

# Ali V. Dubbing Show

Beijing Internet Court  
ZHANG Qian

# Backgrounds

This case involves Ali, a very famous cartoon character.

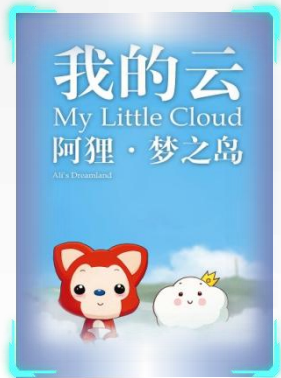


Ali

中文名称	阿狸	星座	双鱼座
原版名称	阿狸	类型	小狐狸
其他名称	Ali the fox	性格	可爱、温暖，孩子气，一直相信童话
作者	Hans，本名徐瀚	女朋友	桃子
作画	Hans	喜欢颜色	红色
地区	中国大陆	喜欢水果	柚子
出版期间	2006年	喜欢食物	鸡肉卷
出版时间	2006	姓名	阿狸
生日	3月16日	配音	山新

# Backgrounds

Cartoons based on Ali.



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01

# Case Brief



## Claims

### 1. Ownership

The plaintiff is the copyright owner of Ali animations.

### 2. Infringement

14 dubbing materials originating from the animations and more than 20,000 dubbing videos made based on these dubbing materials existed on the App.

### 3. Liability

The plaintiff requested the court to order the defendant to stop the infringement and compensate for his economic losses and reasonable expenses totaling RMB 162,000 yuan.

V.S

## Defences

### 1. No direct infringement

Reasonable use by network users

### 2. Internet service provider

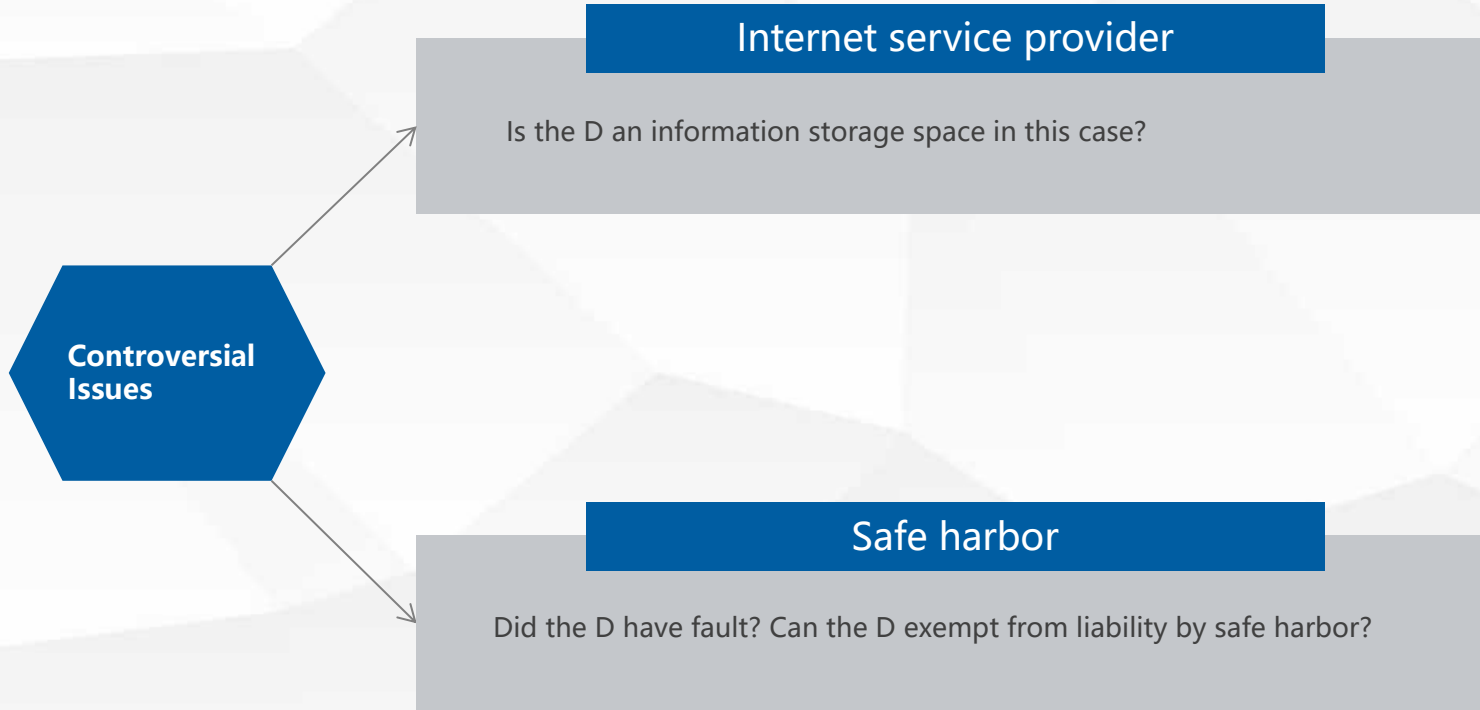
The defendant provided information storage spaces to network users.

