity—a concept that remains highly debated.¹⁶ While advanced AI can mimic human tasks through deep learning, it still lacks full emotions and consciousness, making legal personality unsuitable for AI in the foreseeable future. It has been argued that if AI algorithms could possess human consciousness, they should be given legal personality.¹⁷

There is ongoing debate over whether AI-generated work should be eligible for intellectual property rights (IPR) protection. There is a growing trend of consensus among jurisdictions that an AI algorithm should not be granted legal personality.¹⁸ For example, in China in the case of *Shenzhen Tencent Computer System v Shanghai Yingxun Technology* (2019), the court did not recognize legal personality for Tencent's Dreamwriter software.¹⁹ The US courts have consistently ruled that AI-generated work is not eligible for copyright protection due to the absence of human authorship. For example, in the recent US Federal

¹⁶ Kurki, VAJ 'The Legal Personhood of Artificial Intelligences' in Kurki, VAJ *A Theory of Legal Personhood* (Oxford Scholarship Online, 2019), Chapter 6. DOI:10.1093/oso/9780198844037.003.0007. It argues that AI is capable of performing similar tasks as human beings and thus should function as legal persons.

¹⁷ Papakonstantinou, Vagelis & Paul De Hert, 'Refusing to award legal personality to AI: Why the European Parliament got it wrong', 20 November 2020 available at <<https://europeanlawblog.eu/2020/11/25/refusing-to-award-legal-personality-to-ai-why-the-european-parliament-got-it-wrong/>> last accessed 31 March 2025.

¹⁸ Wang, F (2023) Copyright Protection for AI-Generated Works Solutions to Further Challenges from Generative AI, Series 2 Vol. 5 No. 1 *Amicus Curiae* 88-103 at 91.

¹⁹ *Shenzhen Tencent Computer System Co Ltd v Shanghai Yingxun Technology Co Ltd* (2019) Yue 0305 Min Chu 14010, Judgment decision on 24 December 2019 by Shenzhen Nanshan District People's Court.

Appeal Case of *Stephen Thaler v Shira Perlmutter* (representing register of Copyrights and Director of the United States) in 2025, Dr Stephen Thaler, a computer scientist, had created a generative AI named the 'Creativity Machine,' which generated an artwork titled 'A Recent Entrance to Paradise.'²⁰ He applied for copyright registration with the United States Copyright Office, listing the Creativity Machine as the sole author and himself as the owner. The Copyright Office rejected the application, stating that only works created by human beings qualify for copyright protection, excluding AI-generated works without human authorship under the human-authorship requirement. The appeals court upheld the district court and copyright office's rejection of Dr Thaler's argument that he should be recognized as the author because he created and used the Creativity Machine. The appeal court also rejected the claim that there was an employment relationship between Dr Thaler (as employer) and Creative Machine (as employee). The appeals court therefore affirmed that Dr Thaler's claim did not meet the requirements of the Copyright Act 1976, which allows individuals and organizations to own copyrights for works created by others only through a contractual agreement known as a 'work made for hire.' The court reaffirmed that the Creativity Machine may not be considered the author of a copyrighted work, as the Copyright Act 1976 requires authorship by a human being. Consequently, Dr Thaler could not be recognised as the author of the work.²¹

This ruling is unsurprising, as unlike many other jurisdictions, the US does not grant copyright protection to 'computer-generated works' and only protects original works created by human authors.²² According to the US Supreme Court (1879), copyright applies to 'the fruits of intellectual labor' derived from 'the creative powers of the mind.'²³ This principle was reinforced in *Naruto v. Slater* (2018), where the court ruled that a selfie taken by a monkey that accidentally pressed a camera button could not be protected under US copyright law, as it lacked human authorship.²⁴

There have been a series of class actions against OpenAI for usage of copyrighted materials for AI data training.²⁵ For example, in the pending US trial case of *Andersen v. Stability AI*²⁶ (scheduled in autumn 2026), artists alleged Stability AI and others of copyright infringement by using their works to train

²⁰ *Stephen Thaler v Shira Perlmutter* (representing register of Copyrights and Director of the United States), Decision 18 March 2025, Appeal from the United States District Court for the District of Columbia (No. 1:22-cv-01564).

²¹ *Ibid*, page 23 IV.

²² Wang, F (2023) 'Copyright Protection for AI-Generated Works Solutions to Further Challenges from Generative AI' Series 2 Vol. 5 No. 1 *Amicus Curiae* 88-103, p.94. See also United States Copyright Office. 'Copyrightable Authorship: What Can Be Registered.' In *Compendium of US Copyright Office Practices*. 3rd edn, ch 300, 21 August 2021.

²³ United States Supreme Court. Trademark Cases, Syllabus from US Supreme Court, 100 US 82, 94 (1879).

²⁴ *Naruto v Slater*, 2018 WL 1902414 (9th Cir April 23, 2018).

²⁵ Case No 1:23-cv-8292 Class Action Complaint – Authors Guild, et al v Open AI, Inc, et al, United States District Court Southern District of New York, lawsuit filed 19 September 2023 (consolidated with *Alter v OpenAI* and *Basbanes & Ngagoyeanes v Microsoft and OpenAI*); Case No 3:23-cv-03416-AMO *Sarah Silverman, et al v OpenAI, Inc, et al*, United States District Court Northern District of California, San Francisco Division, lawsuit filed 27 September 2023 ((consolidated with *Tremblay v OpenAI* and *Chabon v OpenAI*).

²⁶ Case No 23-cv-00201-WHO *Andersen v. Stability AI Ltd.* (N.D. Cal. Aug. 12, 2024).

AI models and generate similar styled images. Further investigation may be required to understand how AI companies use copyrighted materials to train their systems and whether such usage for data training may infringe copyright law. The decisions of all these pending cases may potentially influence the direction of AI-generated art protection and how courts interpret the balance between AI innovation and IP rights in the US.

Recently the US Copyright Office's Report on Copyright and AI Generative Copyright and Artificial Intelligence in its Part 2 on Copyrightability (2025) affirms that AI outputs are only eligible for copyright protection if a human author contributes sufficient expressive elements, such as incorporating perceptible human-authored content or making creative modifications, but merely providing prompts is insufficient.²⁷ It concludes that changes to existing law for AI-generated outputs protection is unnecessary.

In the UK, the final judgement in *Getty Images (US) Inc v Stability AI Ltd*²⁸ is expected to address substantive legal issues and ethical questions concerning the use of copyright protected materials in training and developing GenAI models, particularly where rights-holder consent is absent. The case may potentially clarify UK's position on the interpretation of AI training practices and copyright protection.

Although a consensus may be reached among jurisdictions that an AI algorithm should not be granted authorship or ownership for copyright due to various reasons, it will be difficult to reach an agreement on whether or not AI-generated work should be eligible for IPR protection. In the author's opinion, AI-generated work should receive appropriate IPR protection to promote technological development while striving a balanced protection among different rightsholders.²⁹ The most appropriate persons/authors/beneficiaries for such protection are individuals who make primary necessary arrangements for the development and operation of AI, including creators, programmers, developers, algorithm designers as well as those selecting, inputting, and training data, and the operators or users of the AI.³⁰ Establishing clear legal and technical mechanisms is essential to identify and protect these contributors.³¹ In addition, specialized administrative offices, such as copyright management organizations for AI-generated works, could be established for publishers, and all who make arrangements necessary for the work to be generated, to join and receive awards efficiently in case of their works being in commercial use.

²⁷ Copyright and Artificial Intelligence Part 2: Copyrightability, United States Copyright Office, January 2025 available at <<https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf>> last accessed 31 March 2025.

²⁸ *Getty Images (US) Inc and Ors v Stability AI Ltd* [2025] EWHC 38 (Ch).

