

An Analysis of the Personal and Property Security Obligations and "Corresponding Responsibilities" of E-Commerce Platform Operators

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ABSTRACT

As a new law, the "Electronic Commerce Law" has attracted the attention of the public since its inception. The legislative process concerning the second paragraph of Article 38 of this law has triggered heated discussions. The original joint liability has been changed to supplementary liability. In the end, it was changed to "corresponding responsibilities." After many revisions and evaluations, the legislator finally determined it as the existing clause. This is an innovative and highly compromised product established by many parties after several trade-offs. Its formulation has a major impact on the construction of the current e-commerce platform and has great research value. In this article, the author tries to analyze this article by layer. First, starting from the subject of the "corresponding liability", analyze the objects regulated by the law-e-commerce platform operators, and the objects of its protection-damaged consumers. The second is to analyze the content of the regulations. First, it analyzes the concept, origin and standards of the personal safety guarantee obligations stipulated by the law, as well as the specific circumstances in which they are applied; then, analyzes the "corresponding responsibilities" that violate the security obligations. Concepts and origins, and conduct a comparative analysis of the applicable content and applicable methods of the associated joint and several liabilities and supplementary liabilities, and further analyze the applicable conditions of the "corresponding responsibility", and select typical cases related to the "corresponding responsibility" for research, To determine its impact on the e-commerce platform. Finally, it analyzes related existing cases and discusses the problems arising from the practical operation of judicial trials from three aspects: legislation, law enforcement, and justice: system design; construction and improvement of "corresponding responsibilities" legal system plan And system law enforcement mechanism; and proposed to optimize the "corresponding responsibility" judicial application system, and finally put forward suggestions on the improvement of the "corresponding responsibility" system.

KEYWORDS: *E-commerce platform operators; Obligation to guarantee personal safety; Corresponding responsibilities*

I. INTRODUCTION

The "E-Commerce Law" has attracted the attention of the public since its inception. The legislative process concerning the second paragraph of Article 38 of the law has aroused heated discussions, from the first stipulation of joint and several liability to the later revision to supplementary liability, and then it was finally determined as "corresponding responsibilities", and the legislators finally determined the existing clauses after many amendments and weighings.

This "corresponding responsibility" system is an innovative and compromised product established by legislators after several measurements. Its formulation has had a significant impact on the construction of the current e-commerce platform and has a lot of research value. This article will analyze the personal safety guarantee obligations and the "corresponding responsibilities" in Article 38, paragraph 2 of the "E-Commerce Law", in order to explore some of the

effects and problems applicable to it during the more than one year of implementation. , And analyze the judgment cases and law enforcement cases, and put forward relevant system improvement countermeasures.

II. Analysis of the personal and property security obligations of e-commerce platform operators

A. The definition of the main body of the e-commerce platform operator

1. Analysis of the main body of e-commerce operator's security guarantee obligation

To clarify the main body of the e-commerce platform operator's security guarantee obligations, we must first determine the scope and object of the e-commerce law application. According to Article 2 of the law, the main adjustment scope of the "E-commerce Law" is divided into two parts, namely "sales of goods" and "providing services". In addition, it also clarifies that some areas are not covered

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by the "E-commerce Law". "The scope of adjustment, for example, Internet-related webcasting platforms should not be subject to the e-commerce law. [1] In the case of extreme sports internet celebrity Wu Yongning falling from a building, the trial judge erroneously applied Article 38, paragraph 2 of the E-Commerce Law, and determined that "the defendant is the provider and manager of network services, Wu Yongning was obliged to ensure safety, and ruled that the defendant should be liable for compensation for Wu Yongning's fall due to his failure to fulfill Wu Yongning's safety protection obligations." Since the case involved the live broadcast industry, it did not belong to the applicable field of the "E-Commerce Law".

Secondly, it is necessary to clarify that the e-commerce platform operator is the main body of the e-commerce operator's security guarantee obligation. This concept is clearly defined in Article 9 of the "E-Commerce Law". It can be seen from this article that an e-commerce platform is mainly used as a platform party, which provides a trading platform for operators in the platform, and on this basis, regulates the behavior of operators in the platform, so that operators and consumers in this environment The transaction is more secure and efficient. By analogy, it's like an owner who rents a storefront rents the storefront to a shop for business activities. However, due to the virtual nature of the network and the complexity of the people involved on the platform, the "tenants" that this "owner" can rent are also more random, and the things to be monitored are correspondingly more, so its regulations are different. The lease and trade relationship in civil law. In other words, the normative requirements for e-commerce platform operators are completely different from the traditional lease trade relationship in the civil law. Compared with the house owner in the traditional lease and trade relationship, the e-commerce platform needs to be more cautious. Especially the series of guarantee obligations for consumers' transaction security, which is also the most dissimilar to the house owner. In general, an e-commerce platform operator should be an online platform party that has a contractual relationship with the operator on the platform and does not have a direct transaction relationship with consumers on the platform.

