

# ***Real-World Dilemmas in Copyright Infringement of Online Literary Works and the Improvement of Criminal Law Protection***

**Xuan Zhou**

*Dalian Ocean University, Dalian, Liaoning, China  
zx19990215@163.com*

**Keywords:** Real-World Dilemmas in Copyright Infringement of Online Literary Works and the Improvement of Criminal Law Protection, Online Literature, Crime of Copyright Infringement, Criminal Law Protection

**Abstract:** The advent of the digital era has not only catalyzed the prosperity of online literary works but also introduced significant challenges to traditional copyright protection mechanisms. Copyrighted works are being rapidly digitized, making them vulnerable to effortless replication and widespread dissemination across online platforms. The rise of digital piracy has presented novel issues and challenges to China's established copyright protection framework. Currently, however, China's conventional civil law approach to protection remains excessively lenient, while its criminal law provisions are unduly restrictive. While it is true that the Amendment (XI) to the Criminal Law of the People's Republic of China sought to enhance the regulation of copyright infringement for online literary works through targeted revisions to Article 217 of the Criminal Law of the People's Republic of China, empirical evidence from judicial practice suggests that these amendments have yet to yield the anticipated outcomes.

## **1. Introduction**

The rapid growth of the internet has dramatically transformed people's lifestyles, and online literature, thriving on long-established literary websites, has flourished like never before. Many widely popular works have emerged, captivating countless readers. However, most readers access these works not through the authors' original publishing platforms but rather through specialized online literature-sharing groups or pirated websites and apps. These unauthorized channels, offering low-cost or even free access with near real-time updates, have gained immense popularity among readers. Yet, the copyright infringement they entail is often overlooked.

The perpetrators in such cases are often widespread, exploiting the anonymity of the internet to conceal their activities. As a result, few criminal cases involving copyright infringement of online literature are successfully prosecuted. Moreover, due to limitations in manpower, financial resources, and technical capabilities, handling these cases remains highly challenging.

In March 2021, the Eleventh Amendment to the Criminal Law of the People's Republic of China (commonly referred to as Criminal Law Amendment (XI)) came into effect, ushering in significant

reforms for the protection of online literary copyrights. Key changes include harsher penalties for copyright infringement and the explicit recognition of "distribution via information networks" as a punishable offense. These amendments underscore China's determination to curb online literary piracy and strengthen enforcement against copyright violations.

## **2. Infringement Status of Online Literary Works**

### **2.1. Legal Transformations under Criminal Law Amendment (XI)**

Amendment XI to the Criminal Law has introduced comprehensive revisions and contemporaneous additions to Article 271 of the Criminal Law of the People's Republic of China (hereinafter referred to as the "Criminal Law"). The key modifications are as follows:

First, the amendment expands the scope of protected rights, no longer limited to copyright alone but now encompassing rights related to copyright. This change broadens the protection of intellectual property, enabling more comprehensive safeguards against infringement and more effective punitive measures.

Second, regarding penalties, the amendment abolishes short-term detention as a sentencing option. For cases involving "substantial illegal gains or other particularly severe circumstances," the maximum sentence has been increased from seven to ten years. This elevation in sentencing severity raises the cost of violations, thereby reinforcing the deterrent purpose of criminal law.

Third, in addressing infringing acts, Amendment XI explicitly incorporates "dissemination to the public via information networks" alongside traditional "reproduction and distribution" as punishable offenses. This revision formally codifies online copyright infringement into criminal liability standards, moving beyond reliance on judicial interpretations (e.g., Article 2 of the Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Cases Involving Copyright Disputes over Computer Networks).

Fourth, the amendment extends protection to additional categories of copyrighted works, such as artistic and audiovisual works. Notably, audiovisual works now consolidate previously separate classifications (e.g., films, television broadcasts, and video recordings) into a unified category with broader coverage. This adjustment accommodates the dynamic nature of digital media and stands as a highlight of the legislative update.

Fifth, the amendment addresses loopholes in the enforcement of Article 271 by introducing new Paragraphs 4 and 6, which effectively curb exploitative infringement tactics that previously circumvented legal boundaries.

However, challenges persist in online copyright protection due to the weakened exclusivity, diversified and intangible manifestations, and dissolution of spatiotemporal boundaries inherent to digital environments. In this virtual context, copyright holders often publish works anonymously or under pseudonyms to protect privacy, complicating the precise identification of infringers and adjudication of violations under Amendment XI<sup>[1]</sup>. Compared to international trends that adopt broader criteria for criminalizing infringement, Amendment XI maintains a conservative stance, with minimal adjustments to subjective constitutive elements and standards for establishing criminal liability. This rigidity may inadvertently create loopholes for online infringement to exploit.