²⁹ Copyright, Designs and Patents Act 1988, s.9(3). See also Wang, F (2022) 'AI and Intellectual Property Rights: IPR Protection for AI-Created Work' (Speech at the Evidence Meeting of AI and Intellectual Property Rights: IPR Protection for AI-Created Work for All-Party Parliamentary Group (APPG), 24 January 2022) available at <<https://www.youtube.com/watch?v=E3wMWldnIPM>> last accessed on 31 March 2025.

³⁰ Wang, F (2022) 'AI and Intellectual Property Rights: IPR Protection for AI-Created Work' Speech at the Evidence Meeting of AI and Intellectual Property Rights: IPR Protection for AI-Created Work for All-Party Parliamentary Group (APPG), 24 January 2022 available at <<https://www.youtube.com/watch?v=E3wMWldnIPM>> last accessed 31 March 2025.

³¹ *Ibid.*

CONSTRAINTS ON PROCEDURAL LAW

From a procedural law perspective, when global social media platforms (such as YouTube, Tiktok and Facebook) offer AI-powered content moderation tools, they must comply with national laws on notice and takedown requests for copyright infringement, depending on the location of the user or where the content is accessed. For example, YouTube offers a Copyright Match Tool to support the notice and takedown process. Available to users who have submitted a valid copyright takedown request, the tool automatically detects videos that match or resemble others on the platform. Content owners can then review these matches to assess whether they fall under fair use, fair dealing, or similar copyright exceptions.³² YouTube will encounter legal challenges and uncertainties due to varying national and regional legislation regarding content moderation and copyright enforcement.

In the EU, it is arguable that although the Copyright Directive 2019 ‘does not impose upload filters nor does it require user-uploaded platforms to apply any specific technology to recognise illegal content’,³³ the Copyright Directive in 2019 may still appear to encourage hosting service providers to use technological measures (such as ‘content recognition technologies’³⁴ which is also known as ‘automated content recognition tool’³⁵) to detect illegal content to avoid liability, which may appear to contradict with the principle of prohibiting imposing ‘general monitoring obligations’ as set out in the EC E-Commerce Directive and the Digital Service Act 2022. This is due to the wording set out in Article 17(4)(c) of the Copyright Directive 2019 that online content-sharing service providers shall be liable for unauthorized public communication of acts of communication to the public, unless they act quickly to remove or disable access to infringing content upon receiving a valid notice from rights holders and ‘make best efforts to **prevent their future uploads**’³⁶ [emphasis added] Although the European Commission has clarified that the ‘best efforts’ obligation does not specify any specific means or technology,³⁷ it is not clear how it is possible to prevent any future uploads without monitoring in line with the principle of prohibiting imposing ‘general monitoring obligations’. It was argued that Article 17 of the EC Copyright Directive 2019 may place additional burden on hosting service providers to demonstrate their best efforts by using more

³² Use the Copyright Match Tool, available at <<https://support.google.com/youtube/answer/7648743>> last accessed 31 March 2025.

³³ Questions and Answers – New EU copyright rules, 4 June 2021 available at <https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_2821> last accessed 31 March 2025.

³⁴ ‘Effective Content Recognition Technologies’ were proposed in Article 13(1) within Chapter 2 ‘Certain uses of protected content by online services’ in the *Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market*, COM/2016/0593 final, 14.9.2016. However, such wording was removed in the final adopted Copyright Directive 2019 in its Chapter 2 ‘Certain uses of protected content by online services’.

³⁵ Communication from the Commission to the European Parliament and the Council: Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market, COM(2021) 288 final, 4 June 2021, Section VI.

³⁶ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17.5.2019, p. 92–125. Article 17(4)(c).

³⁷ Questions and Answers – New EU copyright rules, 4 June 2021 available at <https://ec.europa.eu/commission/presscorner/detail/en/QANDA_21_2821> last accessed 31 March 2025.

stringent content recognition algorithms to scan users' content 'more rigorously and pre-emptively'.³⁸ In a CJEU (Court of Justice of the European Union) case on April 26, 2022, the Republic of Poland sought to annul Article 17 of the EC Copyright Directive 2019. Poland argued that Article 17(4)(b) and (c) effectively require service providers to conduct 'preventive monitoring' of user-uploaded content using automated filtering tools.³⁹ Poland claimed that these provisions lack sufficient safeguards to protect the right to freedom of expression and information, resulting in a disproportionate and unjustified limitation on this fundamental right.⁴⁰

In the UK, general monitoring obligations remain prohibited, and there is no legal requirement to use automated filtering software for detecting illegal content. The UK Government's 2020 Online Harms White Paper confirms that service providers will not be required to conduct general monitoring of online content but must swiftly remove illegal material once aware of it, ensuring being comparable with EU e-Commerce Directive liability rules.⁴¹ Platforms are only required to remove or disable illegal content once they become aware of it in order to avoid liability. General monitoring is not mandated due to concerns about excessive burdens on service providers and potential harm to freedom of expression and user privacy.⁴² Notably, the UK chose not to implement the EU Copyright Directive 2019, despite its connection to the EC Directive on Electronic Commerce.

In the US, the Digital Millennium Copyright Act (DMCA) provides a notice and takedown procedure, known as the 'safe harbor' provisions, to shield online intermediaries from legal liability for hosting infringing content.⁴³ While this procedure applies broadly to remove online infringing materials, including counterfeit goods,⁴⁴ it is not explicitly covered under the Lanham Act.⁴⁵ Section 512(m) of the DMCA imposes no duty on a service provider to 'monitor its service or affirmatively seek facts indicating infringing activity, except to the extent consistent with a standard technical measure'.⁴⁶ However,

³⁸ Tie, A. (2020) 'Copyright law issues in the context of video game Let's Plays and livestreams' 3(2) *Interactive Entertainment Law Review* 121 at 128.

³⁹ CJEU Case C-401/19, ACTION for annulment under Article 263 TFEU, brought on 24 May 2019, *Republic of Poland v European Parliament and Council of the European Union*, Judgment of the Court (Grand Chamber) 26 April 2022, para. 24.

⁴⁰ CJEU Case C-401/19, ACTION for annulment under Article 263 TFEU, brought on 24 May 2019, *Republic of Poland v European Parliament and Council of the European Union*, Judgment of the Court (Grand Chamber) 26 April 2022, para. 24.

⁴¹ 'Consultation Outcome - Online Harms White Paper: Full government response to the consultation' UK Government, 15 December 2020.

⁴² *Ibid.*

⁴³ US Digital Millennium Copyright Act (DMCA), Section 512.

⁴⁴ *Tiffany (NJ) Inc. v. eBay Inc.* 600 F.3d 93 (2nd Cir. 2010).

⁴⁵ Ballon, I. C. (2019) *E-Commerce & Internet Law: Treatise with Forms* (2nd ed) Thomson/West Publishing 135.

⁴⁶ US Digital Millennium Copyright Act (DMCA), Section 512(I)(2). 'The term 'standard technical measures' means technical measures that are used by copyright owners to identify or protect copyrighted works and - (A) have been developed pursuant to a broad consensus of copyright owners and service providers in an open, fair, voluntary, multi-industry standards process; (B) are available to any person on reasonable and non-discriminatory terms; and (C)

the US Copyright Office has clarified that if automated filtering technology flags repeated infringers, such infringers should be referred for human review, because the rule of no general monitoring obligation does not mean that online service providers 'may simply ignore information of potential repeated infringement on their system once obtained'.⁴⁷ This approach aligns with recent legislation and court rulings in the EU, supporting the use of automated filtering technology.⁴⁸

In the People's Republic of China (hereafter 'PRC' or 'China') China, the notice and takedown procedure has been regulated by E-Commerce Law of PRC, adopted in 2018 and enforced in 2019 (hereafter 'China E-Commerce Law 2019')⁴⁹ in accordance with China Civil Code. This Code provides that rightsholders shall notify the network service provider to take such necessary measures such as deletion, block, or disconnection to tackle a tortious act on the network service.⁵⁰ The China E-Commerce Law at Article 42 provides that an IPR holder could notify any content infringement to the e-commerce operator, however any such notice must include prima facie evidence, whilst upon the receipt of such notice, the e-commerce platform operator should 'take such necessary measures as deletion, blocking, disabling the link, termination of transaction and service' in a timely manner.⁵¹ Compared with the relevant legislation in the UK, EU and US, this Article 42 of China E-Commerce Law 2019 provides the threshold of liability, instead of providing general liability exemption like other countries. It stipulates that an IPR holder's wrong notice may result in civil liability or double liability depending on the severity, whilst an 'e-commerce platform operator' may bear the joint and several liability for magnified damage, due to undue delay in taking necessary measures, along with 'operators on platform' who are allegedly engaging in content infringing activities.⁵² An e-commerce platform operator should be understood as an e-commerce service provider or 'hosting service provider' (as used in EC Directive on Electronic Commerce, Article 14), whilst operators on platform should be understood as the content generators/providers on platform, 'subscribers' on platform (as used in US DMCA, Section 512), or 'the recipient of the service' (as used in EC Directive on Electronic Commerce, Article 14).