### 3. No fault and safe harbor

The defendant had no fault and performed the deletion obligation in a timely manner after receiving the notice from the plaintiff.

02

## **Controversial Issues**





03

**Internet Service Provider**





## *Tort Liability Law of the People's Republic of China*

**Article 36** If a network subscriber or **network service provider** uses the network to commit a tort against the civil rights or interests of another, he/she/it shall bear tort liability.

Where a network subscriber uses the network services to commit a tortious act, the injured person shall have the right to notify the **network service provider** to take necessary measures such as deletion, blocking and severance of the link. If the network service provider fails to take the necessary measures in a timely manner after receipt of the notice, it shall bear joint and several liability with the network subscriber for the additional injury caused.

If a **network service provider** is aware that a network subscriber is using its network services to commit a tort against the civil rights or interests of another and fails to take the necessary measures, it shall bear joint and several liability with the network subscriber.



### *Civil Code of the People's Republic of China*

**Article 1194** A network user or **network service provider** who infringes upon the civil right or interest of another person through network shall assume the tort liability, unless otherwise provided by law.

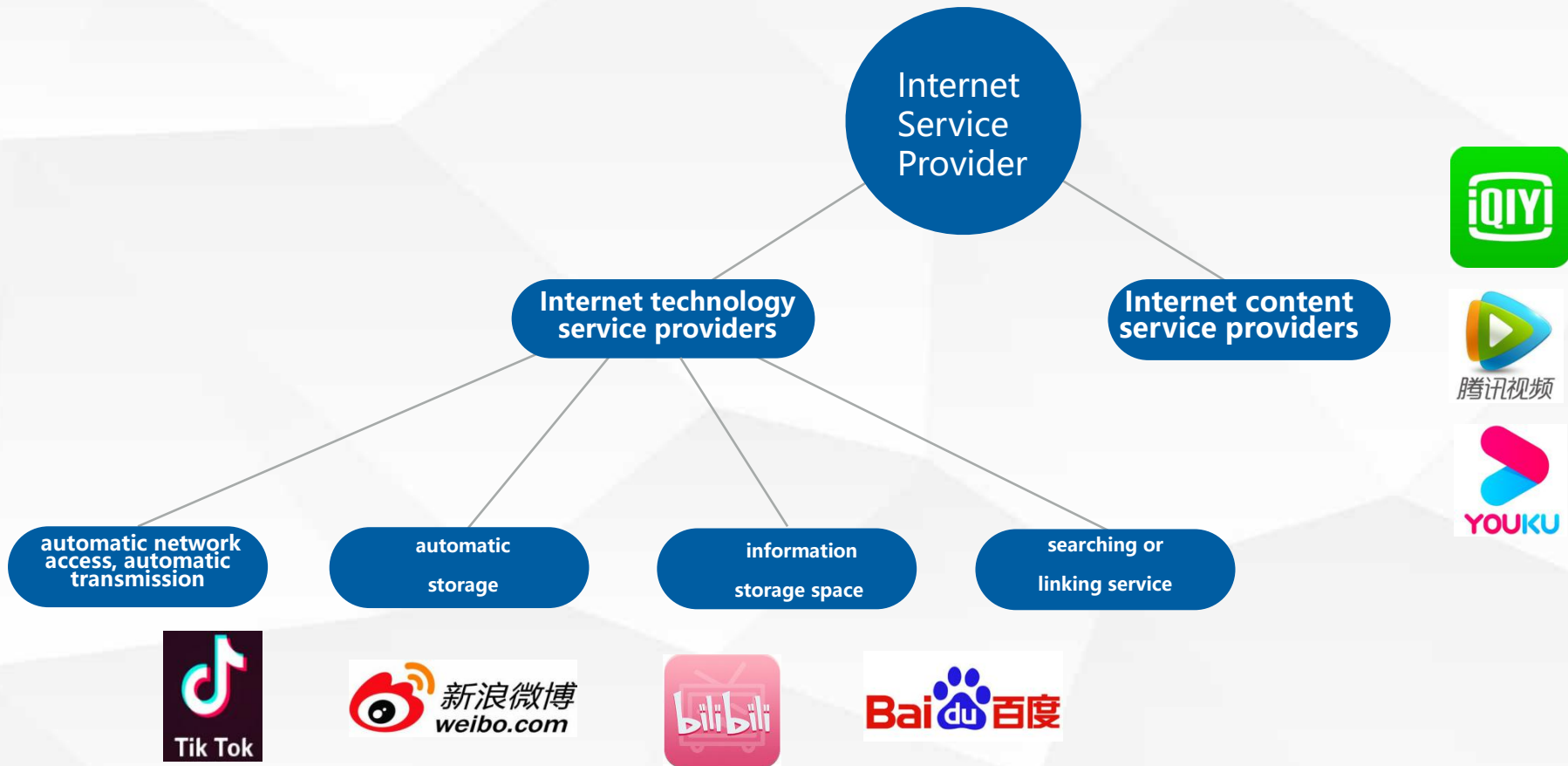
**Article 1197** Where a **network service provider** knows or should have known that a network user is infringing upon a civil right or interest of another person through its network services, and fails to take necessary measures, it shall be jointly and severally liable with the network user.



