**Question “B” for the LIDC Congress in Vienna, 8 – 12 October 2025**

**China**

**Effie WANG**

**YUHONG Intellectual Property Law Firm**

**Email: effie.wang@yuhongip.com；office@yuhongip.com**

**Platform Liability for IP Infringements and Unfair Competition in China**

1. **China’s Existing Framework for Platform Liability**

Like many jurisdictions, China established a “Notice and Takedown” mechanism through the 2006 Regulations on the Protection of Information Network Dissemination Rights. Under these rules, network service providers must promptly remove infringing content upon receiving a notice from IP owners and reinstate it upon receipt of a counter-notice. Only prima facie evidence is required for both, which has led to abuse by both complainants and respondents due to minimal scrutiny by platforms.

Platform liability was formally introduced in the 2009 Tort Liability Law, which holds platforms jointly liable if they fail to act upon notice of infringement or actual knowledge. Later regulations—such as the E-Commerce Law (ECL) and Civil Code—require platforms to reinstate content unless a legal complaint is filed within 15 working days. They also provide liability for rights holders who file false claims. Although the ECL authorizes penalties for platforms that fail to act, enforcement by regulators remains rare, often pushing rights holders toward civil litigation.

Judicial interpretation has become essential in clarifying platform liability. For instance, the Zhejiang Higher People’s Court issued guidance in 2019 outlining due diligence standards for handling notices and counter-notices. In 2020, the Supreme People’s Court released two judicial opinions reinforcing these principles and offering a list of factors for courts to assess whether platforms took “necessary measures.” These include the strength of evidence, scale and circumstances of infringement, presence of bad faith, and the platform’s technical capabilities and response effectiveness.

### Legislative development

In recent years, substantial progress has been made to address gaps in the implementation of China’s E-Commerce Law, which initially lacked detailed enforcement mechanisms. Notably, the Supreme People’s Court (SPC) issued Guidelines and a Judicial Reply that provide clearer instructions on critical aspects such as the procedures for takedown and counter-notification, assessment criteria for determining bad faith, and the standard for evaluating whether platforms have exercised reasonable care. These clarifications enhance legal predictability and operational guidance for stakeholders.

Furthermore, recent administrative regulations and policy guidelines have explicitly recognized livestreaming platforms that facilitate the sale of goods as falling under the scope of e-commerce platforms. This categorization subjects such platforms to the same regulatory obligations stipulated by the E-Commerce Law, ensuring more consistent oversight across emerging digital commerce formats.

The legislative trajectory reflects a deliberate effort to establish a governance system that is both balanced and symmetrical. While there is a pronounced emphasis on strengthening intellectual property (IP) protection, current legal instruments also incorporate safeguards against misuse of the complaint process. Measures such as restrictions on bad faith complaints and provisions for injunctive relief in favor of online merchants are designed to uphold fairness and prevent exploitation.

This approach appears to be driven by persistent concerns regarding the prevalence of malicious complaints in China’s e-commerce environment. A significant proportion of reported violations are based on questionable rights claims or are strategically deployed as competitive tactics, highlighting the necessity for regulatory mechanisms that deter abuse while preserving legitimate enforcement pathways.

### 2.1 E-Commerce Law

Under China’s E-Commerce Law, Article 9 defines key entities within the e-commerce ecosystem, including e-commerce operators, platform operators, and platform vendors. Articles 41 to 45 outline the obligations of platform operators, which include establishing rules for intellectual property (IP) protection, implementing a takedown notice mechanism, and publicly disclosing the results of such actions. Compliance with these provisions affords platform operators a safe harbor from liability.

However, Articles 42 and 45 also specify conditions under which platform operators may bear joint and several liability with vendors. Specifically, they may be held liable for additional damages resulting from a failure to take timely and necessary actions. Moreover, if a platform operator knew or should have known about an infringement and failed to act, it shall share liability with the vendor. Article 84 further prescribes administrative penalties for failure to meet the obligations set out in Articles 42 and 45.

Despite establishing a comprehensive regulatory framework, the E-Commerce Law has faced criticism. One notable concern is the limited window—only 15 days—granted to rights holders to initiate judicial or administrative proceedings after receiving a counter-notice from a platform vendor asserting non-infringement. This provision was designed to help vendors combat malicious or frivolous complaints. However, the rigid timeline poses particular difficulties for foreign rights holders, for whom preparing formal complaints is time-intensive, often requiring notarization and legalization of authorization documents.

As a result, the current structure effectively obliges rights holders to begin preparing formal complaints before issuing a takedown notice. This is seen as burdensome and may lead to unnecessary litigation or administrative actions.