If operators on platform submit a counter notice ('a statement of no infringement') with prima facie evidence to the e-commerce platform operator, an IPR holder should be informed about his/her right to file a complaint to relevant competent authorities or bring a lawsuit in courts.⁵³ Comparing with

do not impose substantial costs on service providers or substantial burdens on their systems or networks.)

⁴⁷ 'Section 512 of title 17: A Report of the Register of Copyrights', United States Copyright Office, May 2020, p.3.

⁴⁸ Joined Cases C-682/18 and C-683/18, *Frank Peterson v Google LLC and Others and Elsevier Inc. v Cyando AG*, Judgment of the Court (Grand Chamber) of 22 June 2021.

⁴⁹ People's Republic of China E-Commerce Law 2019, Articles 41-46.

⁵⁰ People's Republic of China Civil Code 2020, Article 1195.

⁵¹ China E-Commerce Law 2019, Article 42. See the English version available at <https://ipkey.eu/sites/default/files/documents/resources/PRC_E-Commerce_Law.pdf> last accessed 31 March 2025.

⁵² *Ibid.*

⁵³ China E-Commerce Law 2019, Article 43. See the English version available at <<https://ipkey.eu>>

relevant legislation in the UK and EU which is currently unclear on the counter notice procedures,⁵⁴ the provision in Article 43 of the China E-Commerce Law 2019 provides an additional timeframe to enable the e-commerce operator to lift any measures taken, in that ‘ if the e-commerce platform operator has not received any notice within fifteen days as of the arrival of the forwarded statement at the IPR holder that the right holder has filed a complaint or lawsuit, it shall immediately stop the measures it has taken’.⁵⁵ Such timeframe is helpful to reduce the legal uncertainty as to how the e-commerce platform operator should react upon receipt of a counter notice. This is also in line with the current legislation in the US Digital Millennium Copyright Act (DMCA) that ‘unless the copyright owner files an action seeking a court order against the subscriber, the service provider must put the material back up within 10-14 business days after receiving the counter notification.’⁵⁶ Unlike China (15 days) and the US (10-14 days), EU legislation lacks clarity on counter-notices and the timeframe for reinstating removed content after receiving counter-notices from uploaders.⁵⁷ While counter-notice measures aim to protect uploaders’ rights, they have been seen as inadequate in the US.⁵⁸

Additionally, neither the EU, US, nor China require service providers to offer out-of-court settlement options for unresolved content disputes after a counter-notice. However, China’s amended Copyright Law (2020) in its Article 60 encourages mediation or arbitration to resolve disputes.⁵⁹ WIPO’s recent report highlights the benefits of using technology for ODR in B2B digital copyright disputes, such as reducing legal costs and avoiding adversarial processes. Since 2021, WIPO has promoted ODR with initiatives like the WIPO Rules for Expert Determination for User-Uploaded Content, model mediation agreements, and expedited arbitration agreements for digital copyright disputes.⁶⁰

[eu/sites/default/files/documents/resources/PRC_E-Commerce_Law.pdf](https://www.ipkey.eu/sites/default/files/documents/resources/PRC_E-Commerce_Law.pdf)> last accessed 31 March 2025.

⁵⁴ Reform of the EU liability regime for online intermediaries - Background on the forthcoming digital services act, European Parliamentary Research Service, May 2020 available at <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/649404/EPRS_IDA\(2020\)649404_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/649404/EPRS_IDA(2020)649404_EN.pdf)> last accessed 31 March 2025.

⁵⁵ China E-Commerce Law 2019, Article 43. See the English version available at <https://ipkey.eu/sites/default/files/documents/resources/PRC_E-Commerce_Law.pdf> last accessed 31 March 2025.

⁵⁶ The Digital Millennium Copyright Act of 1998, U.S. Copyright Office Summary, December 1998 available at <<https://www.copyright.gov/legislation/dmca.pdf>> last accessed 31 March 2025.

⁵⁷ China E-Commerce Law 2019, Article 43. See the English version <https://ipkey.eu/sites/default/files/documents/resources/PRC_E-Commerce_Law.pdf> last accessed 31 March 2025. See also The Digital Millennium Copyright Act of 1998, U.S. Copyright Office Summary, December 1998 available at <<https://www.copyright.gov/legislation/dmca.pdf>> last accessed 31 March 2025.

⁵⁸ Urban, JM, Karaganis, J and Schofield, BL (2017) ‘Notice and Takedown in Everyday Practice Urban’ *UC Berkeley Public Law Research Paper No. 2755628* available at <<http://dx.doi.org/10.2139/ssrn.2755628>> last accessed 31 March 2025.

⁵⁹ China Copyright Law (amended in 2020 and enforced in 2021), Article 60.

⁶⁰ Alternative Dispute Resolution Mechanisms for Business-to-Business Digital Copyright- and Content-Related Disputes: A report on the results of the WIPO-MCST survey, WIPO 2021 at 53-58 available at <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_969.pdf> last accessed 31 March 2025.

Another comparable feature of the China E-Commerce Directive 2019 with corresponding UK, EU and US legislation is that it applies the knowledge standard to determination of the liability of an e-commerce platform operation. Under the knowledge standard, the e-commerce platform operator should be liable only if it knows or should know any infringing or illegal activities and does not take necessary or appropriate measures expeditiously.⁶¹ The underlying differences among the rule of the knowledge standard among China, the UK, EU and US are that the UK, EU and US, different from China, emphasize that such knowledge must be actual, though there is no harmonised interpretation as to what constitutes ‘actual knowledge’ in judicial cases or regulations. The US Copyright Office provides limited interpretation to ‘actual knowledge’ being ‘the requisite level of knowledge’ of infringing materials by the service provider.⁶² In the EU, the notice-and-takedown procedure has faced criticism for its lack of clarity, particularly due to the absence of a clear definition of ‘actual knowledge’ and a standardized benchmark for determining ‘illegal activities.’⁶³ The EC Directive on Electronic Commerce 2000 outlines three core interconnecting factors influencing a hosting service provider’s liability under Article 14(1): ‘actual knowledge’, actions (to ‘remove/disable’) and manners (‘expeditiously’).⁶⁴ The Digital Services Act (DSA) 2024 builds on and updates the E-Commerce Directive by providing clearer guidelines. Under the DSA, actual knowledge is presumed when service providers receive a clear and detailed notice containing sufficient information to identify and assess illegal content, including the URL, legal justification, and notifier’s details. Reports from trusted flaggers, recognized for their expertise in detecting illegal content, also establish actual knowledge. Additionally, providers are considered to have actual knowledge upon receiving a legally binding order from a court or regulatory authority to remove specific content.

One of the fundamental differences of the safe harbour regime in China, as compared with the UK, EU and US, is that there is no explicit provision confirming that the e-commerce platform operator has ‘no general monitoring obligation’ on their platform. China E-Commerce Law 2019 is also silent on the legality of using automated filtering software (such as AI algorithms) to detect illegal content and take actions automatically. Based on the wording of China E-Commerce 2019, it could be interpreted that the e-commerce operator has no general monitoring obligation, because necessary measures to delete or disable infringing materials, would only be initiated by the operator upon the receipt of a manual notification from IPR holders with prima facie evidence.

