# LEGAL REGULATION APPROACH TO THE ALIENATION OF PRIVATE POWER OF ONLINE TRADING PLATFORMS

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## I. INTRODUCTION

As a nascent commercial entity in the digital economy, the operator of an online trading platform integrates the dual attributes of a market and an enterprise, thereby becoming the primary model of resource allocation and organization in the digital era. By virtue of their advantages in market share and control over digital infrastructure, online trading platforms have acquired the ‘quasi-legislative power’ to formulate rules, the ‘quasi-judicial power’ to determine rights and liabilities, and the ‘quasi-administrative power’ to impose penalties. They utilize these powers to optimize management, playing the dual roles of platform operators and managers. This enables them to influence and dominate consumers and merchants on the platform unilaterally. This capability transcends the equality inherent in traditional civil and commercial relations, gradually evolving into a form of ‘private power’ that shapes the interplay between public power, private power, and private rights within the ‘government-platform-society’ structure.

As platforms continue to grow, the public nature of private power becomes increasingly prominent, rendering their legal status similar to that of ‘common carriers’ and ‘gatekeepers’. Platform private power has expanded from initial technical power and information power to market power and economic power, further penetrating into social power and political power.[1] The private power possessed by online trading platforms plays a crucial role in ensuring transaction security, safeguarding consumer rights, regulating market behavior, and promoting the public interest, serving as the cornerstone of effective platform governance. However, we must be alert to the gradual emergence of risks associated with private power alienation. At the level of technical power, platforms utilize automated algorithmic decision-making to implement price differentiation and data concentration, which could affect consumers’ rights to information, choice, and privacy; at the level of economic power, certain platforms abuse their dominant market positions to implement

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1 *See* Fang Xingdong & Zhong Xiangming, *Essence and Countermeasures of Anti-Monopoly of Internet Platform*, 2 Modern Publishing 37, 37 (2021).

strategies of 'forced exclusivity', self-preferencing, and data blocking, with potential impacts on market competition and merchant rights. At the level of management power, platforms expand the scope of exemptions through internal rules and unilaterally adjust user rights, giving rise to more disputes. These phenomena have introduced uncertainties into the digital market order and intensified the imbalance among participating parties, making the legal regulation of the private power of online trading platforms an urgent task.

## II. INQUIRY INTO THE CAUSES OF THE ALIENATION OF PRIVATE POWER OF ONLINE TRADING PLATFORMS

### *A. The Conflict Between the Private Interest and Public Nature of Online Trading Platforms*

As an emerging organizational form of social production in the digital economy, the online trading platform is a new type of commercial entity that assumes partial responsibilities for public management, playing the role of a 'quasi-public organization'. When exercising regulatory power, it may face conflicts between the enterprise's interests and the public interest. Therefore, when the platform exercises private power characterized by quasi-judicial power, quasi-administrative power, and quasi-legislative power, it faces the risk of power alienation. 'The platform's private interest and public nature are irreconcilable. Public nature requires openness, sharing, and neutrality, while private interest drives the platform to exercise exclusivity, monopoly, and discrimination.'[2] The private interest of the online trading platform drives it to maximize its own benefits, while its public nature requires it to prioritize public needs. This contradiction permeates platform operations, requiring platforms to balance economic benefits with the public interest.

From the perspective of safeguarding the public interest, on the one hand, online trading platforms should avoid damaging personal privacy and other data-related rights through their own actions; on the other hand, it is essential to ensure that giant digital platforms do not utilize their 'gatekeeper' status to restrict competition or implement other forms of abusive behavior. However, as a for-profit legal person, the platform's self-regulation and daily management are centered on profit maximization. Management behaviors that cannot directly generate economic returns often lack effective incentives. From the perspective of organizational rationality, the interests of platform enterprises are highly positively

2 Zhang Chenying, *Anti-Monopoly Regulation of Internet Platforms from the Perspective of Publicness*, 4 Chinese Journal of Law 149, 158 (2021).

correlated with the development of their platform space. Their exercise of private power will not come at the expense of platform development. As for-profit private subjects, platforms may neglect the maintenance of public values in pursuit of profit maximization, thereby increasing the risk of private power alienation.

### *B. The Imbalance of Rights and Obligations of Online Trading Platforms in Multilateral Legal Relations*

*1. The Imbalance in the Legal Relationship Between Private Power and Private Rights.* — The imbalance between private power and private rights in legal relations is mainly reflected in the unequal status of platforms and users or merchants arising from technological and resource advantages. Users have little say in the formulation of platform rules and often find themselves in a passive position under platform regulation. In the early stage, platforms offer favorable conditions to attract merchants. Once their market share expands, however, platforms further weaken the bargaining power of the weaker party by restricting merchants' rights and increasing their obligations, thereby intensifying the unequal relationship. This imbalance is manifested in the following aspects.

First, the contractual relationship between platforms and users differs from the traditional contractual relationship. Standard-form terms (contracts of adhesion) are widely used on the platform. The drafting party and the counterparty (users, merchants) hold disparate statuses in the contracting process. Users are naturally in a passive position of acceptance and have little room for negotiation regarding the standard terms provided by the platform. As the weaker party, users are usually excluded from participating in the formulation of agreement terms, leaving them with a choice between full acceptance and complete withdrawal. As a result, the agreements on the platform lose the possibility of true mutual assent between both parties.

Second, the content of the agreements often overemphasizes the platform's own rights and the weaker party's obligations, while rarely mentioning or vaguely describing the platform's own obligations and liabilities for breach of contract. Platforms should establish systems in accordance with the law based on the fair distribution of rights and obligations, complying with legal responsibilities such as network security, information dissemination, data protection, content security management, and service licensing, so as to ensure the balance of rights and obligations of all parties.[3] However, in practice, platforms have obviously overstepped their

3 *See* Sun Yixiao, *Regulation of Online Platform Self-Regulation: From Power Generation to Power Adjustment — From the Perspective of Algorithmic Media Platforms*, 12 E-Government 69, 70 (2021).

bounds in substantive content such as specific rights and responsibilities. Especially in recent years, with the accumulation of technology and capital, certain platforms have gradually risen, and the rules they have established have constantly eroded the rights space of other private subjects. This is mainly because, although the rules set by the platform superficially provides guidance on the behavior of various subjects on the platform, it is primarily about the distribution and adjustment of interests between the platform, the government, and users.[4] Therefore, driven by the 'Matthew Effect' and the goal of profit maximization, it is difficult for platforms to adhere to the principle of value neutrality. In rule setting, they often overemphasize the fulfillment of user obligations, while imposing relatively weak constraints on their own behavior.