Finally, whether other value-added paid services signed by the e-commerce platform operator and the e-commerce platform before the transaction with consumers and the situation where the e-commerce platform operator's self-operated goods or services cause consumer losses fall under the "E-commerce Law" There is still no clear official explanation for the scope of the specification. Since the obligation of security protection belongs to a very subjective term, it can be applied as a comprehensive clause in the Electronic Commerce Law in judicial practice. Therefore, the author believes that when the above two situations occur, if there is no appropriate legal clause to explain, This kind of self-operated goods and other value-added paid service e-commerce platform operators previously signed by the operators on the platform can be used as the subject of security guarantee obligations in the legal provisions.

2. Analysis of the main body of the security protection rights of the e-commerce platform operators

According to the specific content of Article 38, paragraph 2 of the "E-Commerce Law", we know that consumers are the

subject of the obligation to ensure safety. As for the meaning of the term consumer here, the author believes that it should be interpreted broadly: it is not limited to consumers who complete transactions with operators on the platform, but also includes all potential consumers, that is, as long as they are registered with the platform account Users, if the e-commerce platform has not fulfilled its platform review obligations, and some users who browse the goods suffer certain physical and mental damage (such as violence, pornography), these users should also be included in the scope of the security protection rights subject, but because Mental injury is difficult to define in practice, so it is necessary for the consumer's proof standard to reach a higher probability standard than general proof. However, if the fact has reached an obvious degree, even if consumers are only mentally injured, they should become the main body of e-commerce platform operators' safety protection rights.

B. Analysis of personal and property security obligations

1. The concept of personal and property security obligations and legal provisions

In the context of e-commerce, the platform's obligation to protect consumers' safety refers to providing necessary measures to protect the lives and health of consumers who transact on the platform. [2] This concept was first traced back to the "Verkehrspflicht" that appeared in German law in the 17th century, which was a product of the law made by judges at that time. [3] The initial communication security obligation refers to the obligation to take reasonable and necessary measures to prevent the third party from being harmed by the person who initiates or continues the hazard. This obligation first applies to the scope of the security obligations assumed by the operators of the service establishments on their premises, mainly for the personal and property protection obligations of consumers who enter their business premises or potentially enter their business premises. With the continuous improvement of the law, its scope of application has become wider and wider, and it is commonly used by countries all over the world. Among them, China applied this view to the "Judicial Interpretation of Compensation for Personal Injury" in 2003. Article 37 of the 2009 "Tort Liability Law" formally confirmed China's security obligation system at the legislative level and formed a general norm. The concept is further improved and applied to the "Network Security Law" and the "E-Commerce Law".

The duty of safety protection is the expansion of the principle of good faith in the civil law in the field of tort law, the legal treatment of high-risk situations in a modern society with close communication, and the protection of the reasonable demand for trust in certain places. [4] The "E-Commerce Law" stipulates the personal and property protection obligations of e-commerce platforms, and at the same time provides legal liability clauses, so that the safety protection obligations are widely cited on e-commerce platforms.

2. Standards for personal and property security obligations

The definition of the personal safety guarantee obligation standard can start with the famous German "Dead Tree Case" in 1902. This case caused the German judicial circle to further improve the obligation of safe communication. The

judge started from the question of "how to define the infringer due to the dumping of a tree due to natural phenomena, and how to define the offender", and finally developed a special theory of infringement of inaction, which is the concept of early tort liability. Our country also made it a part of tort liability in subsequent legislation. The fuse of its development originated from the Galaxy Hotel case in the early 21st century. In response to the question of "whether the hotel needs to be held responsible for homicides in a hotel", the Supreme Court issued a relevant judicial interpretation in 2003, which was the "subject + behavior + object" that defined the obligation of security in the original judicial interpretation the three structural model. With the promulgation of the "Tort Liability Law" in 2009, the duty of safety protection has become the legal liability system in my country, from the initial three structures to the four structure model of "location + subject + behavior + object". The increase of the space vector has improved the rules on the responsibility of service place operators for the security protection in the public domains they operate. This is also the prototype of the security protection obligation in the "E-Commerce Law", which has since formed the infringement law in China's judicial system. The standards of personal and property security obligations in the Liability Law.

Although my country's "Electronic Commerce Law" stipulates the security guarantee obligations following the above four structural models, the author believes that in practice, the level of attention to the security of e-commerce platforms should be slightly lower than that of traditional physical locations. From an objective point of view, first of all, in the context of big data, the amount of information on the Internet is huge, and the content of the virtual "place" of the e-commerce platform is much greater than that of the traditional physical platform that only needs to take into account the tangible place; second is the Internet The update speed of technical information is very fast. If the e-commerce platform is given a higher duty of care, the e-commerce platform will suffer from constantly updating its own regulatory rules, and will spend a lot of costs in this process, and limit the operators on the platform In addition, due to the virtual nature of the network environment, some false information that appears in it covers a variety of situations, and it is also the obligation of personal safety protection in Article 38, paragraph 2 of the "E-Commerce Law" The "audit obligation" has been set in the law as a parallel provision with the safety guarantee obligation, so the safety guarantee obligation mentioned here does not mean that the standard of the e-commerce platform's audit obligation can be lowered. In summary, compared with traditional security assurance entities, the standards of attention on the security assurance obligations of e-commerce platforms in Article 38, paragraph 2 should be lowered.