Even if there is no monitoring obligation under relevant legislation, there is still legal uncertainty as to what extent the deployment of AI-powered

⁶¹ China E-Commerce Law 2019, Articles 42 and 45; EC Directive on Electronic Commerce 2000, Article 14; and the US Digital Millennium Copyright Act (DMCA), Section 512(c).

⁶² The Digital Millennium Copyright Act of 1998, U.S. Copyright Office Summary, December 1998 available at <<https://www.copyright.gov/legislation/dmca.pdf>> last accessed 31 March 2025.

⁶³ Reform of the EU liability regime for online intermediaries - Background on the forthcoming digital services act, European Parliamentary Research Service, May 2020 available at <<http://dx.doi.org/10.2139/ssrn.2755628>> last accessed 31 March 2025.

⁶⁴ Wang, F (2012) ‘Response to Public Consultation on Procedures for Notifying and Acting on Illegal Content hosted by Online Intermediaries’ (December 2012) Issue 91 *Journal of Intellectual Property Forum*, 93 at 95.

content moderation tools may be considered as undertaking general monitoring obligation on their services, which may conflict with the prohibition on general monitoring for hosting services in current legislation in Europe,⁶⁵ US⁶⁶ and China.⁶⁷ On the other hand, the deployment of notice and takedown procedures with no general monitoring obligation from hosting services in the UK, EU and US has raised concerns over the effectiveness of tackling illegal content uploads, in particular with the use of AI-powered content moderation tools, because: (1) hosting service providers may receive a large volume of notice requests which places them with an unreasonable and difficult to handle burden;⁶⁸ (2) once an approved illegal content is taken down, the same content may be uploaded repeatedly; or (3) hosting service providers may not have the incentives to arrange licensing agreements as they may profit from the dissemination of illegal uploads. In order to improve the efficiency and effectiveness of the notice and takedown procedures, the interpretation of knowledge standard/requirements and the threshold of allowance and limitation on 'monitoring' need to be further clarified in law and courts. Thus, it is crucial to determine an appropriate relationship between 'knowledge requirements' and 'no general monitoring obligation'.⁶⁹

In both Europe and the US, hosting service providers are generally not liable for illegal content unless rightsholders notify them with sufficient evidence. However, if AI algorithms detect illegal content and generate notifications that meet legal standards for evidence, this may constitute actual knowledge of the content. This could raise concerns about whether using AI-powered content moderation tools implies that platforms are monitoring content, potentially increasing their liability if they fail to act quickly on flagged content. Additionally, while YouTube offers AI-powered content moderation tools to assist copyright owners, applying these tools without consent across all videos could be seen as imposing a prohibited general monitoring obligation.

A possible solution is to limit the use of AI-powered content moderation tools to specific issues, like detecting 'manifestly infringing uploads,' instead of employing them as broad, indiscriminate policing tools.⁷⁰ AI-powered moderation tools should also be subject to risk assessments under relevant

⁶⁵ EC Directive on Electronic Commerce 2000, Article 15. UK Regulation on E-Commerce 2000, Article 19 (Provisions in the e-Commerce Regulations 2002 and the e-Commerce Regulations 2018 implementing Articles 12-14 of the Directive are unaffected by the Electronic Commerce (Amendment etc.) (EU Exit) Regulations 2019.) See also 'Consultation Outcome - Online Harms White Paper: Full government response to the consultation', UK Government, 15 December 2020. It sets out that 'the regulator would not compel companies to undertake general monitoring on their online services, as this would place a disproportionate burden on companies and raise concerns about freedom of expression and user privacy.'

⁶⁶ US Digital Millennium Copyright Act (DMCA), Section 512(m).

⁶⁷ China E-Commerce Law 2019, Articles 41-46.

⁶⁸ For example, between 2012 to 2022, there were 5,589,764,758 URL requests for content delistings due to copyright. See Google Transparency Report available at <https://transparencyreport.google.com/copyright/overview?hl=en_GB> last accessed 31 March 2025.

⁶⁹ See also 'Section 512 of title 17: A Report of the Register of Copyrights', United States Copyright Office, May 2020, p.3.

⁷⁰ Wang, F (2022) Resolving Online Content Disputes in the age of Artificial Intelligence: Legal and Technological Solutions in comparative perspective (17, 2) *Journal of Comparative Law* 491-517 at 511.

legislation, such as the EU AI Act 2024, to ensure they do not manipulate behaviour or cause harm before their implementation on online platforms.

Self-regulatory Constraints

In the absence of specific legislation and international guidelines, many social media platforms rely on self-regulation to implement AI-powered content moderation tools. Notable examples include YouTube's voluntary Content ID Claims, Meta's moderation tools on Facebook, and Weibo's community-driven content moderation system.

In contrast to Chinese platform Douyin (internationally known as 'Tiktok') which only offers notice and takedown process,⁷¹ YouTube offer voluntary Content ID Claims tools. A content ID claim on the YouTube platform is not a copyright strike within the formal notice and takedown legal procedure. When content creators/generators receive a Content ID claim, it means that their video and audio uploads have been found to contain potentially copyright infringing materials after being automatically checked. The content creators will be given three choices: trim out segment, replace or mute/erase audio.⁷² Otherwise, they can share revenue within YouTube Partner Program or dispute the claim. If disputed, the notice will be sent to the content owner. While waiting for the dispute to be resolved, content creators could choose to wait to make their content go live or just publish it. If it is published, any revenue will be held until the dispute is resolved.⁷³ The content owner can either accept or reject the claim. If rejected, the video creator can choose to accept or appeal. If the video creator's appeal is rejected, the content owner may initiate a takedown notice. This self-regulatory process demonstrates that YouTube's Content ID system is primarily automated, with human oversight mainly provided by content creators and copyright owners who can manually claim or dispute claims through YouTube's voluntary review process.

Facebook (now Meta) first experimented with crowdsourced content moderation in 2010. In 2020 it took a different approach from YouTube and officially established the Oversight Board, a 'quasi-judicial body of third-party experts', to review and provide oversight on its disputed content decisions.⁷⁴ The Oversight Board is an independent entity, operating separately from Meta's internal structure and control. Similarly, in 2021 Twitter introduced Birdwatch (now known as 'Community Notes'), which is a community-driven note-taking feature on Twitter (now on 'X') that enables contributors to identify potentially misleading information in Tweets and add notes that provide informative context.⁷⁵

⁷¹ 'Douyin E-commerce Intellectual Property Protection Platform User Guide' 17 January 2024 available at <> last accessed 31 March 2025.

⁷² What is a Content ID claim? available at < <https://support.google.com/youtube/answer/6013276>> last accessed 31 March 2025.

⁷³ *Ibid.*

⁷⁴ Zhao, A & Hu, L (2025). Rule social media with users: Unveiling Strategical Governance and User Dynamics in Weibo's Community-driven Content Moderation System, available at <https://osf.io/preprints/socarxiv/da8fz_v1> last accessed 31 March 2025.

⁷⁵ Coleman, K (2021) Introducing Birdwatch, a community-based approach to misinformation, available at <https://osf.io/preprints/socarxiv/da8fz_v1> last accessed 31 March 2025.

In 2012, Sina launched the Weibo Community Management Centre along with the 'Weibo Community Convention,' which operates like a jury of users resolving disputes.⁷⁶ Last updated in 2021, 'Weibo Community Convention' is a set of self-regulatory rules in compliance with relevant Chinese laws. It is believed to operate independently, offering a unique opportunity to observe genuine user behaviour as conflicts are resolved through reasoning, persuasion, and voting instead of authoritative orders. However, it was observed that frequent reporters on Weibo often act as community enforcers or participate in coordinated trolling. Reporting behaviour can be contagious and is sometimes motivated by retaliation. Moreover, potential selection bias may exist, as analysis can only draw upon user-reported cases, leaving uncertainties about unreported moderation activities in this community-driven content moderation system.⁷⁷

As discussed above in the absence of specific international legislation, many social media platforms opt for self-regulation for AI-powered content moderation tools, incorporating human oversight to ensure fair and compliant decisions. This approach may help reduce legal liability if AI systems fail to remove illegal content or mistakenly censor lawful materials.