## **2.2. Emerging Characteristics of Online Copyright Crimes**

### **2.2.1. Diversification and Organization of Crime Perpetrators**

In traditional copyright infringement involving literary works, perpetrators typically engaged in activities such as reproduction, publication, distribution, and transportation<sup>[2]</sup>. Individual offenders

or ordinary joint crimes were often constrained by limited resources and capabilities, making it difficult to achieve substantial illicit gains. However, with the rapid advancement of network technology, copyright infringement of literary works has become more efficient and convenient. Leveraging digital tools, offenders can now reproduce and disseminate works on a large scale at minimal cost, resulting in a low-risk, high-reward criminal model. Driven by these incentives, the profile of offenders has diversified. In addition to individuals, entities and legal persons have increasingly participated in such activities, broadening the scope of criminal subjects.

### **2.2.2. Diversified Modus Operandi in Copyright Crimes**

The intersection of the internet and copyright sharing is inherently innovation-driven, fostering novel behavioral patterns and diversified modes of content dissemination. While this dynamic offers new opportunities for the circulation of online literary works, it also introduces unprecedented challenges to their protection. In the digital realm, the misuse of deep linking has emerged as a prevalent tactic among copyright infringers. By employing this technique, offenders directly link to copyrighted material, enabling users to access works without visiting the original platform thereby undermining the rights holders' legitimate interests.

### **2.2.3. Complexity of Criminal Intent**

In the online environment, motivations for infringement have grown more intricate. Profit-driven objectives now encompass both direct and indirect monetization, while non-pecuniary motives, such as seeking attention, fame, social media virality, or retaliation have also proliferated. For instance, certain public accounts or online groups dedicated to sharing literary works and facilitating downloads may not operate for profit; some initially arise from mere altruistic sharing intentions.

## **3. Practical Dilemmas in Protecting Online Literary Copyright**

### **3.1. Deficiencies in Establishing "Profit-Making Purpose" for Online Literary Infringement**

With the development of the internet era, numerous copyrighted works are readily converted into data and disseminated through diverse channels, making the assessment of whether a profit-making purpose exists more complicated and challenging.<sup>[3]</sup>

Firstly, within the provisions of China's Criminal Law concerning intellectual property crimes, subjective elements such as "for profit-making purposes" are not stipulated as prerequisites for offenses involving trademarks, patents, or trade secrets. However, copyright offenses, which also fall within the scope of intellectual property, are specifically subject to this profit-motive requirement. This distinction lacks sufficient justification and is detrimental to the holistic protection of intellectual property rights.

Secondly, the Copyright Law of the People's Republic of China (hereinafter referred to as the "Copyright Law"), serving as the enabling legislation and the preceding law, also contained the subjective requirement of "for profit-making purposes" prior to its amendment in 2001. This requirement has since been removed based on national conditions. Nevertheless, the Criminal Law has yet to make a corresponding amendment. This results in an inconsistency in the subjective elements between the Criminal Law and the Copyright Law. Consequently, as the information age advances, while copyright law progressively expands the scope of rights protection, criminal law stubbornly adheres to outdated conventions. This discrepancy is likely to exacerbate offenses against the copyright of online literary works and undermine the protection of victims.

Finally, many countries have abandoned the traditional subjective requirement of a profit motive as a criterion for criminalization. For instance, France stipulates that infringement constitutes a

crime "whether for payment or free of charge". Under the U.S. Criminal Copyright Amendment Act of 1995, the subjective condition requires only "willfulness" for an act to constitute a crime.

Therefore, based on the aforementioned three aspects, this paper argues that China's criminalization standard requiring "for profit-making purposes" proves problematic.

### **3.2. Flaws in Assessing Criminal Circumstances of Online Literary Infringement**

In the network era, employing "illegal gains" as a criterion for conviction faces significant difficulties in determining the amount involved. The Supreme People's Court's Interpretation on Several Issues Concerning the Application of Law in the Trial of Cases Involving Copyright Disputes over Computer Networks explicitly defines the measurement standards for "illegal gains." While this framework appears comprehensive, it proves inadequate in practice. This is primarily because perpetrators of online copyright infringement frequently adopt indirect revenue models. For instance, internet users can access pirated literary works free of charge without direct payment. Consequently, no explicit profit is generated on the books, making it exceptionally challenging to establish the "illegal gains" necessary to meet the criminal conviction threshold.