From a subjective point of view, although "as far as the fault of the security obligor is concerned, his intention and his fault should be treated separately." [5] But under normal circumstances, the fault of the operators on the platform is much greater than that of the operators of the e-commerce platform, which is usually reflected in the intention of the operators on the platform and the negligence of the operators of the e-commerce platform. On the other hand, the e-commerce platform has a complementary relationship with the operators on the platform. The more merchants that an e-commerce platform attracts to provide services or sell

goods on its platform, the more likely it is to increase its popularity, thereby enabling more consumers Staying on its website will not only promote the expansion of its own platform, but also enable operators on the platform to have a better sales environment. [6] From the above factors, it seems reasonable to require e-commerce platform operators to undertake lower security guarantee obligations. However, if the subjective status of e-commerce platforms is not qualitatively generalized, it does not conform to the original intention of the legislation. Therefore, different levels of standard treatment should be given to different subjective attitudes of e-commerce platforms (the worse the subjective attitude, the lower the standard of personal and property security obligations). Specifically, subjective attitudes should be classified. The author believes that the "safe haven principle" and "red flag principle" in the "Millennium Digital Copyright Act" can be adopted. [7] Safe Harbor Principle: If the network service provider has done its duty of reasonable care, it can be used as its own exemption clause. Red flag principle: When the fact of infringement is indisputable, the "safe haven principle" is no longer applicable. At this time, the burden of proof is given to the platform itself. This theoretical basis is still applicable when discussing the platform's information review obligations. The basis for the application of these two principles is to make specific distinctions based on the degree of subjective fault of the platform party, which is also a standard that the e-commerce law can adopt when discussing security guarantee obligations.

3. Situation analysis of safety guarantee obligations

Due to the relatively short period of time for the promulgation and implementation of the E-Commerce Law, there are still few cases in which the safety guarantee obligations in Article 38, paragraph 2 are applied in practice. Typical cases are the extreme sports internet celebrities mentioned above. Take the case of Wu Yongning falling from a building as an example. Although the judge misapplied relevant regulations in this case, his determination of the duty of safety protection is worthy of our consideration. In this case, the judge believed that the defendant's live broadcast platform, knowing that Wu Yongning's videos were dangerous, still allowed him to upload such videos to the platform, and used Wu Yongning for publicity to increase the popularity of the platform. , And it has the possibility of preventing him from shooting dangerous videos (if his behavior is prohibited, then Wu Yongning is very likely to stop shooting dangerous videos because it is difficult to find a platform to play on). In this case, if the platform does not stop it, giving it a certain positive incentive or creating a suitable environment that will cause danger, it will become an incentive to encourage the operators on the platform to shoot the dangerous video. In the field of e-commerce, the result of such a situation is also easy to cause harm to consumers. The court held that the reason for Wu Yongning's death was because the defendant had not fulfilled his duty of safeguarding safety, and there was a certain causal relationship between the two in essence. [8]

C. Analysis of the relationship between security guarantee obligations and audit obligations

"Legal responsibility is related to the concept of legal obligation. That is, if a person is legally liable, if he acts contrary to the responsibility, he may be sanctioned." [9] In the context of paragraph 2 of Article 38, the basis of the

platform operator's "corresponding responsibility" is the failure to fulfill the security guarantee obligations or audit obligations. That is to say, the security guarantee obligation and the audit obligation are the prerequisites for the platform operator to assume the "corresponding responsibilities". [10]

The safety guarantee obligation stipulated in Article 38, paragraph 2 of the "E-Commerce Law" is a statutory obligation, and e-commerce platforms need to actively perform this obligation, and cannot be excluded through agreed terms. As a broad concept, it can be summarized in the meaning of other unfulfilled obligations stipulated in the provisions of the Electronic Commerce Law; and the "corresponding responsibility" itself does not belong to the type of legal responsibility, it can be used in specific instances. It is summarized as supplementary liability, joint liability or share liability. Due to the broad interpretation of the two, it is also reasonable to correspond to the two inclusive concepts of security guarantee obligations and "corresponding responsibilities".

The review obligation stipulated in Article 38, paragraph 2 of the "E-Commerce Law" is more like a subordinate concept of the safety protection obligation, because the unfulfilled review obligation itself is also a manifestation of the unfulfilled safety protection obligation, and the safety protection obligation includes The range is also greater. The "audit duty" is listed in the law as a separate provision because the duty of care in this article is universal (most of the cases where the safety guarantee obligation is not fulfilled are the failure to fulfill the audit duty).

III. Analysis of the "corresponding responsibilities" of e-commerce platform operators who violate their personal and property security obligations

A. The concept and origin of "corresponding responsibility"

1. The concept of "corresponding responsibility"

Correspondence is correspondence. The subject who has performed a certain legal act shall bear the same legal responsibility. However, "corresponding liability" is not an independent type of civil liability, and it needs to be explained in detail in conjunction with other statutory responsibilities in the process of application. At present, China mainly has four types of liability, supplementary liability, joint liability, and untrue joint liability. Type of legal liability.