Administrative Enforcement Measures

The deployment of AI-powered content moderation tools on social media platforms is likely to lead to deeper and more extensive interventions by copyright law in the structure of complex and dynamic markets. Administrative authorities may effectively resolve online content-sharing conflicts by ensuring the consistent implementation of notice and takedown procedures, especially if they are well-regulated and trained in specialized dispute resolution. Administrative authorities could be delegated to resolve AI-related content disputes by applying notice and takedown procedures consistently and effectively, and by contributing to harmonised best practices for copyright enforcement within administrative justice. This approach can also support the judicial system in addressing legal uncertainties surrounding the use of AI-powered content moderation tools on social media platforms.

Laws such as the EU Digital Services Act, the US Digital Millennium Copyright Act (DMCA), and China's Civil Code and E-Commerce Law require platforms to balance content moderation with safeguarding users' rights, primarily using the 'notice and takedown' process.

Technological, legal and self-regulatory constraints have led to a considerable degree of uncertainty of protection for rightsholders on social media platforms. Although there have been fifty-eight countries including China, France, Australia and India signing an international AI declaration to promote AI accessibility, transparency, security, trust and inclusivity,⁷⁸ UK and US refused to sign it due

⁷⁶ BBC News: Sina launches Weibo community convention and management regulations, 28 May 2012 available at <https://www.bbc.com/zhongwen/trad/chinese_news/2012/05/120528_sina_byraymondli> last accessed 31 March 2025.

⁷⁷ Zhao, A & Hu, L (2025). Rule social media with users: Unveiling Strategical Governance and User Dynamics in Weibo's Community-driven Content Moderation System, available at <https://osf.io/preprints/socarxiv/da8fz_v1> last accessed 31 March 2025.

⁷⁸ Statement on inclusive and sustainable artificial intelligence for people and the planet, 14 February 2025 available at <<https://my.ambafrance.org/Statement-on-inclusive-and-sustainable->

to various concerns including national security and global governance.⁷⁹ The Council of Europe Framework Convention on Artificial Intelligence, Human Rights, Democracy and the Rule of Law is the first treaty open to non-European countries.⁸⁰ Eight Council of Europe member states including the UK, along with the European Union, the United States, and Israel have taken the first step to sign this treaty,⁸¹ however, the treaty still requires ratification to take effect. Reaching an international AI agreement or legislation will be highly challenging, if not infeasible, due to the diverse political and legal cultures, as well as varying economic and technological capacities across countries. Global platforms still need to comply with varying national and regional laws concerning copyright protection, depending on the location of the user or where the content is accessed.⁸²

Besides relevant laws, China primarily relies on administrative measures to enforce platform responsibility. For example, in China, the National Copyright Administration of China (NCAC) has been established to provide administrative regulations and administrative dispute resolution service on illegal activities concerning copyright infringement.⁸³ When rightsowners report a concern to NCAC by post or via their online reporting/complaint platform, rightsowners are advised to provide samples of pirated materials and their sources when reporting.⁸⁴ When a complaint is accepted, the copyright administrative authority will investigate the suspected infringement and make decisions to dismiss the case; impose an administrative penalty on the infringer if the infringement is not minor; or to transfer to judicial courts if there is any criminal suspicion.⁸⁵ The administrative authority for copyright may give the infringer administrative penalties by 'ordering the infringing act to cease; confiscating the illegal gains; confiscating or destroying the infringing copy; imposing a fine; confiscating the materials, tools, equipment, etc. mainly used to make the infringing copy if the

artificial-intelligence-for-people-and> last accessed 31 March 2025.

⁷⁹ 'UK and US refuse to sign international AI declaration', BBC News, 11 February 2025 available at <<https://www.bbc.co.uk/news/articles/c8edn0n58gwo>> last accessed 31 March 2025.

⁸⁰ Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law, Vilnius, 5.IX.2024 available at <<https://rm.coe.int/1680afae3c>> accessed 31 March 2025.

⁸¹ Press release: UK signs first international treaty addressing risks of artificial intelligence, Ministry of Justice 5 September 2024; Bureau of Democracy, Human Rights, and Labor, US Department of State, 5 September 2024 available at <<https://www.state.gov/bureau-of-democracy-human-rights-and-labor/the-council-of-europes-framework-convention-on-artificial-intelligence-and-human-rights-democracy-and-the-rule-of-law>> last accessed 31 March 2025; and Canada and Japan sign Council of Europe's first ever global treaty on AI, Council of Europe, 11 February 2025 available at <<https://www.coe.int/en/web/portal/-/canada-and-japan-sign-council-of-europe-s-first-ever-global-treaty-on-ai>> last accessed 31 March 2025.

⁸² Wang, JF (2025) 'Platform Responsibility with Chinese Characteristics' in Chakravorti B & Trachtman, JP (eds.) *Defeating Disinformation: Digital Platform Responsibility, Regulation and Content Moderation on the Global Technological Commons* Cambridge University Press at 59.

⁸³ National Copyright Administration of China (NCAC) available at <<https://www.ncac.gov.cn/>> last accessed 31 March 2025.

⁸⁴ National Copyright Administration of China (NCAC) Online Reporting Platform available at <<https://www.ncac.gov.cn/chinacopyright/channels/12578.shtml>> last accessed 31 March 2025.

⁸⁵ National Copyright Administration of China (NCAC) Complaint Guideline, Section 7 available at <<https://www.ncac.gov.cn/chinacopyright/channels/12577.shtml>> last accessed 31 March 2025.

circumstances are serious; or giving other administrative penalties provided for by laws and regulations'.⁸⁶ Although NCAC provides a general system for copyright administrative enforcement, it was reported that there are considerable differences in copyright case filing systems set up by individual administrative authorities in different cities and provisions which may result in inconsistent investigation outcomes.⁸⁷ Comparing with China's administrative copyright enforcement system, in the UK, Ofcom, a public funded national regulator/ authority for communication services has provided the UK Video-sharing platform guidance - Guidance for Providers on Measures to Protect Users from Harmful material,⁸⁸ though Parliament has not given Ofcom powers to resolve complaints concerning illegal content.⁸⁹ Unlike China, neither the UK nor the US has an administrative enforcement system within their copyright offices.

In the EU, while IP offices are not currently tasked with handling administrative copyright enforcement, there is a growing trend toward adopting administrative measures to address the emerging enforcement challenges posed by AI and generative AI. For example, on 24 January 2024, the European Commission established European Artificial Intelligence Office (AI Office), which may be granted enforcement authority to implement relevant AI regulations within the EU.⁹⁰ The AI Office has formed task forces to develop guidelines, establish codes of conduct, and foster cross-sectoral and international cooperation.⁹¹ Collaboration between the European Union Intellectual Property Office (EUIPO) and the EU AI Office could facilitate the creation of harmonized guidelines and enforcement mechanisms for notice and takedown procedures, particularly in addressing AI-related content-sharing disputes.

Appeals Centre Europe (ACE) was established on 26 September 2024 under the EU's Digital Services Act (DSA) as an independent out-of-court dispute settlement (ODS) body.⁹² It reviews content moderation decisions made by platforms like Facebook, TikTok, and YouTube, offering users a fast, low-cost, fair and impartial avenue to challenge such decisions.⁹³ By ensuring an independent review process, ACE promotes fairness and accountability in online

⁸⁶ *Ibid.*

⁸⁷ Factsheet on Administrative Enforcement of Copyright in China available at <<https://www.gov.uk/government/publications/factsheet-on-administrative-enforcement-of-copyright-in-china>> last accessed 31 March 2025.