### 2.2 Civil Code

The Civil Code is the first and only legislation in the People’s Republic of China formally designated as a “Code,” representing a significant milestone in the development of the country's legal system. It was promulgated on May 28, 2020, and came into force on January 1, 2021. The Code provides comprehensive regulation of civil activities and liabilities, consolidating and replacing various previous standalone laws, including the General Principles of Civil Law, Tort Law, and Contract Law.

Although the Civil Code does not directly reference e-commerce, Articles 1194 to 1197 introduce new provisions applicable to network service providers. These rules generally align with those found in the E-Commerce Law, with one notable distinction: Article 1196 provides that network service providers shall terminate protective measures if no notice of judicial or administrative proceedings is received within a reasonable time after a non-infringement counter-notice is issued. Unlike the E-Commerce Law, which prescribes a fixed 15-day period, the Civil Code affords greater flexibility to rights holders.

### 2.3 Anti-Unfair Competition Law

Recently, draft amendments related to platform obligations for IP infringements were proposed for China’s Anti-Unfair Competition Law (the “AUCL”). Amongst other proposed changes, the draft provisions would require platforms to expressly clarify their own unfair competition rules and to take “timely and necessary measures” against acts of unfair competition occurring on their platforms. The draft amendments do not outline any civil remedies or administrative sanctions if platforms were to breach these obligations, however, leaving the potential utility of these new “requirements” unclear. The newly revised Anti-Unfair Competition Law was adopted at the 16th session of the Standing Committee of the 14th National People's Congress on June 27, and will come into effect on October 15, 2025.

### 2.4 SPC Judicial Interpretations

Judicial interpretations issued by the Supreme People’s Court (SPC) are a key source of legal guidance and play an important role in implementing intellectual property (IP) laws.

On April 15, 2020, the SPC issued the Opinions on Comprehensively Strengthening Judicial Protection of Intellectual Property, calling for enhanced enforcement against online IP infringement and clearer platform governance, including streamlined notice-and-takedown procedures. The Opinions emphasized balancing the rights of IP holders, platforms, and vendors by penalizing malicious complaints while protecting good-faith claims.

Following this, on September 10 and 14, 2020, the SPC issued two major judicial interpretations:

Guideline on the Trial of IPR Disputes Involving E-Commerce Platforms – the first SPC interpretation specific to IP in e-commerce. It sets out principles, obligations, and liability rules for platforms, aligning with commitments under the Phase One Agreement.

Official Reply on the Application of Law to Online IP Infringement Disputes – clarifies the timeline for handling counter-notices, introduces conditions for punitive damages in bad-faith claims, and exempts rights holders from liability for good-faith misjudgments. It also extends the 15-day period for filing legal action to a flexible timeframe (up to 20 working days), accommodating the needs of foreign rights holders.

### Proactive and preventive measures taken by platforms

It is recognized that major platforms have implemented proactive and preventive measures, many of which have proven effective. However, rights holders continue to seek more consistent and detailed disclosures—such as statistics and case studies—that would support the development of best practices and clarify how they can contribute to improving these measures’ accuracy and efficiency.

At present, while leading platforms occasionally publish general data, information from smaller platforms remains limited. Even among the major platforms, participation channels in these initiatives are not always clearly communicated. We believe all rights holders would welcome greater transparency regarding access to such initiatives and how they operate.

### 3.1 Stakeholder collaboration

Cooperation and collaboration among stakeholders is increasingly recognized as essential. Rights holders are keen to receive more concrete data and insights into the proactive measures implemented by platforms and how these operate in practice. This transparency would enable them to better understand how they can contribute to enhancing these efforts.

Given their access to extensive data and cross-platform analytics, platforms are well-positioned to offer broader insights. Meanwhile, rights holders bring valuable experience and in-depth knowledge when addressing IP infringements and unfair competition related to specific brands, technologies, or content. By integrating the information and keywords provided by rights holders into their algorithms, platforms can further improve the accuracy and efficiency of their preventive mechanisms.

At present, there is a lack of clear guidance on what information can be shared with rights holders, largely due to growing concerns over data privacy. Developing a well-defined framework distinguishing what data may be proactively shared versus what requires a court subpoena would help facilitate responsible information-sharing while maintaining compliance with data protection requirements.

### 3.2 Platform liabilities

According to the most recent statistics released in 2025, trademark and copyright disputes continue to dominate the landscape of intellectual property rights (IPR) enforcement in China. In 2024 alone, Chinese courts handled approximately 530,000 IPR cases, with trademark counterfeiting remaining the most prosecuted offense. In contrast, patent-related cases remain relatively limited, largely due to the technical complexity involved in proving infringement and the higher evidentiary threshold required for such claims.