Third, by virtue of their dominant position, platforms force the weaker party to accept 'forced exclusivity' arrangements. This practice tends to restrict the trading opportunities of the weaker party on other platforms, thereby deepening the unequal relationship between the two parties. Although there is an interdependent relationship between the platform and merchants/consumers, the term 'user' is merely a general term that indicates a one-to-many relationship between the platform and users. For scattered user groups, it is difficult for them to unite against the platform, which increases the risk of unilateral control by the platform. According to *Hohfeld*'s analysis of rights theory, platform private power enables it to unilaterally change legal relations.[5] When users or merchants engage in violations, the platform will rely on its dual identities as 'operator' and 'manager' to apply the legal framework of 'traditional commercial equal subjects' to allocate liability, rather than assuming corresponding obligations in their capacity as 'exercisers of private power', ultimately evading its due statutory obligations indirectly while exercising private power.

In summary, by formulating rules and using means such as algorithmic procedures, platforms have established a structure of rights and obligations that favors the platform itself to a certain extent. This tendency leads to inequality in status between the platform and private rights subjects, making it difficult for the private rights of merchants and users on the platform to obtain effective relief.

*2. The Imbalance in the Legal Relationship Between Public Power and Private Power.* — Public power may exert influence or make supplementary corrections before and after the operation of platform private power through authorization, participation, approval, and other means, so as to protect private

4 *See* CASS R. SUNSTEIN, REPUBLIC.COM, at 217 (Shanghai People's Publishing House, 2003).

5 Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 Yale Law Journal 16, 44 (1913).

rights. The imbalance between the level of government intervention and the development stage of platforms is the primary manifestation of the imbalance in their legal relationship, which is specifically reflected in the following two aspects.

First, regulatory intervention of public power lags behind the development of private power. In the early stages of the development of online trading platforms, the government's main focus was on supervising and managing the operation of the external market, while adopting a *laissez-faire* attitude towards the self-management of the platform's internal market. This created a relatively loose development environment for online trading platforms to a certain extent. In fact, regulation by public power only began to intervene after online trading platform operators had already entered a stage of rapid growth, which needed to keep pace with the actual development of platform private power.

Second, there is a mismatch between the content of public power supervision or regulation and the stage-specific characteristics of platform development. As the scale of the platform expands and its influence increases, the risk of overregulation may arise. With the expansion and alienation of platform private power, the government recognizes the existence of private power by setting obligations, gradually shifting from *ex-post* correction to the *ex-ante* definition of the scope of private power. This shift directly leads to an imbalance in the legal allocation of powers and responsibilities of online trading platforms. On the one hand, although the law grants platform operators relatively broad regulatory authority, it does not clearly stipulate corresponding regulatory responsibilities at different stages of the development of the regulated subject. The configuration of power and responsibility gradually begins to reach a balance only when the regulated subject develops to a certain extent. On the other hand, the law sets relatively generalized review duties for network platforms, including auditing, information reporting, and handling and reporting of illegal acts, potentially increasing the operational costs of platforms. In the process of handling and reporting illegal acts, platforms are entrusted with the heavy responsibility of determining illegal acts. However, since platforms lack professional legal knowledge and law enforcement power, fulfilling this responsibility could be challenging. Therefore, platforms have to invest heavily in developing technologies for identifying illegal activities, hiring review personnel, and dealing with lawsuits caused by review errors. Although large, mature platforms can bear these costs, for smaller or start-up platforms, these costs may become a major obstacle to their survival and development. In addition, as the public nature of platforms becomes increasingly prominent, with platforms playing the role of 'quasi-public facilities' in cyberspace, the public supervision power they wield gradually increases, and the phenomenon of 'erosion' of public power becomes increasingly obvious.[6]

The development of private power in online trading platforms has given rise to complex and changeable multilateral legal relationships, the content of which evolves with the development stage of the platform. Currently, the imbalance of rights and obligations conflicts with the principle of legal consistency, resulting in legal contradictions and the alienation of the relationship between platform private power, private rights, and public power. Therefore, it is urgently necessary to exercise effective supervision over platform private power, correct the imbalance, and achieve a dynamic balance.

## III. THE REGULATORY DILEMMA OF THE ALIENATION OF PRIVATE POWER OF ONLINE TRADING PLATFORMS

As commercial entities in market economic activities, online trading platforms enjoy extensive autonomy within the framework of private law. Their exercise of power should follow the private law principle that 'everything which is not forbidden is allowed', meaning that platforms can make autonomous decisions where not explicitly prohibited by law. At the same time, on the one hand, when exercising private rights, platforms do not need to strictly follow the public law principle of 'no action without authorization' and the model of power exercise under which 'statutory duties must be performed'. In this context, the exercise of private power by online trading platforms may affect the stability of the basic legal and regulatory framework. On the other hand, platform operators take profit maximization as their primary goal, often placing the protection of user rights and the public interest in a secondary position. Furthermore, platforms hold management power over public space and develop rapidly in an environment characterized by the free expansion of private rights. This allows platform enterprises to gain excessive discretion to exercise power for private gain, thereby posing higher requirements for legislative norms, law enforcement supervision, judicial accountability, and internal constraints on platform private power.

### *A. Legislative Challenges in Regulating the Private Power of Online Trading Platforms*

*1. Limitations of the Private Law Path for Regulating Platform Private Power.* — From the perspective of private law, the exercise of private power

6 *See* Chen Chengwei, *Endogenous and Exogenous: Generation, Interaction and Adaptation of Self-Regulatory Power in E-Commerce Platforms*, 4 Journal of Kunming University of Science and Technology (Social Sciences) 18, 24 (2023).

by online trading platforms under the current civil law framework is regarded as an ordinary civil activity, with related disputes mainly resolved under the principles of freedom of contract and autonomy of will. However, this approach may not be sufficient to provide comprehensive protection for the private rights of the weaker party.