At present, there are very few judgments involving this article (Article 38, paragraph 2) in practice, so it is necessary to study the legal articles in other laws that involve "corresponding responsibilities." The application of the "corresponding responsibilities" involved in the law is different. This makes the "corresponding responsibilities" in Article 38, paragraph 2 of the Electronic Commerce Law different from other "corresponding responsibilities". The legal provisions are compared, and the research is carried out from the search for a legal provision that has the most similar application situation. At present, there are legal provisions concerning "corresponding liability" in the "Tort Liability Law", "Company Law Judicial Interpretation" and "Administrative Law". Among them, the lease and loan of motor vehicles in Article 49 of the "Tort Liability Law" The specific circumstances of the corresponding compensation

liability when the damage is caused are the closest to the "corresponding liability" of the security obligation in the "E-Commerce Law". The determination of the "corresponding liability" in this article is not generalized in practice. Judges should analyze specific issues in practice. [11] When the owner of a motor vehicle is at fault, the judge usually applies joint and several liability and "corresponding liability", and in a few cases assumes the share-based liability. The way of assuming responsibility is joint responsibility (both the owner of the motor vehicle and the user of the motor vehicle), and the application of these "corresponding responsibilities" has a great impact on the "corresponding responsibilities" in the E-Commerce Law. The role of reference.

In summary, from the literal meaning, "corresponding responsibility" can be understood as a general term including joint and several liability, supplementary liability, and partial liability according to the usual interpretation, or it can be understood as an exclusion based on the limited interpretation. The form of joint and several liability and supplementary liability only refers to liability by share. [12]

2. Origins of "corresponding responsibilities"

"Corresponding liability" is not a statutory type of liability. It has been involved in the Tort Liability Law and the Administrative Law. Of course, it also includes the latest E-commerce Law. In determining the application of this responsibility, the legislature has passed a long weighing. The reason is that the e-commerce law is different from the general law. In comparison, the e-commerce law is more complicated, covers a wider range, and has a larger scale. As a new thing, it is developing rapidly. It needs to go through four reviews during the legislative process (other laws generally three times). From the proposal to the pass, the "Electronic Commerce Law" took three years to draft and two years to deliberate at meetings, and a full five years. Its formulation process is so long and cautious, in the revision process, the clause has gone through from "joint and several liability" to "supplementary liability" to the final "corresponding liability". This ups and downs process seems to be only a few words away, but it also reflects a cautious compromise of the legislators: if they agree with joint liability, the subjective viciousness of direct tort liability will be equated with incomplete review or security guarantee liability. Obviously, it has increased the responsibility of the platform, which violates fairness and justice; if the supplementary responsibility is recognized, it will not be effective in punishing and regulating those platform operators who are subjectively malicious. [13]

B. Analysis of the relationship between "corresponding liability" and joint and several liability and supplementary liability

1. Contents of responsibility

As Article 38, paragraph 2 of the Electronic Commerce Law has undergone many changes, the legislators' changes in joint and several liability, supplementary liability and "corresponding responsibilities" also make it necessary for us to compare the relationship between the three and analyze the legislator. The legislative direction of the law and the application of this law in practice in the future make us need to further study joint and several liability and supplementary liability.

Joint and several liability is conglomerate liability, and the creditor can pursue all the liability for compensation from any one of the joint debtors. This is like the debtors are one with each other. If the debts are not fulfilled, everyone has the possibility to bear all the debts. When the debts are not fully paid off, the creditors can treat any of them before the statute of limitations expires. A debtor claims rights, that is, "the debtors are all in the same boat." Supplementary liability usually means that when the primary responsible person is unable to pay off his debts, the secondary responsible person assumes the remaining responsibilities, and the content it bears may be partial or all, but in most cases it is partial. Generally speaking, it is better to assume supplementary liability than joint liability.

The "corresponding responsibility" is not a specific legal type, and it needs to be interpreted by a judge in the application process, so that it can be further applied to other specific responsibilities. The author randomly selected 50 cases from the Judgment Written Network; most of the "corresponding responsibilities" apply to joint and several liability, and only a few apply to supplementary liability and untrue joint liability. Since the share liability is lighter than the joint liability, it can be seen from the applicable proportion that the content of the "corresponding liability" is lighter than the general joint liability, and because the "corresponding liability" is concretized, most of the liabilities are assumed to be joint and several liability, so it can be concluded that the content of the "corresponding liability" as a whole is higher than the supplementary liability.