Alibaba’s platforms—including Taobao, Tmall, and Tmall Global—remain the most frequently involved in IPR disputes, reportedly accounting for nearly 60% of all platform-related cases. These platforms are often the primary battlegrounds for rights holders due to their massive user base and volume of transactions. While Alibaba has developed a centralized Intellectual Property Protection (IPP) platform to streamline takedown procedures across its ecosystem, enforcement remains challenging.

Despite the volume of complaints, e-commerce platforms are rarely held directly liable for IPR infringements. This is largely due to the safe harbor provisions under the E-Commerce Law and Civil Code, which shield platforms from liability if they act promptly upon receiving valid takedown notices. However, insufficient or procedurally flawed notices remain a key reason for failed enforcement attempts. Many complaints are dismissed due to lack of prima facie evidence or failure to meet formal requirements, especially on smaller or less transparent platforms.

Moreover, while major platforms like Alibaba occasionally publish general enforcement data, there is still a lack of transparency and detailed reporting, particularly from smaller platforms. This limits the ability of rights holders to assess enforcement effectiveness and engage meaningfully in platform-led initiatives.

1. **Relevant Chinese court decisions**

E-commerce platforms in China can often limit their civil liability in intellectual property (IP) disputes by promptly removing infringing listings once a civil action has been filed. This practice frequently results in lower damage awards at trial and fewer appeals or retrials involving significant platform liability. However, several cases shed light on how Chinese courts evaluate whether a platform has taken “necessary measures” in a timely and reasonable manner after receiving IP infringement complaints.

**4.1 Delays Despite Legal Proceedings: The RedNote Cases**

In two copyright infringement cases—Beijing Xiaochang Technology Co., Ltd. v Xingyin Information Technology (Shanghai) Co., Ltd. ((2023) Jing 73 Min Zhong 742) and Beijing Douyin Technology Co., Ltd. v Xingyin Information Technology (Shanghai) Co., Ltd. ((2021) Jing 0491 Min Chu 26711)—the courts faulted the platform RedNote for unjustified delays in taking down infringing content.

In the first case, RedNote delayed removal until just one day before the court’s second hearing, despite being formally served with the case docket and evidence. In the second case, the platform waited two months after initial notice before acting. Both the Beijing IP Court and the Beijing Internet Court found the platform liable for failing to timely implement necessary enforcement measures.

**4.2 Rejecting Complaints Without Justification: Tmall Case**

In Jiangsu Huateng Personal Care Products Co., Ltd. v Yiwu Deliang & Zhejiang Tmall Network Co., Ltd. ((2021) Yue 1971 Min Chu No. 10140), the Dongguan First People’s Court held Tmall jointly liable for damages resulting from continued infringement. Tmall had rejected the rights holder’s complaint three times, requesting additional evidence that had already been submitted with the initial filing. The court emphasized that while platforms are permitted to request further clarification when a complaint lacks prima facie evidence, they may not impose unjustified procedural hurdles. Tmall was held responsible for one-third of the total damages due to its failure to act on the submitted complaints.

**4.3 Unilateral Determination of Infringement: Taobao Case**

In Beihe Sunshine Technology Co., Ltd. v Huinan Town Chen X Food Store et al. ((2021) Hu 0115 Min Chu No. 76438), the Pudong New District People’s Court found Taobao jointly liable after it dismissed the rights holder’s complaint without forwarding it to the vendor. The platform had independently concluded that the plaintiff’s trademark was generic and thus not protected—despite lacking evidence to support such a determination.

The court criticized Taobao for overstepping its role, stating that platforms are not judicial bodies and should refrain from making unilateral decisions in complex IP disputes. At the very least, the platform was expected to pass on the complaint and only assess appropriate action afterward. Ultimately, the court found Taobao jointly liable for one-third of the plaintiff’s economic losses.

1. **Conclusion**

Since E-Commerce Law takes effect in 2019, there has been major development in terms of e- commerce market, technologies, and legal governance framework.

Various new laws, regulations and policies help to clarify the legal requirements, which provide some certainty to stakeholders and guide platforms to build specific rules and procedures. Also, major platforms continue to develop proactive and preventive measures, the effectiveness and efforts of which should be acknowledged.

While e-commerce platform operators and rights owners continue to develop and deploy new technologies to combat IP infringement and unfair competition, infringers also learn from experience and invent new ways to freeride. There are also issues that remain unsolved, and even made harder to resolve given the evolving technologies. Right owners would expect and appreciate more information sharing and collaboration with platforms and authorities to act in concert in building best practice especially in tacking the complex and emerging forms of online infringement and unfair competition.