On the one hand, there are limitations of contract law in regulating platform management power. The *Civil Code* contains detailed provisions on standard terms signed between online trading platforms and users. The traditional civil law regulation approach focuses on the regulation of standard terms, with emphasis on the provider's duty of reminder and notification (procedural control) and the determination of absolutely invalid terms (substantive control). Yet it may not adequately address challenges arising from the formulation of service agreements and transaction rules by platform operators. In terms of procedural control, while the traditional approach emphasizes the duty of reminder and notification, such reminders in practice tend to be formalistic. Reliance on a single regulatory instrument can hardly accommodate the personalized needs of consumers, resulting in insufficient protection of certain consumer rights. In terms of substantive control, although it focuses on identifying invalid terms based on an imbalance of interests, consumers are in a weak position, and platforms may formulate terms that favor their own interests and affect consumer rights. Moreover, legislators and regulators face difficulties in assessing the fairness of interest distribution, which may limit the effectiveness in control.

On the other hand, there are limitations of tort law in regulating platform technical power. Articles 1194 to 1197 of the *Civil Code* have developed the network tort liability stipulated in article 36 of the *Tort Liability Law*, dividing it into two types: direct tort liability and indirect tort liability. These provisions lay out basic rules for network tort acts and construct an overall framework for various network tort liabilities. Articles 1195 to 1197 of the *Civil Code* stipulate the indirect tort liability of network service providers, further refining the 'safe harbor principle' and extending the 'notice-deletion' procedure into a full process of 'notice → forward notice (taking necessary measures) → counter-notice → second forward notice → restoration', with more comprehensive provisions on applicable scope scenarios, applicable conditions, legal liability consequences, and post-relief procedures.[7]

However, the indirect infringement clauses of the *Civil Code* lack flexibility in application. When consumers on online trading platforms suffer infringement, these provisions are difficult to apply in the field of damage

7 Zhang Ronggang & Wei Chuan, *Analysis of Digital Economy Governance Efficiency of the Civil Code*, 2 Journal of Beijing Institute of Technology (Social Sciences Edition) 95, 101 (2022).

compensation. The reasons can be summarized as follows. First, these provisions are the extension and development of the 'safe harbor principle' and 'red flag principle' in China, with a prominent focus on intellectual property protection. They require that platforms take 'necessary measures such as deletion, blocking, and disconnection of links' upon receiving infringement notices to prevent further damage to intellectual property holders' rights and interests in the network environment. Nevertheless, this practice cannot provide substantive remedies for consumers who have already suffered losses in economic rights or personality rights due to infringements. Second, the liable party under these provisions is the 'network service provider', which broadly applies to various network platforms and upholds the value orientation of platform-neutral liability. This orientation is suitable for the field of intellectual property protection with strong legal expertise. However, network service providers are not judicial organs and may face difficulties in conducting a comprehensive review of information released on the platform. Therefore, under normal circumstances, as long as an ordinary person believes that certain information does not have an infringing nature, the network service provider can be exempted from bearing corresponding liability. Third, there is a certain degree of misalignment between the logic of liability attribution and the business model of online trading platforms. The current tort law follows the logic of 'no fault, no liability', focusing on the examination of 'knowing or should have known' regarding the platform's subjective fault. However, in the era of algorithmic recommendation, platforms have transformed from passive 'information intermediaries' to active 'traffic manipulators'. Platforms directly obtain huge traffic monetization returns through algorithmic distribution but evade the duty of care that matches their profitability under the guise of 'technological neutrality'. This mechanism of 'privatized profits and socialized risks' makes it difficult for the current liability attribution system based on subjective fault to effectively respond to the systemic infringement risks posed by algorithmic recommendations.

*2. Limitations of the Public Law Path for Regulating Platform Private Power.* — In recent years, with the rapid development of the platform economy, there has been a global trend of strengthening the responsibilities of platforms. High fines for monopolistic conduct have been frequently imposed on platform operators. Regulators have increasingly focused on the management of platform responsibilities by promulgating various regulations and standards. However, if administrative responsibilities are set too strictly or are not clear enough, it may cause platforms to reduce or even terminate certain business activities to avoid risks, which could hinder the innovative development of China's digital economy and affect its international competitiveness.[8] If regulatory responsibilities are excessively shifted to platforms, it may not only cause them to deviate from neutrality but also further expand platform power as a result of excessive regulatory obligations. This may also lead to disorderly expansion of platforms, which could both disrupt the normal market trading order and add to social governance difficulties.

The public law approach enhances platform responsibilities but exhibits certain limitations. First, current laws impose administrative third-party obligations on platforms, requiring them to assist in supervision and assume no-fault liability. This approach does not align with the traditional theory of administrative authorization or delegation, and the imposition of no-fault liability on platforms may raise concerns regarding procedural fairness. Second, strict liability may redistribute compliance pressures onto users and merchants (as illustrated by Pinduoduo's 'one fake, tenfold compensation' policy), which may lead to service agreements being perceived as overly restrictive. Third, the addition of public law administrative obligations to platforms provides a legal basis for the expansion of platforms' private power. Finally, the liability system associated with the expansion of platform private power is limited to administrative liability, with insufficient civil remedy channels available. Platforms in violation only face fines and are not required to disclose or suspend the use of algorithms, which cannot fundamentally solve the problem. Precautionary measures and algorithm transparency cannot be fully realized under this model. As a result, consumers may lack incentives to protect their rights, creating practical obstacles to the protection of legitimate rights and interests.

### *B. Enforcement Challenges in Regulating the Private Power of Online Trading Platforms*

In 2022, the Political Bureau of the CPC Central Committee proposed requirements for the normalized regulation of the platform economy to promote its standardized and healthy development, and to complete the special rectification of platform enterprises. China's regulatory strategy has transitioned from a loose model to an inclusive and prudent approach, then to strengthened special supervision, and finally to normalized supervision, comprehensively strengthening and improving the main responsibility of platform enterprises.