This predicament arises directly from the unique characteristics of network environments—namely their high dissemination capacity and ease of replication—which fundamentally distinguish online copyright infringement from traditional forms. Moreover, this very circumstance is increasingly leveraged by numerous piracy websites as a shield to evade criminal sanctions under the law.<sup>[3]</sup>

### **3.3. Legislative and Post-Redress Inadequacies**

#### **3.3.1. Legislative Deficiencies**

The Applicability of the Criminalization Scope is Limited. Analysis of the amendments introduced by the Criminal Law Amendment (XI) to the provisions of the Criminal Law reveals that China still maintains only two substantive criminal offenses for copyright protection: the crime of copyright infringement and the crime of criminalizing the sale of infringing copies. Regarding copyright infringement in cyberspace, apart from the addition of "communication to the public via information networks" in Article 217 of the Criminal Law, no new targeted offenses have been established. This stems from the inherent difficulties in defining crimes within cyberspace. Due to the virtual nature of cyberspace, the calculation of the amount of "illegal gains" proves exceptionally problematic. Consequently, the "illegal gains" conviction standard fails to adequately address both traditional copyright infringement and its online manifestations. This represents a clear manifestation of the inherent lag of criminal legislation.

#### **3.3.2. Inadequate Protective Mechanisms**

Article 54 of the Copyright Law outlines the compensation provisions for copyright infringement, indicating that China's primary remedy for rightsholders is economic compensation (damages). However, significant deficiencies persist in the determination of infringement damages. In practice, infringed parties often find themselves in a situation where they "win the lawsuit but incur a net financial loss" <sup>[4]</sup>. For instance, in the case of "XX Alliance v. XX Library concerning Online Copyright Infringement Dispute", the court awarded relatively low compensation to the Alliance. This outcome discourages subsequent victims, the faced with high litigation costs and the prospect of low compensation awards, often choose to passively accept the infringement rather than pursue legal action.<sup>[5]</sup> Thus, while rightsholders intend to protect their rights through litigation, their legitimate claims are frequently unmet under the current judicial framework. Furthermore, there is a

notable lack of robust post-litigation protection mechanisms for the copyrighted works of rightsholders. In practice, due to the inherent diffuseness and rapid dissemination characteristics of the internet, once a work is infringed, subsequent losses often remain unrecoverable even if the infringing individual or entity is successfully sued. Obtaining an injunction or damages frequently fails to fully mitigate the ongoing harm caused by the widespread and persistent availability of the infringed work online.

#### **4. Regulatory Approaches to Online Literary Copyright Infringement**

Based on the preceding analysis of the challenges facing copyright protection for online literary works in China, the core dilemmas stem primarily from legal lag in judicial practice and controversies in infringement determination. While the inherent nature of law inevitably creates some disconnect with societal realities, we can mitigate this gap by refining statutory provisions and clarifying recognition standards, confining the lag within an acceptable range. Accordingly, this paper proposes the following three recommendations:

##### **4.1. Distinguishing the Subjective Conditions for Criminalization**

Regarding this point, this paper proposes drawing upon the copyright laws of jurisdictions with advanced intellectual property regimes by eliminating the subjective requirement of "for profit-making purposes." Instead, it advocates adopting the internationally aligned standard of "willful intent" as the basis for criminalization. This approach would effectively target both non-profit-motivated infringement and infringement utilizing indirect revenue models.

As for the element of "for profit-making purposes," this paper suggests considering it as a relevant sentencing consideration. Furthermore, conduct driven by a "profit-making purpose" inherently demonstrates a significantly higher degree of culpability compared to conduct lacking such a purpose. Therefore, concerning conviction and sentencing, while maintaining the quantitative threshold for conviction applicable to non-profit-motivated offenses, the conviction threshold for profit-motivated infringement could be appropriately lowered.

##### **4.2. Refining Evidentiary Standards for Criminal Conviction**

Currently, China still lacks relatively practical sentencing standards for online copyright infringement. Therefore, it is imperative to establish a quantifiable assessment of the degree of social harm and refine the criteria for determining infringement.

While existing judicial interpretations incorporate factors such as "number of infringing copies" and "view counts" into the conviction standards, this approach often fails to accurately reflect the true societal harm caused by the infringer's conduct in practice. For instance, certain low-value indirect infringements may still inflict significant societal harm, yet such acts frequently fall outside the scope of criminal conviction and sentencing thresholds.

Consequently, regarding quantifiable factors for conviction, it is essential to integrate judicial assessment of the social harm resulting from the infringer's conduct. Imposing corresponding penalties on infringing acts based on their degree of social harm would significantly contribute to optimizing the online copyright environment. This, in turn, would enhance public confidence in legal frameworks such as the Criminal Law and the Copyright Law, while strengthening creators' sense of security and protection.