*Regulation on the Protection of the Right to Communicate  
Works to the Public over Information Networks*

1. automatic access, transmission and storage services  
(*art. 20-21*)
2. network storage and publishing services (*art. 22*)
3. searching or linking services (*art. 23*)







**李子柒**

80后 2枚勋章

关注

个人简介:  
官方认证: 知名美食创作者  
李家有女, 人称李子柒。

1 关注    43.9万 粉丝    26.6万 获赞

猜你喜欢    换一换

视频    动态

<p>19:04</p> <p>小时候睡的旧木床, 蜕变成古色古香的流觞曲水桌</p> <p>6月5日</p>	<p>14:04</p> <p>深深扎根在中华土地上, 历久弥新的茶文化</p> <p>5月27日</p>	<p>19:07</p> <p>捣鼓了一身着花的衣裳, 和我家老小孩一起拥抱春天!</p> <p>4月6日</p>
<p>20:11</p> <p>愿一串串的红柿子给大家带来新一年的柿柿顺心</p> <p>2020年12月9日</p>	<p>19:58</p> <p>芋头的一生</p> <p>2020年11月9日</p>	<p>22:44</p> <p>一年忙忙碌碌, 为的就是谷物满仓的踏实感</p> <p>2020年10月11日</p>





What are the criteria for identifying internet technology service providers?