However, traditional enforcement methods show limitations in dealing

8 *See* Huang Shaokun, *Digital Private Power and Legal Regulation on Self-Preference by Platform*, 3 The Jurist 28, 31 (2025).

with massive and online transactions. First, enforcement lacks sufficient timeliness. Although relevant institutional arrangements have been introduced to regulate the abuse of power by online trading platforms, some of these rules are at a relatively low level in the legal hierarchy, which may affect their effectiveness. Second, professionalism needs to be improved. The government faces limitations in information and technology when regulating private power misconduct. Although platforms are required to enhance algorithm transparency and provide necessary explanations, algorithms are usually protected as trade secrets, as they constitute the core competitiveness of enterprises. Balancing the algorithm-related rights and interests has thus become an urgent issue to be addressed. Third, certain systemic aspects could be further refined. China has initially established a graded and classified platform supervision model, but the 'gatekeeper' system is relatively scattered and lacks unified coordination. Although relevant laws and regulations guarantee the safety of the digital economy, the concept and judgment criteria are not unified. For example, the definition of 'super large platform' varies in different documents, and there is no clear definition or method for determining 'active users'. The *Personal Information Protection Law* embodies the concept of classified supervision, but the interpretation and definition of relevant concepts are not clear enough. Further exploration is needed on how to apply the regulations in practice and on the differences with special platforms.

### *C. Judicial Challenges in Holding Platform Private Power Accountable*

*1. Inconsistent Understanding of the Content and Standards of Legal Obligations of Online Trading Platforms.* — Legislative ambiguity and principled expressions have left room for interpretation regarding the content and standards of civil obligations of online trading platform operators. In addition, judicial adjudication often balances the value orientations of inclusiveness and prudence to encourage innovation in the digital economy and strict regulation to protect consumer rights. In the absence of clear legislative guidance, different courts in different periods may assign different weights to the values of 'development' and 'safety', leading to divergent approaches among judges in determining the standards and content of platform civil obligations. This divergence is mainly reflected in the following three levels.

First, the understanding of 'knowing or should have known' lacks uniformity. Paragraph 1 of article 38 of the *E-Commerce Law* states that where an e-commerce platform operator knows or should have known that platform operators sell goods or provide services not meeting the requirements for guaranteeing personal and property safety or infringe upon the lawful rights and interests of consumers, and fails to take necessary measures, it shall bear joint and several liability with the platform operator in question. However, this clause does not elaborate on specific circumstances constituting ‘knowing or should have known’, nor does it clarify the criteria for such determination. As a result, judicial organs may lack detailed operational criteria when applying this clause. Most judges tend to follow the traditional path of the existing ‘safe harbor principle’ and ‘red flag principle’ in network infringement cases, interpreting ‘knowing or should have known’ as ‘presumed knowledge’, that is, whether the online trading platform operator knows of the third party’s infringing act. If the plaintiff cannot provide sufficient evidence to prove that the online trading platform actually knew or should have known that its platform was used to infringe on consumer rights, the platform’s liability will be considered lighter. Only if there is evidence proving that the platform clearly knows of the infringing acts by the internal operator can the platform be deemed to bear joint and several liability. The technological gap poses challenges for consumers in obtaining and retaining electronic evidence, making it difficult to prove that the platform had knowledge of the internal operators’ infringing acts.

Second, the content and standards of review obligations remain to be clarified. Regarding the obligation to review operator identity information, courts generally believe that platform operators bear a formal review obligation under a prudent duty of care standard. Under the reasonable person standard, formal review typically involves checking corresponding certificates and documents,[9] rather than conducting a substantive review. Some scholars have analyzed 212 judgments that explicitly address the platform’s review obligation of operator identity information. In nearly half of the judgments, courts usually find that the platform has fulfilled its statutory review responsibility after the platform proves that it has reviewed the operator’s identity, without delving into the specific content or standards of the review. The judicial understanding of the review responsibility of platform operators has led to confusion in the determination of platform liability, equating the platform’s review behavior with its due review responsibility, thereby ignoring the key steps of evaluating whether the platform review meets statutory standards. This may limit the determination of platform liability for negligence. However, currently, relying solely on license review to verify the identity information of operators is no longer sufficient to meet consumers’ trust in platforms. With the continuous enhancement of technological capabilities, the responsibilities and objective standards of platform operators in information auditing need to be improved

9 *See* Xue Jun, *The Interpretation of the Information Check Responsibility of Online Transactions Platform Operator Subject*, 3 Research on China Market Regulation 33, 35 (2021).

correspondingly to meet the demands of the times and social development.

Third, the content and determination of security guarantee obligations show variation in practice. Since the *E-Commerce Law* came into force on January 1, 2019, a considerable number of judicial cases involving article 38 have accumulated. The wording of article 38 regarding the 'obligation of guaranteeing security' and 'corresponding liability' is both brief and vague, which not only brings challenges to judicial judgments but also leaves broad room for interpretation and application in judicial practice. A search of civil judgment documents publicly released by the people's courts at all levels nationwide from early 2019 to late 2025 reveals that there are over 1,200 cases where article 38 of the *E-Commerce Law* serves as the adjudicative basis or the primary focus of dispute. Among these cases, courts ultimately ruled that platform operators had breached their safety guarantee obligations and were liable for civil responsibility in approximately 130 cases, accounting for about 10.8% of the total. Specifically, judges held platforms jointly liable in around 80 cases, found them to bear supplementary liability in roughly 40 cases, and determined that they should assume proportionate liability in about 10 cases.[10] E-commerce platforms that fail to fulfill such obligations should bear 'corresponding liability'. The ambiguous legislative expression has led to a discretionary space for judicial adjudication. The specific forms of civil liability they bear may vary, and the results are diverse. Such variations in judicial adjudication standards reflect different understandings of the relevant provisions and indicate that a consensus judicial approach has not yet been fully formed.

*2. Divergence in Liability Characterization for Abuse of Private Power by Online Trading Platforms.* — First, the dilemma in applying tort liability. In cases involving whether algorithms constitute discriminatory infringement against consumers, judges need to strictly follow the principles and elements of traditional tort liability law, comprehensively assessing whether there is damage, an infringing act, fault, and causation. Only when consumers can directly perceive discrimination and provide corresponding evidence can such discriminatory behavior be accurately identified. Therefore, consumers' ability to recognize discrimination and their burden of proof have become important factors affecting the effectiveness of the legal regulation on algorithmic discrimination. In cases involving algorithmic discrimination and ranking algorithm discrimination, the market disorder caused by unfair competition and the restriction of other merchants' trading opportunities make it difficult to effectively prove the damage to consumer rights and the

10 The data is sourced from the China Judgments Online and the PKULAW.

corresponding causal link.