2. Ways to assume responsibility

When it comes to a way of assuming responsibility, especially when there is a tort liability situation, the order in which the platform operator needs to assume responsibility under different liability situations. Since joint liability is to jointly bear all debts at the same time, there is no order in which any one of the joint debtors shall bear the responsibility, and the two shall bear the responsibility at the same time; while the supplementary liability is different, when the platform needs to bear the supplementary responsibility, when it assumes the responsibility it is when "the primary debtor cannot bear the responsibility, the sub-debtor shall bear the remaining debt." Therefore, when the e-commerce platform assumes supplementary responsibilities, there will always be the operator on the platform as the primary debtor acting as a shield, that is, it is not the same as the "Responsibilities" are in the first order of assuming responsibility, and in the latter position. After the "corresponding responsibilities" are concretized, most of them are joint and several liability and share liability, and share liability is the distribution ratio between the parties in accordance with the law or agreeing to their own distribution, and there is no priority in the order of distribution. Therefore, the "corresponding responsibilities" need to be borne in most cases without prioritization.

IV. Analysis of theoretical and practical issues concerning the application of "corresponding responsibilities" in Article 38, paragraph 2 of the "E-Commerce Law"

A. Theoretical issues in the judicial application of "corresponding responsibilities"

1. Teleology of "corresponding responsibility"

The "E-Commerce Law" was passed and promulgated after a long period of legislative preparation. Due to the rapid

changes in information and information in the Internet age, the review of the draft e-commerce law needs to be considered longer-term and more flexible. Therefore, the review process of the law alone lasts for five years, and the legislative process is very strict and cautious. [14] The first to determine the basic framework of Article 38 of the Electronic Commerce Law was the third review of the Electronic Commerce Law. The draft adopts "dual joint and several liability", which means that both the first and second paragraphs of Article 38 apply joint liability. However, after the promulgation of the resolution, some members of the public and e-commerce platform companies believed that the joint and several liability in paragraph 2 imposed excessive penalties on platform operators and suggested that it should be changed to "corresponding supplementary liability". The Constitutional Affairs Committee and the Legal Affairs Committee also adopted this approach after review, so in the fourth review draft, the joint and several liability in paragraph 2 was changed to supplementary responsibility; this time, it caused some disagreements among the members of the Standing Committee of the National People's Congress. Agree, they believe that such a modification is "backward", and they believe that the supplementary liability imposed on the e-commerce platform is too light, which will break the status of the e-commerce platform and consumers that originally maintained a balance of rights, that is, weaken the consumption Protection of the rights of the owners. In this regard, in the last vote, the previously revised supplementary liability was changed to "corresponding liability", and the specific penalty amount was clarified at the same time, which is now the content of Article 38, paragraph 2.

From these two revisions, it can also be seen that the "corresponding responsibility" applies to the teleology, just like the idea emphasized by Yin Zhongqing, the deputy chairman of the Finance and Economic Committee of the National People's Congress: Although it is only a few words of consideration, it reflects the intensity of punishment. The game, which involves the battle between platform operators, consumers and scholars in related fields. [15]

2. Apply the narrow interpretation of "corresponding responsibilities"

Since the "corresponding responsibility" needs to be further clarified as legal responsibilities by the judge according to the specific circumstances during the application process, the degree of discretion is large, so it is necessary to narrow down some parts of the interpretation. Under the premise of meeting the legislator's legislative purpose, the penalties for the "corresponding liability" established are greater than supplementary liabilities. The legislator stipulates the relevant penalty amount in Article 83 of the Electronic Commerce Law, which must be A narrow interpretation of the "responsibility of the company", which stipulates the minimum and maximum fines for "corresponding liability", so that the judge can make the platform operator get the punishment due to the application of this clause and the punishment will not be excessive weight.

3. Apply the expanded interpretation of "corresponding responsibilities"

The "corresponding responsibility" itself is a very extended concept. It can be specified as any one of the four statutory responsibilities in a specific judicial decision, and when it is

specifically applicable, it also needs to be based on the e-commerce platform. (For example, when the e-commerce platform does not strictly review the operators on the platform in the case of damage due to goods, it is more necessary to bear joint and several liabilities. In the terms of service, it is still necessary to further follow the process. The size of the damage caused, the principle of reciprocity of interests and risks, and the principle of fairness and justice will be discussed in detail [16]); and since there is only one judgment that currently applies to Article 38, paragraph 2 of the Electronic Commerce Law, the judge needs to be specific. When applying this clause, you can refer to other laws related to "corresponding liability" for judgment, such as Article 49 of the Tort Liability Law.

B. Analysis of applicable conditions of "corresponding responsibilities"

1. The standard of "audit duty"

The review obligation in Article 38, paragraph 2 of the Electronic Commerce Law is a statutory act obligation, which is specifically stipulated in Article 27, paragraph 1 of the law. However, this clause only stipulates the audit obligations in the pre- and in-process phases of the audit obligation, and does not stipulate the corresponding post-phase audit obligations. Such provisions are not a complete review system. Before determining the standard of "audit obligations", This part of the regulations also need to be further improved as far as possible.

Based on such an audit system, the author believes that the duty of care of e-commerce platforms should meet the standard expected by ordinary people, that is, the standard that the public has reasonable expectations for it. In practice, the e-commerce platform is not a direct transaction party, it only exists as a platform provider, and because of the many situations it takes into account, it is impossible to review all the information of the operator one by one, so the audit requirements only need to meet the standards that ordinary people can expect.