⁸⁸ Ofcom Video-sharing platform guidance - Guidance for providers on measures to protect users from harmful material, 6 October 2021 available at <https://www.ofcom.org.uk/__data/assets/pdf_file/0015/226302/vsp-harms-guidance.pdf> last accessed 31 March 2025.

⁸⁹ What is Ofcom? available at <<https://www.ofcom.org.uk/about-ofcom/what-is-ofcom>> last accessed 31 March 2025.

⁹⁰ Commission Decision Establishing the European AI Office, 24 January 2024, available at <<https://digital-strategy.ec.europa.eu/en/library/commission-decision-establishing-european-ai-office>> last accessed 31 March 2025.

⁹¹ European AI Office, available at <<https://digital-strategy.ec.europa.eu/en/policies/ai-office#ecl-inpage-tasks-of-the-ai-office>> last accessed 31 March 2025.

⁹² Out-of-court dispute settlement bodies under the Digital Services Act (DSA), European Commission, 26 September 2024 available at <<https://digital-strategy.ec.europa.eu/en/policies/dsa-out-court-dispute-settlement>> last accessed 31 March 2025.

⁹³ Appeals Centre Europe, available at <<https://www.appealscentre.eu/about-us/>> last accessed 31 March 2025.

content moderation, serving as a check on administrative actions by platforms. However, ACE has faced criticism over its ties to Meta, having received \$15 million in start-up funding from Meta's Oversight Board. While ACE asserts its independence with strict conflict-of-interest policies, its non-binding decisions are intended to reduce legal disputes. The Irish media regulator stressed that ACE would maintain financial independence through fees from social media companies and assured continuous oversight to ensure compliance with the Digital Services Act.⁹⁴ Although ACE's decisions are non-binding, platforms are required to engage in good faith and may reverse their previous stance on the content in question based on ACE's recommendations. ACE has promised to explain the reasons for its decisions and ensure transparency, but it remains unclear whether AI-powered decision-making tools will assist in the ACE dispute process, including the expert review, and whether the reasoning behind algorithmic decisions will be provided alongside human expert reviews.

HARMONISING ALGORITHMIC ADMINISTRATIVE JUSTICE

Effective redress mechanisms should be available to users/uploaders to address concerns over any disabled or removed content by AI-powered content recognition tools in particular a) where an exception, limitation and fair use has not been sufficiently considered; b) where it materially distorts an uploader's behaviour in his/her future content creation and uploads; or c) where it causes psychological and economic harm. Currently, there is no international harmonisation regarding effective redress mechanisms that national legislation should regulate within their notice and takedown or safe harbour regimes. Additionally, courts and tribunals have been notably slower in adopting new technologies and online processes compared to private initiatives⁹⁵ and administrative justice systems.

An administrative justice system governs how government decisions affect citizens' rights and entitlements and provides avenues for challenging those decisions. As the largest part of the state, the administration translates high-level policies into direct actions impacting citizens.⁹⁶ Administrative justice is intended to ensure fairness and offer redress, providing benefits such as quicker resolutions, greater accessibility, and a more informal process compared to complex civil justice system. It has also been argued that administrative dispute resolution systems, due to their flexibility and specialisation, may be better positioned than courts to lead technological innovation.⁹⁷ With the rapid pace

⁹⁴ Burns, J (2024) 'Regulator insists body with links to Meta is 'independent': Appeals Centre Europe was given start-up costs by Meta's Oversight Board', *Irish Independent*, Dublin. 12 October 2024.

⁹⁵ Alternative Dispute Resolution Mechanisms for Business-to-Business Digital Copyright- and Content-Related Disputes: A report on the results of the WIPO-MCST survey, WIPO 2021 at 53 available at <https://www.wipo.int/edocs/pubdocs/en/wipo_pub_969.pdf> last accessed 31 March 2025.

⁹⁶ Tomlinson, J (2019) *Justice in the Digital State: Assessing the Next Revolution in Administrative Justice* (1st ed) Bristol University Press at 1.

⁹⁷ Sossin, L and Thompson, D (2021) 'Digitalisation and Administrative Justice: An Access to Justice Perspective' in Marc Hertogh (ed.) et al., *The Oxford Handbook of Administrative Justice* Oxford University Press at 503-520.

of technological advancements, there is significant potential to reshape and improve the effectiveness of administrative justice, particularly in how redress mechanisms are implemented and accessed.

If a national copyright office could be granted administrative adjudicative authority, such administrative system could offer impartial adjudication and reduce the need of a costly court proceeding. It may also discourage invalid takedown requests and relieve hosting service provider's burden of dealing with notice and takedown legal process.⁹⁸

In China, the Cyberspace Administration of China (CAC) has enhanced its supervision of online law enforcement by encouraging local administrations to improve enforcement quality through regular inspections, self-assessments, and annual reviews. It promotes the development of certified online law enforcement teams, ensuring personnel meet qualification standards. Additionally, the CAC supports comprehensive training programs to strengthen the political and professional competence of internet law enforcement officials, ensuring the effective implementation of national laws and regulations. For example, in 2024 the national network information system severely cracked down on online violations of laws and regulations to clean cyberspace which led to interviewing 11,159 platforms, issuing warnings or fines to 4,046 platforms, ordering 585 websites to suspend relevant functions or information updates, removing 200 mobile applications, disposing of 40 mini programs, shutting down 10,946 illegal websites and closing 107,802 user accounts.⁹⁹ In 2023 China's cyberspace regulator also fined Tencent 1 million yuan for hosting illegal content on its Tencent QQ platform's 'Little World' section, with additional penalties including a 30-day suspension and profit confiscation.¹⁰⁰ Tencent QQ's security centre accepted the penalties and pledged to enhance the platform through technological upgrades and improved content moderation.

This example shows that Chinese administrative agencies or authorities have managed to effectively resolve online copyright infringement issues. China Copyright Offices have copyright enforcement administrative functions,¹⁰¹ compared with other nations and regions which IP offices were not tasked for administrative enforcement functions. China's Copyright Offices at the city, provincial, and regional levels should consider adopting measures to enhance and harmonize their practices by applying notice and takedown procedures consistently, developing suitable AI tools, and establishing a code of practice to effectively address generative-AI content infringement.

⁹⁸ Gocha, AJ (2018) 'Modern system for resolving online copyright infringement disputes: administrative rulemaking and adjudication, one-stop fix to the digital millennium copyright act. IDEA' 58(2) *The Journal of the Franklin Pierce Center for Intellectual Property* 131 at 176.

⁹⁹ 'Maintaining Cyberspace Cleanliness: the national network information system severely cracking down on online violations of laws and regulations,' China Network Information Network 25 February 2025 available at <https://www.cac.gov.cn/2025-02/25/c_1742186054989836.htm> last accessed 31 March 2025.

¹⁰⁰ 'China watchdog fines Tencent over illegal content on its messaging platform' by Reuters, 13 September 2013 available at <<https://www.reuters.com/technology/china-watchdog-fines-tencent-over-illegal-content-its-messaging-platform-2023-09-13/>> last accessed 31 March 2025.

¹⁰¹ Administrative Enforcement of Intellectual Property in China: Guidance for British companies seeking administrative enforcement against IP infringements in China, 13 November 2023 available at <<https://www.gov.uk/government/case-studies/uk-china-cooperation-on-intellectual-property>> last accessed 31 March 2025.

Regarding administrative policies development, since 2020 China National Copyright Administration Office (also known as ‘Copyright Bureau’) has improved consistency in its administrative copyright enforcement, issuing a Circular (known as ‘Notification’) on Further Improving the Examination and Identification of Evidence for Administrative Enforcement of Copyright Law.¹⁰² This Circular gives guidance to three areas of administrative enforcement, namely concerning ‘proof of rights’, ‘evidence of infringement’, and ‘determination of infringement’¹⁰³ with the intent to improve the efficiency and clarity of the copyright administrative enforcement process. However, there is still scope for further clarification and interpretation as to admissible evidence of AI-related copyrighted materials. For example, it lacks explanation as to the format of admissible evidence, concerning AI-generated work. It is also silent on the mechanism and process that administrative authorities may use to collect, analyse and determine copyright infringement.