In judicial cases, taking the reputation dispute case between Baidu and Jinde Company as an example, the search engine Baidu displayed a combination of words containing negative information, such as 'liar', when searching for the keyword 'Jinde Pipe Industry'. The court applied the principle of technological neutrality, holding that search results were not subjectively manipulated by Baidu, and thus rejecting Jinde Pipe Industry's claims.[11] In the trial of the *Ren Moujia Case*, the judge, after careful analysis, believed that the keyword associations automatically generated by the search engine were character combinations naturally formed based on the algorithms during information collection and processing. This combination had no actual meaning of a name, and therefore does not constitute an infringement of the name rights of the other party.[12] In another case concluded by the Beijing Internet Court, *Li* sued a company for reputation infringement by the algorithmic risk control system. The plaintiff, an employee of a financial institution, had his account banned after his chat messages on a dating app automatically triggered the platform's risk control mechanism, which he alleged had damaged his reputation. The judge believed that the platform's behavior constituted its supervisory responsibility performed for the public interest in accordance with the law, and there was no infringing act.

Second, the dilemma in applying liability for breach of contract. Compared to tort claims with higher requirements for burden of proof, consumers and merchants on the platform tend to choose less demanding breach of contract lawsuits to defend their rights in practice. However, judges often exclude platform liability on the grounds of platform pricing freedom and consumer consent to platform rules. For example, in the first case where a consumer sued an online trading platform for breach of contract regarding an intelligent retrieval service, the plaintiff *Zhao* claimed that Taobao's ranking algorithm discrimination constituted a breach of contract. The Hangzhou Internet Court ruled that the two parties had not reached an agreement on the specific standards of retrieval services, so it did not constitute a breach of contract. In the dispute between Beijing Sankuai Technology Co., Ltd. and *Liu*, *Liu*, as the plaintiff, raised the issue that he placed an order 13 minutes earlier than his colleague on the same food delivery service, but paid one extra yuan. When *Liu* filed an appeal, he submitted evidence that the same merchant charged different fees to different customers for services, provided at almost the same time and place, attempting to prove that the platform

11 Civil Final Judgment No. 17680 of Beijing First Intermediate People's Court (2009).

12 Civil First-Instance Judgment No. 3719 (Jing 0491) of Beijing Internet Court (2019).

implemented price fraud based on whether customers were new or existing, using big data technology. However, the court held that dynamic adjustment of delivery fees was a merchant's autonomous business decision based on changes in platform transaction volume. The evidence provided by *Liu* was insufficient to prove that the merchant used big data technology to implement differential pricing strategies for new and old customers, so the claim was not upheld.[13]

At the same time, it is difficult to gain support in judicial practice to question the reasonableness of platform rules solely based on the theory of liability for breach of contract. In cases involving *Fuzhou Jiunong Trading Company vs. Shanghai Xunmeng Information Technology Company*[14] and *Wuxi Annie Zhenxuan E-Commerce Company vs. Shanghai Xunmeng Information Technology Company*,[15] the plaintiffs both questioned the platform's self-formulated liquidated damages clause — liquidated damages are set at 10 times the standard amount — believing that it was too strict and infringed on their legitimate rights and interests. However, during the trial of these two cases, the courts held that the 'one fake, tenfold compensation' clause set by the defendant did not conform to the traditional concept of 'liquidated damages', and therefore rejected the plaintiffs' claims. The court's reasoning was mainly based on the following views. On the one hand, 'one fake, tenfold compensation' is not a traditional concept of liquidated damages, but a special provision with a punitive nature as well as a means of platform standardization and management. On the other hand, platform rules do not take the form of traditional one-to-one contracts, but are reached through consultation between the platform and massive users, involving interests not only of the platform and merchants but also of the vast number of consumers and even the public interest. Therefore, the courts held that the plaintiff's questioning of the 'one fake, tenfold compensation' standard was untenable.

*3. Divergence in Basic Recognition of New Digital Rights.* — Over the past five years, the number of disputes related to personal information and data rights in China has been increasing year by year, reflecting the need to adjust the scope and boundaries of civil rights in the digital economy era. Judicial trials of cases involving personal information face multiple challenges, such as balancing legal application and clarifying the scope of information. In the *Zhu Ye vs. Baidu Privacy Dispute Case*,[16] the first-instance and second-instance courts

13 Civil Final Judgment No. 9501 (Xiang 01) of Changsha Intermediate People's Court of Hunan Province (2019).

14 Civil Final Ruling No. 10527 (Hu 01) of Shanghai First Intermediate People's Court (2018).

15 Civil First-Instance Judgment No. 11642 (Hu 0105) of Changning District People's Court of Shanghai Municipality (2017).

16 Civil Final Judgment No. 5028 of Nanjing Intermediate People's Court of Jiangsu Province (2014).

adopted different standards for determining the damage to the consumer's personal information rights and interests. The first-instance judgment did not fully consider the distinction and identifiability of information, which may hinder the free flow of information. At present, the academic and practical circles have not reached a consensus on whether personal information constitutes rights or interests, nor on its protection approaches under civil law. If privacy standards are used to protect all personal information, it will break the balance between protection and circulation, posing challenges to judicial practice.[17] In tort law, the definition of rights and interests affects the degree of protection and the scope of platform obligations. Assessing information damage requires first determining whether the information qualifies as personal information and falls within the scope of privacy, rather than uniformly judging such infringements as violations of privacy rights. Data-related disputes concentrate on areas such as big data 'discriminatory pricing', involving the definition of data property right and the protection of rights and interests. The *Civil Code* has included data and network virtual property under civil law protection, but the nature of virtual property remains controversial. Judges agree that platforms have responsibilities to provide protection and assistance in virtual property transactions, but when handling tort cases, they do not fully consider the difference between virtual property and traditional property rights, and platform obligations should match transaction characteristics.