2. "Safety guarantee obligations" standards

As mentioned above, the security obligation in Article 38, paragraph 2 of the "E-Commerce Law" should be based on the objective "location + subject + behavior + object" four essential areas to determine whether the e-commerce platform operator violates the security obligation and The "safe harbor principle" and the "red flag principle" distinguish between the safety assurance standards; in addition, the security obligation standards in the clauses should also be analyzed in terms of the field of the platform and its own business model based on general social standards. , And confirm the scope of its obligations.

3. The application of the "corresponding responsibilities" as the "covering clause"

Since the security guarantee obligation is a very broad concept, it is as broad as most of the circumstances (Articles 9 to 46) stipulated in the Electronic Commerce Law that require the responsibility of e-commerce platforms to perform security guarantee obligations. Detailed situation. In other words, the safety guarantee obligation in Article 38 of the E-Commerce Law itself has the function of a "covering clause" when other legal provisions cannot regulate consumers, so it violates this law. The situation is also different. Therefore, the legislator stipulated that the

"corresponding responsibility" for this clause is also a measure of weighing. In practical application, the "corresponding responsibility" is also more flexible than the general statutory responsibility. Of course, a more comprehensive legal team is needed to implement such a clause in order to give full play to its true effectiveness.

"Corresponding liability" is not a statutory type of liability. The interpretation of e-commerce platform operators' "undertaking corresponding responsibilities" can refer to Article 49 of the Tort Liability Law, which has more applicable cases. However, it should be clear that e-commerce platforms have to undertake a larger scope, which includes audit and security obligations that consumers have not fulfilled when receiving services and purchasing goods. [17]

4. Combination of "corresponding responsibilities" and public law

The purpose of the tort liability law in the initial legislation was not limited to redistributing the costs caused by the damage incidents that occurred in the past. Its function has a certain effect of serving the future. [18] As the application of the Tort Liability Law to the Electronic Commerce Law, the main purpose of Article 38, paragraph 2 of the Electronic Commerce Law is to help consumers who have suffered losses get their due compensation. The effect of "precaution before it happens" is minimal, and its effectiveness as a regulatory platform operator is still lacking. The legislators were aware of this situation and deliberately set up Article 83 of the "E-Commerce Law", which on the one hand stipulates the scope of compensation that e-commerce platforms should bear if their obligations are not fulfilled, and on the other hand, they also order market supervision and management. The department supervises its order to make corrections, and its legislative purpose is to achieve a preventive responsibility supervision system through the combination of administrative and civil liabilities, but whether the third party (market platform) supervision and increase of fines established in it can help. The effect of standardizing the platform remains to be considered. If the use of market supervision to fines can more effectively curb online counterfeiting and protect consumers' rights and interests, at least it can prove the effectiveness of the liability mechanism extending to the market. But the actual operation is very difficult, because it requires the market supervision department to apply a higher substantive examination standard than the court's formal examination standard in infringement litigation. [19] This article provides for a bold experiment, but how effective it is in the future remains to be seen.

C. Analysis of typical cases of "corresponding responsibilities"

In the "Extreme Sports Internet Red Wu Yongning's Falling Case" mentioned above, the court determined that the defendant Huajiao Platform, as a network service platform, had a safety guarantee obligation to Wu Yongning and opposed it for failing to fulfill its safety guarantee obligation. Wu Yongning assumed "corresponding responsibilities." Although the court found that Wu Yongning himself should bear the main responsibility, and the Huajiao platform did not fulfill its security obligations, the court ignored the following two issues in the case: First, it did not realize that the field of live broadcast platforms does not belong to the E-

commerce Law. The scope of adjustment; second, the target of its adjustment is not the consumer of Article 38. As the only judgment applicable to this article that can be searched on the China Judgment Documents website, its erroneous judgment also tells us that the second paragraph of Article 38 can be applied to many online platform-related cases due to its wide scope of application. However, these are often easily confused as facts of the cases governed by the E-Commerce Law, which can easily lead the judge to incorrectly apply the law in the judgment, and the judge uses a consumer protection clause to protect the "operator on the platform". It also shows that there is a certain lag in judicial application of this law.

At present, China is not optimistic about the application of the new law to e-commerce platform operators. There are only a few judgments that can be found on the judgment website for such widely applicable laws as Article 38, paragraph 2 of the "E-Commerce Law". In actual judicial trials, many online disputes can be applied to Article 38, paragraph 2 of the E-Commerce Law, such as "The People's Court of Beijing Haidian District Regarding Shi Guodong and Hangzhou Alibaba Advertising Co., Ltd. and other sales contract disputes First-instance civil cases" and "Beijing Fourth Intermediate People's Court on Chen Bing and Beijing Jingdong Sanbailushidu Electronic Commerce Co., Ltd." and other online shopping contract disputes. It is a pity that these cases failed to quote the content of Article 38, paragraph 2 of the Electronic Commerce Law. [20] At present, China's judicial system should apply "corresponding responsibilities" more widely, such as applying it to the current common online car-hailing, but how to better apply the provisions of Article 38, paragraph 2 to this provision, Still need to be further clarified.