### 4.3. Adjustment to the Penalty Structure for Copyright Infringement Crimes

Currently, the range of criminal penalties for copyright infringement offenses in China remains relatively limited, resulting in insufficient deterrence against such crimes.<sup>[6]</sup> Concurrently, judicial practice reveals challenges including low prosecution rates and difficulties in rights enforcement, leading to diminished confidence among rightsholders in legal frameworks such as the Criminal Law and the Copyright Law. Consequently, reforming the relevant penalty system is an urgent imperative.

#### 4.3.1. Introduction of Access-Restricting Penalties

Given the ease of dissemination inherent to the internet, the cost of committing offenses is low, enabling perpetrators to resume infringing activities even after punishment. To fulfill the preventive purpose of criminal penalties, it is essential to introduce sanctions that effectively impede offenders from re-engaging in criminal conduct. Access-restricting penalties are particularly suited to current needs. For instance, French Intellectual Property Code empowers courts to order the complete or partial closure of offending establishments and to prohibit offenders from accessing public communication services.<sup>[7]</sup> Drawing on this model, China could establish specific access-restricting penalties targeting the use of network information technology for the pirated reproduction of copyrighted works in copyright infringement crimes.<sup>[4]</sup> This would effectively deter infringers, restrict their capacity to reoffend, and render entities subject to such penalties incapable of committing similar offenses in the future.

#### 4.3.2. Refining the Penalty Structure: "Monetary Penalties as Primary, Custodial Sentences as Supplementary"

China's current penalty scheme for copyright infringement prioritizes custodial sentences over monetary penalties. However, judicial practice often exhibits a tendency to favor monetary penalties over custodial sentences, which fails to achieve sufficient deterrence and undermines the goal of crime prevention. Therefore, it is recommended to:

Enhance the emphasis on custodial sentences within the sentencing framework and implement supplementary penalties, such as the confiscation of property. Because the extent of legal interest infringement in copyright crimes is predominantly reflected in the property losses suffered by rightsholders. Consequently, monetary penalties are better suited to: Safeguarding the rights of rightsholders and Compensating for their actual losses and Increasing the economic cost of copyright offenses, thereby reducing recidivism. The application of monetary penalties also aids in preventing profit-driven crimes and achieves a punitive effect. For example, offenders committing less severe acts often exhibit lower persistence in criminal motivation. After weighing the potential gains against the costs incurred, they are more likely to restrain their criminal impulses or abandon criminal intent altogether.<sup>[8]</sup>

### 5. Conclusion

Within the current online literary landscape, the barriers to infringing upon online literary works continue to lower, while infringement rates exhibit an upward trend. This has led to numerous cases characterized by substantial infringement scales, extensive reach, and significant difficulties in rights enforcement. Furthermore, in the process of infringing upon the copyright of online literary works, some perpetrators demonstrate technologically sophisticated methods, making them difficult to detect and trace. Their infringements extend beyond simple textual copying or plagiarism in the traditional sense; instead, they utilize layered obfuscation through network information to commit



infringing acts and generate profits through various means, such as displaying advertisements on piracy platforms.

Therefore, to safeguard the interests of literary copyright holders, it is imperative to: Adapt judicial recognition standards to the contemporary networked environment and Strengthen and refine the penalty system for copyright infringement and Significantly increase the cost of infringement for perpetrators. These measures are essential to foster a secure environment conducive to creative output by online copyright holders and the sustainable development of the burgeoning online literary market.

## References

- [1] Yan Y. *Research on Copyright Protection of Online Literary Works*[D]. Zhuzhou: Hunan University of Technology, 2022.
- [2] Zhao G L. *Investigation and Research on Intellectual Property Crimes*[M]. Beijing: China Procuratorate Press, 2002: 38.
- [3] Fu X Y. *Research on Criminal Law Protection of Copyright in Network Environment*[J]. *Economic Research Guide*, 2022(4): 159-161.
- [4] Wu X Y. *Criminal Law Protection of Online Copyright*[D]. Zhengzhou: Zhongyuan University of Technology, 2022.
- [5] Hu J Z. *Legal Protection of Copyright for Online Audiovisual Works*[D]. Kunming: Yunnan University of Finance and Economics, 2020.
- [6] Xu X C. *Research on Criminal Law Protection of Online Copyright: An Analysis Based on 96 Criminal Judgments*[D]. Jinan: Shandong University, 2020.
- [7] Zhang Y Y, Zhang Y F. *Research on Criminal Law Protection of Online Literary Copyright*[J]. *Legal System Vision*, 2020(27): 48-50.
- [8] Tian Y. *Research on Criminal Law Protection of Online Literary Works Copyright*[D]. Jinan: Shandong University of Political Science and Law, 2024.