## IV. REGULATORY PATHS FOR THE ALIENATION OF PRIVATE POWER OF ONLINE TRADING PLATFORMS

The formation of private power of online trading platforms is a combined result of insufficient regulation and the externalization of enterprise management power in the context of the information society and digital economy. With the rapid growth of the platform economy, the expansion of platform private power and its negative externalities have become increasingly prominent, and the impact on private rights and public power cannot be overlooked. Traditional institutional frameworks offer valuable insights but require further development in regulating private power. Therefore, it is particularly important to reflect deeply on the existing approaches to government governance and actively explore new regulatory models.[18]

17 *See* Zhang Xinbao, *On the Personal Information Protection Clauses in the General Provisions of the Civil Law*, 1 Peking University Law Journal 54, 65-67 (2019).

18 *See* Chen Kexiang, *The Transformation of Internet Public-Domain Governance Structure and Development of Administrative Organization Law*, 5 Oriental Law 74, 82 (2022).

### *A. Responsive Legal Regulation Model from the Perspective of Meta-Regulation*

Meta-regulation aims to standardize the internal management mechanisms of platforms, that is, to re-regulate platform self-regulation. This means that direct legal intervention continuously decreases, shifting from imperative and mandatory control to a participatory and cooperative indirect regulation model that is more open and inclusive. It guides, incentivizes, and encourages platform enterprises to strengthen self-regulation through principled legislation and flexible law enforcement, so as to maximize the positive externalities of their self-regulation, mitigate negative externalities, and address regulatory needs related to platform private power alienation. Under the guiding concept and institutional framework of meta-regulation, enterprises will formulate more targeted and practical regulatory measures for their internal normative systems and business activities to ensure compliant operation.[19]

The theory of responsive regulation provides a collaborative perspective for integrating 'legal regulation and platform autonomy'. Facing digital social problems and platform private power risks, the responsive legal regulation model offers new ideas for effective governance.

*1. Emphasizing the Diversification of Regulatory Subjects.* — In the legal regulation of private power of online trading platforms, the following issues should be emphasized. First, the government should acknowledge and respect the rationality of the existence of platform private power, which stems from the platform's self-regulation mechanism. Such rules are the product of collaboration between operators and participants, while platforms also hold advantages in information and technology. Direct government regulation may lead to negative effects due to information asymmetry. Therefore, the rationality and effectiveness of platform private power need to be fully considered in regulation. Furthermore, the alienation of platform private power should serve as the prerequisite for the government to initiate regulation. The government should intervene only when platform private power is alienated, and such intervention shall aim at 'assisting the platform in fulfilling regulatory duties'. Second, the government needs to cultivate and improve regulatory awareness and capacity among various subjects. Re-regulating platform private power aims to assist the platform in fulfilling regulatory duties. The government's re-regulatory power has symbolic

19 *See* Jiang Hui, *The Dilemma of Platform Governance in Digital Economy Era and Its Way Out Under the Rule of Law*, 6 Studies in Law and Business 31, 37 (2022).

significance, with public power serving as the ultimate guarantee. Finally, other subjects should be introduced for supplementary supervision. Social organizations and users should play a supervisory role, and consumers and merchants should transform their roles. The Internet can generate public opinion pressure to supervise both platforms and the government. Industry associations for online trading platforms should improve relevant standards and enhance information disclosure, while e-commerce associations should strengthen policy communication to create a fair market environment.

*2. Highlighting the Escalation of Regulatory Intensity.* — The responsive legal regulation model suggests adopting a progressive three-step strategy. First, platform self-regulation should be given priority. Second, when the rights and interests of users and platform merchants are damaged, internal and external platform dispute resolution mechanisms should be utilized for relief. Third, public power command-and-control regulation may be adopted if necessary. The regulatory intensity gradually increases across these three scenarios, the degree of public power intervention increases, the risk of platform abuse of private power decreases, and the government's exercise of public power should be the last resort.

The first step is to prioritize the construction of internal self-supervision mechanisms on the platform. Platform operators are more likely to identify internal issues due to their closed business models and advantages in information technology. The government can guide and supervise platforms to standardize their exercise of power, establish indirect supervision mechanisms,[20] clarify responsibilities of the platform, delineate the boundaries of private power, and promote platform self-supervision. The second step is for the judicial authorities to intervene after the failure of self-regulation by platform enterprises, resulting in damage to consumer rights and interests and triggering lawsuits. Theoretically, a sound legal system would enable the judiciary to effectively address such disputes, but defects in the legal system may affect the deterrent effect and lead to ineffective enforcement. In light of this, proceeding to the third step, administrative organs should initiate administrative enforcement procedures in accordance with the law if they detect obvious potential damage. When distributing residual legislative and enforcement powers between judicial and administrative organs, it is necessary to weigh the degree and nature of legal incompleteness, the ability to restrain misconduct, expected damage, and negative externality impact.[21] The capacity to restrain misconduct refers to the ability to clearly describe the abusive

20 *See* Hou Liyang, *On the Legal Subject Status of Internet Platforms*, 2 Peking University Law Journal 346, 349 (2022).

21 Katharina Pistor & Xu Chenggang, *Incomplete Law — A Conceptual and Analytical Framework and Its Application to the Evolution of Financial Market Regulation*, 35 Journal of International Law and Politics 1, 34 (2003).

exercise of platform private power and its consequences at a reasonable cost. For instance, market supervision departments should clarify the information disclosure obligations of online trading platforms. When the legal regime is incomplete and abusive practices of platform private power can be effectively restrained but pose serious external consequences, improving the legal system is preferable to relying on judicial resolution, and the government can achieve this through various means.

The distribution of legislative, law enforcement, and judicial regulatory measures should be based on rationality, fairness, and efficiency to ensure law enforcement and social order. The intensity of judicial intervention and enforcement supervision should be relatively stable. When law enforcement supervision is robust, judicial organs should exercise restraint; when government supervision is ineffective, judicial organs should provide effective relief.[22] The implementation of escalated regulatory intensity aims to stimulate the enthusiasm of platforms to self-regulate private power, ensure the standardized exercise of private power, and comply with relevant norms.

*3. Valuing the Differentiation of Regulatory Means.* — When dealing with platform misconduct, legal regulation should avoid overly rigid approaches and relying solely on traditional regulatory methods. It is essential to comprehensively consider factors such as platform scale, types of goods and services, technical architecture, control power, and public attributes, and adopt different means to ensure scientific and effective regulation.