D. Analysis of the impact of "corresponding responsibilities" on the regulation of e-commerce platforms

What kind of regulation the e-commerce platform will have after the "corresponding responsibility" is introduced can be seen from two aspects: on the one hand, the "corresponding responsibility" will increase the cost of protecting consumers' rights, and encourage e-commerce platforms to evade the law. . Because the "corresponding responsibility" is actually a "to-be-determined responsibility", how to apply it needs to be further improved in practice. Based on this, the promulgation of the "corresponding responsibility" actually makes the "E-Commerce Law" suitable for the e-commerce platform The reason for the reduction of the penalty intensity of the "corresponding liability" is not that the penalty for the "corresponding liability" is higher than the joint liability or supplementary liability, but that the specific liability that the platform should bear under the situation of "corresponding liability" Before it is determined, platform operators are in a certain space to shirk their responsibilities. When this obligation to confirm responsibility requires proof by the aggrieved party, it will inevitably increase the litigation cost of the plaintiff and increase the difficulty of defending its rights. Due to the existence of this "to-be-determined responsibility", platform operators can rely on other similar laws To reduce or evade their own responsibilities, such as passing Article 44 of the Consumer Rights Protection Law, but this will increase the burden of proof by consumers. Or in accordance with Article

17 of the Tort Liability Law, which can enable e-commerce platforms to avoid possible joint and several liability and "corresponding liabilities" and make themselves bear the supplementary liability that is less liable. Therefore, compared with joint and several liability and supplementary liability, "corresponding liability" actually reduces the liability of platform operators in a disguised way in terms of assuming responsibility.

On the other hand, the establishment of "corresponding responsibilities" and the subsequent promulgation of Article 38 of the "E-Commerce Law" also created a more rigorous e-commerce system. Since there are clear provisions on the amount of fines, and different penalties are stipulated according to different circumstances, and administrative liabilities are introduced to restrict, this also makes the e-commerce platform "fear the law but not violate the law" to a certain extent; The maximum amount also enables the e-commerce platform to reduce the subsequent high compensation costs caused by the failure to fulfill the security obligations, and also enables the e-commerce platform to open up its hands and feet.

E. Improve the design of the "corresponding liability" legal system

In the process of perfecting the "corresponding responsibility" system, although the legislator formulated Article 83 of the Electronic Commerce Law and integrated the responsibility rules in public law with private law, its system also has certain flaws in practice. First of all, logically, the administrative agency is at the first pass in the review of the qualifications of the merchants on the e-commerce platform, followed by the e-commerce platform. Therefore, if the e-commerce platform is to be made to bear heavier substantive review responsibility for this, then the administrative agency should also be responsible for the substantive review. In fact, the administrative agency only needs to bear the formal review responsibility. The logic is not self-consistent. ; Secondly, although this article strengthens the punishment of platform operators through the supervision of administrative agencies, it does not substantially solve the situation that may increase the cost of consumer rights protection in the original article 38.

1. Legislative system design

Regarding the current legal system, the author believes that the improvement of the "corresponding liability" legal system should not only rely on Article 83 of the E-Commerce Law to pursue legal liabilities, or that it can be further improved in response to this idea, and it can also be treated in other ways. Legislation optimizes the system, and the author prefers to think that the original platform supervision method should not be revised, but the responsibility identification link should be carried out. Since my country's current tort liability system only exists as a state of infringement, it does not assume a proportion of the liability for the infringing subject's specific fault. In fact, this would have caused a problem: the overly harsh identification of platform responsibility. As consumers are already in a weak position, this will increase the cost and difficulty of protecting rights for consumers, and violate the requirements of regular verification and update of platform information stipulated in Article 27 of the "E-Commerce Law", leading to strict determination of responsibility.

Therefore, the Supreme People's Court can issue relevant judicial interpretations in the process of applying the law to further clarify the allocation of responsibilities and make judgments from multiple dimensions. If one of the dimensions fails to meet the standard, it is deemed to be liable (similar to a lack of shortcomings). Barrels). In order to achieve this, the determination can be made from the following aspects: the extent to which the infringer infringes or endangers the rights of the victim; the proportion of the aggressor's liability when the infringement is caused; the legitimacy of the aggressor's fault liability when the infringement occurs. This can not only reduce the cost of consumer rights protection, but also prevent e-commerce platforms from being unfairly identified.

