

# Regulating hosting ISPs' responsibilities for copyright infringement

Citation for published version (APA):

Wang, J. (2016). Regulating hosting ISPs' responsibilities for copyright infringement: The freedom to operate in the US, EU and China. [Doctoral Thesis, Maastricht University]. Maastricht University. <https://doi.org/10.26481/dis.20161012jw>

## Document status and date:

Published: 01/01/2016

## DOI:

[10.26481/dis.20161012jw](https://doi.org/10.26481/dis.20161012jw)

## Document Version:

Publisher's PDF, also known as Version of record

## Please check the document version of this publication:

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## Propositions to the Dissertation

### Regulating Hosting ISPs' Responsibilities for Copyright Infringement: the Freedom to operate in the US, EU and China

Jie Wang

1. Hosting ISPs ought to be allowed to adopt the latest information technologies to optimize their services, although the foresaid optimization may make infringing materials more easily accessible.
2. The latest case law in the US, EU and China pays more attention to the intention of hosting ISPs and their duties to monitor specific materials, such as the infringing materials which are repeatedly uploaded and the copyrighted materials which are highly valuable, when deciding hosting ISPs' liability. Nevertheless, these newly-developed liability criteria need to be refined so as to avoid imposing unreasonable burden on hosting ISPs.
3. In notice-and-takedown procedures, copyright owners ought to shoulder the responsibility of seeking and identifying infringing materials, and the duty of hosting ISPs is to facilitate the operation of this procedure, such as expeditiously removing the suspected infringing materials after receiving notices, forwarding notices and counter notices. Regarding wrong deletion, copyright owners rather than hosting ISPs should be imposed more duties to reduce it.
4. When implementing identity disclosure mechanisms, hosting ISPs are not subject to the active obligation of protecting Internet users' privacy but rather a passive obligation of not disclosing Internet users' personal data without the orders from courts or competent authorities.
5. Self-regulation can work as an important and efficient way to solve the copyright disputes between copyright owners and ISPs.
6. Although the rules at legislative level are per se homogenous in different jurisdictions, the courts in these jurisdictions may interpret these rules in quite different ways because of the legal traditions rooted in their own jurisdictions. Therefore, legal transplant may not be capable of fulfilling its primary goal.
7. The private arrangement between copyright owners and ISPs always pay far less attention to Internet users, which may result in negative externalities on Internet users. Therefore, government may need to be engaged in negotiating such private arrangement so as to prevent the final arrangement from trampling Internet users' interests.
8. Codes of conduct reached between copyright owners and hosting ISPs are always criticized as non-binding, and courts may refer to the norms set in codes of conduct when deciding cases so as to grant binding power to the codes of conduct.