Corresponding regulatory measures should be taken to address the abuse of power with different attributes and varying platform scales. For super-large platforms with significant potential for damage and negative external effects, pre-imposed special obligations or negative list systems in legislative regulation, combined with whole process law enforcement supervision, are more effective than *ex-post* judicial regulation. By integrating platform characteristics and historical behavior, regulators can accurately assess the motivations behind exercising private power and match them with differentiated regulatory measures. These motivations fall into three categories: ‘profit-driven’, ‘policy-sensitive’, and ‘capacity-deficient’. ‘Profit-driven’ platforms are prone to the abuse of power for profit and should be subject to strict inspections and penalties, and command-and-control means should be used when necessary. ‘Policy-sensitive’ platforms pay close attention to policies and regulations, and the government should mainly

22 *See* Xiao Mengli, *The Study on Power Generation and Regulation Choice of Platform Enterprises*, 10 Hebei Law Science 73, 86 (2020).

use ‘soft’ self-regulatory measures and strengthen control when necessary. ‘Capacity-deficient’ platforms are mostly small platforms, and supervision should focus on ‘soft’ measures such as assistance and education to avoid excessive escalation. Through differentiated responses, the government can implement selective incentives to provide precise and effective re-regulatory strategies for different platforms.

### *B. Taking the Clarification of Private Power Boundaries as the Regulatory Goal*

*1. Correcting the Imbalance Between Private Power and Private Rights.* — The unequal status between private power subjects and private right subjects is a key factor leading to the abuse of private power. In view of this, the primary goal of regulating private power is to ensure that consumer rights and interests are not infringed upon and to correct the structural imbalance of rights and obligations between private power and private rights. However, relying solely on private law adjustment makes it difficult to achieve the established goals. It is necessary to introduce public law intervention, and at the same time, further refine the content and scope of private rights in cyberspace at the private law level.

On the one hand, regarding the private power exercised by online trading platforms, it is necessary to use public law methods for adjustment and supervision. To begin with, the boundaries of platform private power need to be redefined, which involves two key dimensions. First, given the mismatch between platform power and responsibility, public law should clarify the duties of platform internal supervision and establish corresponding authority and responsibility mechanisms to ensure clear boundaries of power. This aims to prevent platforms from exercising private power in an overly lax manner or engaging in excessive abuse. Second, regarding the situation where rights and obligations appear balanced but are actually uneven due to changes in the environment and conditions of power exercise, public law should intervene to make adjustments. This will prevent platforms from using seemingly equal contracts to force weaker parties to waive certain rights. Such adjustments can be achieved by limiting the exercise of rights by the dominant party or imposing additional obligations on them, ensuring that subjects of private right can participate in decision-making and rule-making processes that affect their interests, thereby achieving a substantive balance of rights and obligations. Finally, regarding the alienation phenomenon that appears in the actual exercise of rights and obligations, public law supervision is also indispensable. We should fully leverage the regulatory and supervisory role of public law, and strengthen supervision by establishing interim and *ex-post* review and spot check mechanisms, in order to prevent platforms from transferring obligations they should bear to users or merchants on the platform, thereby avoiding excessive additional burdens on these weaker parties.

On the other hand, efforts should be made to expand the scope of private rights in cyberspace. The expansion of power often stems from the lack of rights. The rights themselves contain rich functions that naturally deter and resist the abuse of public power, thereby effectively restricting the expansion of power. With the rapid development and wide application of network technology, the content and scope of network private rights are constantly enriched and expanded. For example, with the rise of big data and artificial intelligence technologies, new types of rights such as user data rights and algorithmic explanation rights have gradually emerged. The emergence of these new types of rights not only reflects the expansion of the scope of rights in cyberspace but also indicates users' growing demand for rights protection in cyberspace.

*2. Balancing Platform Development and the Protection of the Public Interest.* — Through legal regulation, platforms can take the public interest into account while pursuing their own economic interests when exercising private power. As a typical regulatory subject, the government's governance objective is to maximize the public interest. This is achieved by formulating fundamental rules in areas such as fair competition, privacy protection, and consumer rights protection, and using external intervention measures to correct market failures and curb the improper use of platform power.[23] By implementing effective intervention measures, the government can mitigate the excessive self-interest tendency of platform market subjects, prompting them to consider the public interest and long-term development, thereby ensuring the sustainable development of the platform economy. In addition, the government can also build a positive moral framework during the process of guidance to improve the moral level of the entire platform market. This dual strategy combining 'law' and 'morality' helps prevent and correct potential market failures in the platform economy, ensuring the healthy and stable operation of the market.

To prevent the 'chilling effect' caused by overregulation and maintain the normal operation and autonomous development of platforms, the legal regulation of platform private power should reflect certain flexibility and inclusiveness, so as to ensure a balance between platform development and the protection of the public interest. Therefore, when regulating the private

23 *See* Zhang Qinyu, *Concept Transformation and Institutional Adjustment of E-Commerce Platform Governance*, 6 Law Review 145, 153 (2025).

power of online trading platforms, the law should follow the principle of 'moderate intervention' to ensure that platform obligations and responsibilities are set within a reasonable range.

### *C. The Introduction of Public Law Principles and the Re-Development of Private Law Principles*

*1. The Integration of Technology for Good, Digital Justice, and the Principle of Good Faith.* — Driven by digital technology, civil subjects enjoy broader scope to exercise autonomy of will. The digitization and efficiency of network algorithm technology make it easier for equal civil subjects to reach agreements in an open network environment, extending the scope of application of autonomy of will. The information revolution promotes the transformation of productivity and production relations, and also affects the basic principles of civil law. The principles of autonomy of will and good faith are extended and expanded in digital space. Technological development strengthens the autonomy of civil subjects in cyberspace and also poses higher requirements for the principle of good faith. Civil subjects should pay attention to the authenticity and accuracy of information in a digital and intelligent environment to protect their rights and interests.