With regard to ‘proof of rights’, the Circular specifies that complainants are required to provide evidence concerning alleged copyright infringement, whilst respondents will be given an opportunity to provide evidence to the contrary. If there is no contrary evidence, the administrative authority shall presume the authors of work, publishers of publications, performers of performance, or producers of sound recordings, signed in the usual manner, as rightsholders if appropriate.¹⁰⁴ It is not clear as to who should be considered as authors, publishers, performers or producers if such work is AI-generated. Therefore, it would be helpful for the administrative authority to provide guidelines as to how authorship is determined concerning AI-generated work.

With regard to ‘evidence of infringement’, The Circular outlines the types of admissible evidence for infringement cases, including infringing works, performances, sound recordings, purchase records, contracts, production documents, photos, videos, webpage screenshots, and proof of forged or unauthorized documents.¹⁰⁵ However, it does not specify the required format of this evidence. Establishing clearer guidelines on evidence formats would enhance certainty, particularly in disputes involving AI-generated works.

Concerning ‘determination of infringement’, the copyright administrative enforcement authority shall conduct investigation and verification; and punish infringements of illegal dissemination.¹⁰⁶ A ‘punishment decision’ is usually issued along with a fine, and an order to stop infringement. It was noted that although the administrative enforcement authority may also deal with cases of online infringement, it is more appropriate for more complex cases of online infringement to be resolved via civil litigation due to their technical nature, which may require the evidence of expert witnesses.¹⁰⁷ However, referring all

¹⁰² Circular on Further Improving the Examination and Identification of Evidence for Administrative Enforcement of Copyright Law, 15 November 2020, available at <https://www.gov.cn/gongbao/content/2021/content_5582649.htm> last accessed 31 March 2025.

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*, Section 1.

¹⁰⁵ *Ibid.*, Section 2.

¹⁰⁶ *Ibid.*, Section 3.

¹⁰⁷ *Ibid.*

complex cases to civil litigation may not be a sustainable solution, given the rapidly increasing volume and complexity of online infringement cases in our digital society. As the majority of copyright infringement cases are likely to involve digital elements with increasing complexity, expert determination could offer an effective alternative to civil litigation. This procedure, regulated under the World Intellectual Property Organization (WIPO) Expert Determination Rules,¹⁰⁸ allows parties to submit disputes to one or more experts for resolution.¹⁰⁹ If both parties agree, expert determination could provide a streamlined and specialised approach to handling complex online copyright infringement cases. Expert determination is best suited to determine ‘technical, scientific or related business nature’ of cases, which may be binding if agreed, or at least may serve as a recommendation.¹¹⁰ China’s copyright administrative enforcement authorities could potentially help to reduce court caseloads by adopting expert determination for online copyright infringement cases. This method would offer a specialized and efficient resolution process, leveraging expert knowledge to address complex digital copyright disputes

Currently China lacks a national guideline on expert determination mechanisms for copyright-related disputes. However, on March 5, 2024, Shenzhen, as one of the pilot areas for the rapid settlement of intellectual property disputes, introduced the Guidelines for Neutral Assessment of Intellectual Property Disputes.¹¹¹ This ‘neutral assessment’ functions similarly to expert determination, where neutrals — typically experts or trusted third parties — provide expert opinions.

An important omission in the Circular on Further Improving the Examination and Identification of Evidence for Administrative Enforcement of Copyright Law is the lack of clarity on the tools and processes administrative authorities may use to collect, analyse and determine the three areas. It remains uncertain whether AI-assisted content moderation tools are permitted, and if so, whether these tools adhere to ethical, safe, and trustworthy standards, comparable to the European AI Act 2024.

At the industry level, the Cybersecurity Administration of China has implemented regulations such as the Administrative Provisions on Algorithm Recommendation for Internet Information Services (2022)¹¹² and the Interim Administrative Measures for Generative AI Services (July 2023) to provide guidance on AI technologies and services.¹¹³ At the national level, ethical

¹⁰⁸ WIPO Expert Determination Rules, effective from 1 July 2021, available at <<https://www.wipo.int/amc/en/expert-determination/rules/index.html>> last accessed 31 March 2025.

¹⁰⁹ What is Expert Determination? by WIPO, available at <<https://www.wipo.int/amc/en/expert-determination/index.html>> last accessed 31 March 2025.

¹¹⁰ Why Expert Determination in Intellectual Property? By WIPO, available at <<https://www.wipo.int/amc/en/expert-determination/why-is-exp.html>> last accessed 31 March 2025.

¹¹¹ Interpretation of Guidelines for Neutral Assessment of Intellectual Property Disputes, Shenzhen Government, 5 March 2024, available at <<https://www.sz.gov.cn/attachment/1/1424/1424526/11184207.pdf>> last accessed 31 March 2025.

¹¹² Administrative Provisions on Algorithm Recommendation for Internet Information Services 2022, available at <https://www.gov.cn/zhengce/zhengceku/2022-01/04/content_5666429.htm> last accessed 31 March 2025.

¹¹³ Interim Administrative Measures for Generative Artificial Intelligence Services 2023, available at <https://www.cac.gov.cn/2023-07/13/c_1690898327029107.htm> last accessed 31

oversight in China is guided by the Ethical Norms for New Generation Artificial Intelligence (September 2021) issued by the National New Generation Artificial Intelligence Governance Specialist Committee,¹¹⁴ and the Scientific and Technological Ethics Review Regulation (September 2023) issued by the Ministry of Science and Technology alongside nine other government agencies.¹¹⁵

Digitalisation, using digital technologies and digitised data to transform process, does not automatically result in lower costs and greater ease of use, as poorly designed digital interfaces can complicate otherwise simple processes; additional risks may relate to accessibility barriers and algorithmic biases; and ambiguous or insufficient administrative policies can undermine fair and consistent enforcement. It has been observed that digital administrative initiatives often prioritize procedural justice over substantive justice, remaining focused on processes rather than outcomes.¹¹⁶ It has been argued that there are no significant barriers to adopting algorithmic administrative enforcement, provided the algorithmic decision-making system can demonstrate that it outperforms humans in making accurate, efficient, and fair decisions, as human decision-making is often unclear and susceptible to errors, biases, and delays.¹¹⁷

A more contextualised and holistic approach has been advocated, emphasising user needs, thoughtful design and the structure of administrative justice systems.¹¹⁸ A more balanced approach has also been promoted on procedural fairness with substantive outcomes in algorithm-driven administrative enforcement environments.¹¹⁹ The responsible design and use of algorithms to promote administrative justice requires governments to rigorously engage in developing and overseeing these systems, with appropriate investments in budgetary (e.g., infrastructure improvements), informational (e.g., data training), and human (e.g., expertise) resources.¹²⁰

Algorithmic administrative enforcement for copyright protection may enable access to administrative justice instead of expensive processes of civil justice by levelling the playing field between rightsholders and platform providers. If decision-making algorithms are trained appropriately and used responsibly,

March 2025.

¹¹⁴ Ethical Norms for New Generation Artificial Intelligence (25 September 2021), Ministry of Science and Technology of People's Republic of China, September 2021 available at <https://www.most.gov.cn/kjbgz/202109/t20210926_177063.html> last accessed 31 March 2025.

¹¹⁵ Scientific and Technological Ethics Review Regulation (September 2023), National Science and Technology Development and Supervision [2023] No. 167 available at <https://www.gov.cn/zhengce/zhengceku/202310/content_6908045.htm> last accessed 31 March 2025.

¹¹⁶ Raso, J (2021) 'Implementing Digitalisation in an Administrative Justice Context' in Marc Hertogh (ed.) et al., *The Oxford Handbook of Administrative Justice* Oxford University Press at 521-544.