2. System design in law enforcement

In the implementation of the above-mentioned relevant identification methods, when determining the dynamic change of the second point of the liability ratio, the relevant law enforcement agencies need to consider whether the platform conducts regular review of the business qualifications of the business. This concept was issued in 2013 in the "Network There are specific provisions in Article 23 of the "Measures for the Administration of Transactions", but because the measures are departmental regulations and have low effectiveness, they have not been used by the courts in relevant judgments until Article 27 of the Electronic Commerce Law clearly stated This provision has risen to the legal level of effectiveness, and matches the relevant "corresponding responsibilities" in paragraph 2 of Article 38. Therefore, when deciding whether the e-commerce platform has fulfilled its audit obligations or security obligations, it should not only be determined whether the e-commerce platform has fulfilled its review obligations when the operator moves into the platform, but also whether the e-commerce platform has a specific review system and regular review system. Review, and in Article 83 of the "E-Commerce Law", the market supervision and management department has already cited the supervision mechanism. As mentioned above, the market supervision and management department itself is at the first hurdle of access during the review process. It would be a little contradictory to let them supervise the illegal e-commerce platform subjects that they had agreed to access. Therefore, the author believes that it is necessary to design an independent market supervision agency, which can not only supervise the e-commerce platform, but also regulate the e-commerce of other regulatory agencies.

However, in practice, how to set up such an institution, and how to set up such an institution from the perspective of economic law, remains to be further explored. However, if such a corresponding institution is given its powers properly, it can help consumers better protect their rights without too restricting the vitality of e-commerce subjects. This is also in line with the legislative purpose of the E-commerce Law.

3. Judicial system design

Judicially, since "corresponding responsibility" is a legal responsibility that requires discretion, how the judge should apply specific legal responsibilities in specific judicial applications needs further study. According to the probability of the distribution of "corresponding liabilities" in the above analysis, the applicable liabilities are mainly

joint and several liabilities after the specificization, but the specific order becomes "provide evidence before determining the liability" This is contrary to the provisions of Article 44, Paragraph 1 of the Consumer Rights Protection Law, which stipulates that when the platform cannot provide the real name, address and effective contact information of the merchant, the consumer can request the platform to pay in advance. This makes the disadvantaged consumers more passive. Therefore, the judge can organically combine the concepts of applying Article 38, paragraph 2 of the Electronic Commerce Law and Article 44, paragraph 1 of the Consumer Rights Protection Law: The degree of carelessness on the e-commerce platform has reached a clear level When there is no need to argue, apply the advance payment to the "corresponding liability" and provide better economic protection for the disadvantaged consumers; in addition, whether the "corresponding liability" needs to be further specific to a certain legal liability The author prefers not to make specific formulations for the time being, but to temporarily delegate the subjective discretion to judges, and issue specific judicial interpretations to resolve such problems when the number of relevant cases has a certain generality.

In addition, when applying the "corresponding liability", the judge should also weigh the specific proportion of the security guarantee obligation that the e-commerce platform needs to bear. In this regard, the following aspects can be started: the violation of the security guarantee obligation and the damage effect The strength of the causal relationship; the degree of due diligence of the e-commerce platform in handling hazardous incidents; how much the platform profited from it; the level of the platform's ability to stop the hazard; the level of the platform's knowledge of the infringement.

Finally, with regard to cases where the people's courts have incorrectly applied legal provisions in the application of the Electronic Commerce Law, such as the case of extreme sports internet celebrity Wu Yongning falling from a building, it also warns that regular professional training for judges needs to be strengthened, and the e-commerce law For the relevant emerging clauses, judges with higher comprehensive qualities and better at the field are selected to make judgments, which can also better guarantee the effective implementation of the electronic e-commerce law.

V. Conclusion

The promulgation of the "E-commerce Law" marks that my country's e-commerce will enter a law-based benign development track. It fills the gaps in the basic law of my country's e-commerce field and created a precedent for my country's e-commerce legislation. [23] It established the framework of my country's e-commerce development and legal framework, and has a positive response to the problems arising from the development of e-commerce. [24] As a newly promulgated law, Article 38, paragraph 2 of the "E-Commerce Law" has its merits. The "corresponding responsibilities" established by it not only give a compromise answer to e-commerce platforms that violate security responsibilities. It also gave the "Electronic Commerce Law" and other laws a different direction of thinking when determining future liabilities, but at least for the moment, there are still problems in practice such as less application situations and errors in application. Up to now,

only one legal document on the Judgment Documents website is applicable to this law; and the judge's wrong application of the law in the "Extreme Sports Net Red Wu Yongning Falling Case". Therefore, to correctly play the role of adjusting the legal provisions of "corresponding responsibilities", it is necessary to improve the supporting system and measures from many directions. In short, e-commerce legislation should pay attention to the balance and coordination of the rights and obligations between e-commerce platforms and consumers: make changes in the recognition of responsibilities in legislation, introduce and improve the supervision system of administrative agencies in law enforcement, and how to guide judges in the judicial system. The application of this law is ultimately for the better implementation of this law.

From the above situation, there is still a lot of work that needs to be done in the current implementation of the Electronic Commerce Law. It is necessary to explore the experience of law application in practice and continuously improve the design of the legal system. Therefore, it is necessary to scientifically design the rights and obligations of both parties based on the relationship between the rights and obligations of platform operators and consumers in the "E-Commerce Law", effectively safeguard the personal and property rights of consumers, and ensure the healthy and sustainable development of the e-commerce industry.

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