The basic principles of civil law reflect basic value scales, and the development of science and technology has a significant impact on the principles of autonomy of will and good faith. Network algorithm technology creates conditions for equal civil subjects to reach agreements online, extending the scope of application of autonomy of will. However, the current basic principles of digital rule of law lack support from relevant laws, such as the basic civil law, and are insufficient to serve as a basis for other legal obligations. Therefore, consideration can be given to moderately expanding the principle of good faith in the *Civil Code* to incorporate the idea of 'technology for good'. First, the principle of good faith is consistent with the connotation of 'technology for good', both being the institutional embodiment and requirement of human social ethics. The principle of good faith includes both subjective and objective aspects. Subjectively, it requires the actor to act in good faith and with fairness; objectively, it represents a moral value judgment and external manifestation that guide and restrict specific behaviors. 'Algorithms for good' promotes the common good through personal good, while the principle of good faith embeds universal values in specific behavioral norms. Second, in judicial practice, the principle of good faith has accumulated rich applications, refinements, and case law, forming many behavioral and judgment norms with predictability, comprehensibility, and operability. This provides a practical foundation for the principle of 'technology for good'.

*2. Digital Human Rights Expanding the Scope of New Digital Civil Rights.* — 'Digital human rights' emphasizes the reshaping of human rights through digital technology. The way human information exists endows human rights with digital attributes, and legal interests in data information promote the digital evolution of human rights.[24] The progress of digital information technology has enabled people to form a digital way of existence, giving rise to digital rights. Digital rights are a comprehensive, systematic, evolving, and open concept that extends with the improvement of information technology and the development of digital economy.

The significance of emphasizing the concept of 'digital human rights' in the accountability of digital platforms lies in: First, at the level of objective value order, human rights are regarded as the highest value, and human rights protection serves as the fundamental yardstick and evaluation criterion. The independence, dignity, freedom, and comprehensive development of individuals are regarded as the ultimate concern of digital rule of law construction, emphasizing that the development of digital technology should be people-oriented, and the state and individuals have the obligation to ensure the realization of norms and values.

Second, digital human rights set an ethical benchmark for the self-discipline of platform enterprises, constraining the exercise of private power and strengthening ethical restrictions and legal norms for digital technology research, development, and application. Platform enterprises should therefore undertake moral and legal obligations to protect digital human rights, taking into account the public attributes and social influence of services, preventing the phenomenon of 'domination', accommodating the needs of ordinary users, and creating a stable and orderly environment.

Third, digital human rights facilitate communication and interaction between the digital social system and the legal system. As a communication tool, they introduce the realities and changes of digital technology development into the legal system. Through legislative, administrative, and judicial responses, the law can adapt to emerging problems promptly, ensuring its timeliness and adaptability, and achieving benign interaction among social subsystems.[25]

Fourth, digital human rights address the challenges of protecting new types of digital rights and interests. Digital human rights reflect the basic

24 *See* Zheng Zhihang, *Theoretical Justification and Connotation of Digital Human Rights*, 1 ECUPL Journal 35, 36 (2023).

25 *Id*., 44.

needs of people in the field of digital technology at the constitutional level, emphasizing the protection of rights and interests in cyberspace, reflecting the *Constitution*'s respect and protection for human rights, and forming an important part of the constitutional system. China's constitutional system incorporates digital rights into the human rights system, thereby strengthening constitutional legitimacy.[26] It advocates that digital human rights respond to the changes in human needs in the network society and satisfy basic needs through human rights protection.

*3. The Introduction of Platform Neutrality Principle, Proportionality Principle, and Procedural Justice Principle.* — First, the principle of platform neutrality emphasizes that platforms should operate in an open, transparent, fair, and non-discriminatory manner. It originates from platform private power and aims to regulate the use of private power, ensuring that power has legitimacy only when it enhances public well-being and individual development. Once alienated or abused, it loses its legitimacy.

Second, the regulation of platform private power must consider the principle of proportionality, prudently formulating rules based on platform capacity, revenue, and fault. Newly established small and medium-sized online trading platforms should be treated with tolerance to unleash the vitality of the platform economy, as they need policy support and technical guidance. Large platforms, by contrast, require cautious regulation since their violations have a great impact. This approach of differentiated obligations avoids the drawbacks of a 'one-size-fits-all' model, maintains the balance of rights and interests among all parties, and reflects the compatibility of 'ends' and 'means'.

Finally, the exercise of private power by platforms must be based on procedural justice.[27] On the one hand, guided by traditional procedural justice theory, the exercise of platform private power should be open and transparent. When formulating rules, reference should be made to the principles of legislative procedural justice, and a recusal mechanism should be established to prevent bias. A hearing system should be established to improve transparency, and the hearing procedure should be flexible and tailored to different situations.[28] When users violate the rules, the platform punishes them according to procedures, informing them of the results and reasons, and listening to their statements and defenses, thereby reflecting

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26 *See* GUNTHER TEUBNER, CONSTITUTIONAL FRAGMENTS: SOCIETAL CONSTITUTIONALISM AND GLOBALIZATION, at 122-128 (Central Compilation & Translation Press, 2016).

27 *See* Luo Ying & Gu Yu, *The Governance Logic of the Autonomous Rules of the Network Platform*, 8 Study and Practice 35, 41 (2021).

28 *See* Xie Zhiyong, *Regulating the Rule-Making Authority of Super Platforms*, 2 Tsinghua University Law Journal 5, 11 (2024).

procedural justice and providing relief channels for users. On the other hand, regarding the technical power of online trading platforms, the concept of digital procedural justice is proposed, covering technical and algorithmic due process, adhering to technological interpretability, curbing algorithmic problems, and achieving digital justice.[29]

## V. CONCLUSION

The root of the alienation of platform private power lies in the internal tension between its private interest and public nature, as well as the structural imbalance of rights and obligations in multilateral legal relations. In this context, the responsive legal regulation model centered on 'meta-regulation' offers a solution. Through the coordination of multiple subjects, escalated regulatory intensity, and differentiated means, the complementarity of government supervision and platform autonomy can be achieved. By clarifying the boundaries of private power to correct the imbalance of rights and obligations, balancing platform development with the public interest, and integrating public law principles with private law innovation, a governance framework adapted to the digital age can be established. In the future, only by continuously optimizing the collaborative regulatory path of public and private law, curbing the abuse of platform private power while leaving enough space for technological innovation and industrial development, can the digital economy achieve healthy and orderly development, and the legitimate rights and interests of all subjects in the digital space be effectively protected.

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29 *See* Zhao Peng, *From Platform Liability to Cooperative Regulation: The Transformation of Internet Regulation Mode and Its Due Process Regulation*, 3 Studies in Law and Business 35, 46 (2025).