¹¹⁷ Appel, SM and Coglianese, C (2021) 'Algorithmic Administrative Justice' in Marc Hertogh (ed.) et al., *The Oxford Handbook of Administrative Justice* Oxford University Press 481-502 at 494.

¹¹⁸ Sossin, L and Thompson, D (2021) 'Digitalisation and Administrative Justice: An Access to Justice Perspective' in Marc Hertogh (ed.) et al., *The Oxford Handbook of Administrative Justice* Oxford University Press at 503-520.

¹¹⁹ Raso, J (2021) 'Implementing Digitalisation in an Administrative Justice Context' in Marc Hertogh (ed.) et al., *The Oxford Handbook of Administrative Justice* Oxford University Press at 544.

¹²⁰ Appel, SM and Coglianese, C (2021) 'Algorithmic Administrative Justice' in Marc Hertogh (ed.) et al., *The Oxford Handbook of Administrative Justice* Oxford University Press 481-502 at 495.

they may help accelerate dispute resolution process and increase consistency of administrative enforcement in local, provincial and national administrative offices. Algorithmic administrative enforcement systems should adopt an 'ethics by design' approach, integrating internationally established AI ethics best practices from alternative dispute resolution (ADR) and online dispute resolution (ODR) systems into their own administrative dispute resolution processes, ensuring accessibility, transparency, accountability, fairness, impartiality, neutrality, competency, security, and confidentiality.¹²¹ Ensuring AI-powered administrative decision-making enhances rather than undermines administrative justice requires the addressing of two key challenges: data quality and algorithmic accountability through explainability. High-quality data is essential for accurate and fair decisions, while explainability ensures transparency and accountability in automated processes.

CONCLUSION AND A WAY FORWARD

Technological, legal, and self-regulatory constraints create uncertainty for rightsholders on social media platforms. While digitalisation in administrative enforcement has the potential to simplify these issues, it can also introduce new complexities. Although algorithms can improve accuracy, efficiency, and fairness compared to human decisions, poor design may lead to complications, accessibility problems and biases. A user-centred approach, supported by investments in infrastructure, data training/management and expertise, is crucial. To strengthen administrative justice in copyright enforcement, a combination of technological, legal, and policy measures including self-regulation should be implemented to ensure transparency, accountability and fairness in AI-powered decision-making.

China's administrative justice system effectively leverages administrative agencies for rapid and streamlined enforcement, as evidenced by the Cyberspace Administration of China's (CAC) initiatives. The Cyberspace Administration of China (CAC) has implemented policies and promoted legal frameworks for internet information dissemination, along with guiding, coordinating, supervising relevant departments to strengthen the management of online content, investigating and penalising illegal and non-compliant websites.¹²²

If the UK and EU could establish specialised administrative bodies like China's CAC to oversee copyright enforcement, the case burden on courts could be reduced. The Appeals Centre Europe (ACE), established under the EU's Digital Services Act, provides independent dispute resolution for content moderation cases. While it offers transparency and fairness, ACE has faced criticism over financial ties to Meta's Oversight Board. ACE's non-binding decisions limit its enforcement power, reducing its effectiveness in holding platforms accountable. Providing ACE with binding authority for certain decisions could enhance its credibility and effectiveness. ACE should ensure robust financial and operational

¹²¹ Wang, F (2023) AI Ethics of Online Commercial Arbitration in Comparative Perspective, (18) 2 *Journal of Comparative Law* 529-556 available at <https://www.lawbookexchange.com/pdf/JCL_18-2_07_Wang_AIEthicsOfOnlineCommercialArbitrationInComparativePerspective.pdf> last accessed 31 March 2025.

¹²² Cyberspace Administration of China Questions and Answers to its Establishment and Responsibilities, 5 May 2011. Available at <https://www.gov.cn/jrzg/2011-05/05/content_1858131.htm> last accessed 31 March 2025.

independence through stronger oversight mechanisms and diversified funding sources. ACE should also provide clear policies or guidelines on expert review/determination for resolving technically complex content disputes.

In contrast, China's Copyright Offices possess administrative enforcement authority, which offer quicker resolutions and reduce the reliance on complex court proceedings. Administrative enforcement also offers the potential to enhance accessibility and reduce financial barriers for rightsholders. The UK and EU could consider granting their national copyright offices administrative enforcement authority to resolve ordinary copyright disputes, while reserving highly complex matters for civil courts. National administrative offices and agents could also help developing detailed guidelines on admissible evidence in AI-related copyright cases, establishing standards for assessing authorship and ownership of AI-generated works, and encouraging transparency and fairness in administrative investigations.

China's regulatory framework encompasses various guidelines on AI governance in administrative justice, focusing on ethical norms and safety standards to promote accountability and transparency in AI-powered decision-making. If the UK and EU were to grant their copyright offices administrative enforcement authority, they could establish comprehensive ethical frameworks for AI-driven copyright enforcement. The UK could draw on its Guidance on Ethics, Transparency, and Accountability Framework for Automated Decision-Making (2023), while the EU could develop AI-specific ethical guidelines aligned with the EU AI Act 2024.

By granting copyright offices adjudicative authority, establishing clear evidence standards, leveraging AI technology and incorporating expert determination mechanisms, the UK and EU can enhance the efficiency and accessibility of copyright dispute resolution. Additionally, robust ethical oversight and technological literacy among administrators will ensure just and transparent decisions, and foster a balanced, fair, and technologically advanced administrative justice system.

Moreover, streamlining the notice and takedown process globally is crucial for both civil and administrative justice. The notice and takedown procedures for copyright infringement vary across the UK, EU, US, and China, leading to challenges for social media platforms with global reach. In the EU, the Copyright Directive 2019 requires platforms to demonstrate 'best efforts' to prevent unauthorised content uploads, which may indirectly encourage automated content recognition tools. However, general monitoring obligations are prohibited under the E-Commerce Directive and the Digital Services Act, resulting in legal ambiguity. In the UK, platforms are similarly protected under the E-Commerce Regulation 2002, with no requirement for general monitoring. The UK maintains a traditional notice and takedown procedure, requiring platforms to act upon receiving valid copyright infringement notices. The UK did not implement the EU's Copyright Directive 2019, reducing regulatory complexity. The US follows the Digital Millennium Copyright Act (DMCA), which offers safe harbour protection to service providers. Platforms are not required to monitor content proactively, but repeated infringements identified through automated tools may lead to liability. The US has also established counter-notice mechanisms to ensure fair treatment of uploaders. China's E-Commerce Law 2019 adopts a stricter approach. Platforms must act quickly

upon receiving valid infringement notices and can face joint liability if they fail to do so. Unlike other jurisdictions, China's law emphasizes timely removal of content and allows for counter-notices, with a clear 15-day window for rights holders to pursue legal action.

Establishing harmonised procedures and best practices for managing infringement notices and counter-notices is essential to promote transparency and fairness on social media platforms worldwide. AI-powered content moderation tools can be used to detect manifestly infringing content, but human oversight should be maintained to reduce removal errors. Harmonising the interpretation of 'actual knowledge' and clarifying the scope of AI monitoring obligations will help reduce legal uncertainties across different jurisdictions. From a substantive law perspective, while there is broad agreement worldwide that AI algorithms should not be granted authorship or copyright ownership, opinions differ on whether AI-generated works should receive intellectual property protection. Some advocate for recognizing the contributions of developers, programmers, creators and algorithm designers, while others argue that only substantial human-authored elements in AI outputs should be copyrightable. Harmonizing this debated issue would enhance legal certainty.

Harmonised AI ethics standards will also play a crucial role in ensuring that AI algorithms are developed and applied in line with ethical principles to support administrative justice and remain aligned with the public interest. With responsible implementation, AI-powered tools can enhance the efficiency and fairness of both administrative and civil justice systems, fostering more equitable enforcement practices.

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