## Beijing High People's Court Guidelines for the Trial of Copyright Infringement Cases

### 9.10 Determination of provision of information storage space service

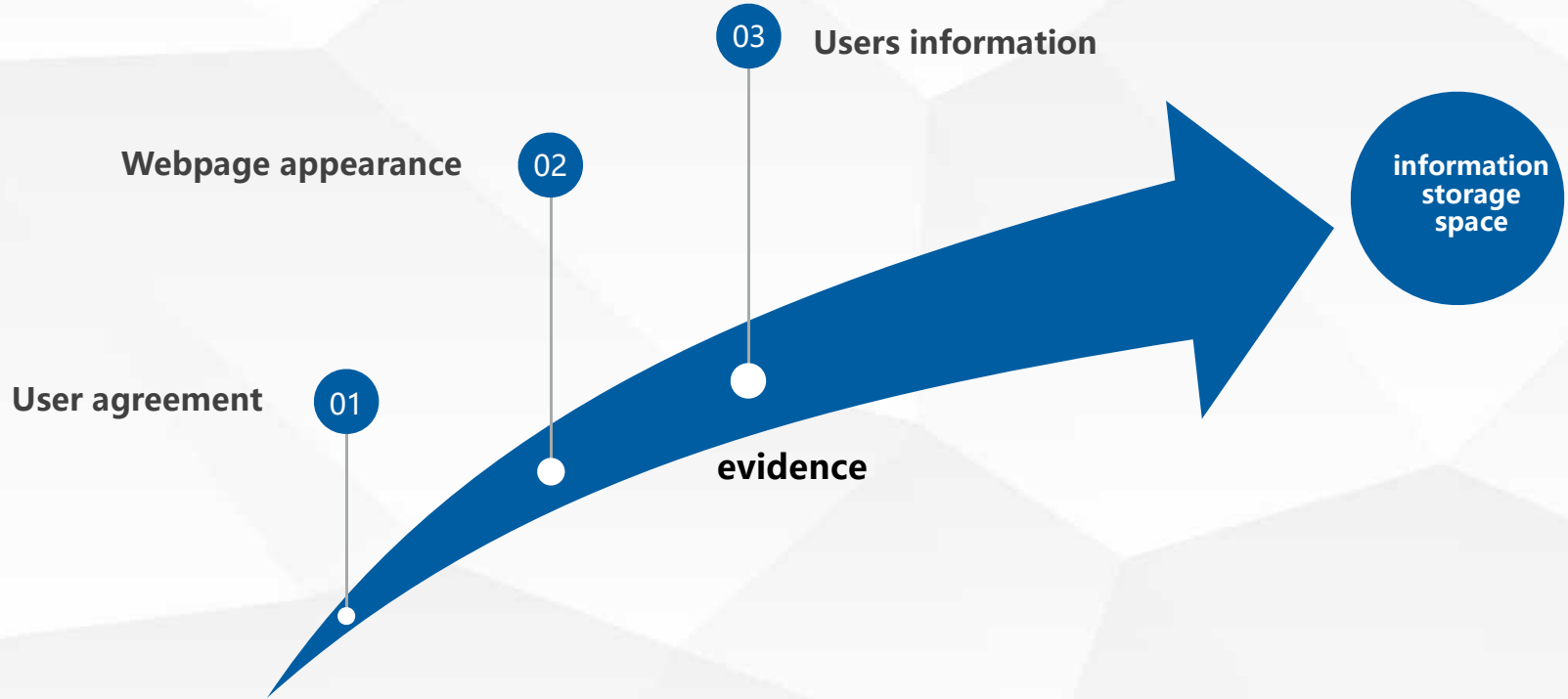
Where the defendant claims that he/she provides information storage space service, the court shall generally take the following factors into consideration in determining whether his/her claim should be upheld:

- (i) whether the evidence presented by the defendant can prove that his/her website has the function of providing information storage space service to service objects;
- (ii) whether the relevant content of the defendant's website clearly indicates the provision of information storage space service to service object;
- (iii) whether the defendant can present the user's name, registered IP address, time of registration IP address of uploading, contact information, time of uploading, information uploaded and other information in respect of the persons uploading the information; and
- (iv) other factors.



*Provisions of the Supreme People's Court on Several Issues Concerning Law Application in the Trial of Civil Disputes over Infringement on the Right of Communication through Information Network*

第六条 原告有初步证据证明网络服务提供者提供了相关作品、表演、录音录像制品，但网络服务提供者能够证明其仅提供网络服务，且无过错的，人民法院不应认定为构成侵权。





## 使用协议及隐私政策

配音秀根据以下服务条款为您提供服务，您一旦使用配音秀服务，即视为您已了解并完全同意本使用协议各项内容，并成为配音秀用户（以下简称“用户”）。

### 2 服务说明

配音秀目前仅向用户提供录音机(可保存录音和回放录音)和播放视频的服务，视频均来源于网络，用户可以在配音秀中录音并保存上传自己的作品、发表评论。除

## 使用协议及隐私政策

### 7 提供者之责任

根据有关法律法规，配音秀在此郑重提醒您注意，任何经由本服务而发布、上传的文字、资讯、资料、音乐、视频、照片、图形、视讯、信息或其它资料（以下简称“内容”），无论系公开还是私下传送，均由内容提供者承担责任。配音秀仅为用户提供内容存储空间，无法控制经由本服务传送之内容，因此不保证内容的正



112 8:04 418

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配音秀APP



 赠送了  x 99+

动漫 《阿狸  和小小云  》初相遇/合花生小朋友合作7

站内播放 1070 站外播放 634 时间 2017-4-30

礼物榜 (1万)      更多 >



编号	素材名称	时长/分钟	上传IP	用户ID	用户昵称	注册时间	最近一次登录时间	登录设备型号	设备操作系统	性别	年龄	地区	登录方式	手机号码	用户作品数量
1	想念小小云的阿狸	0:01:02	124.95.86.136	12021	玥初城	2014/2/11 13:13	2019/12/17 22:18	N811	android	女		天津 红桥区	SINA	15033962764	27
2	屋顶	0:00:56	124.95.86.136	12021	玥初城	2014/2/11 13:13	2019/12/17 22:18	N811	android	女		天津 红桥区	SINA	15033962764	27
3	妈妈你快回来吧	0:01:10	223.100.87.93	141848939	孤真真_熊宝_20快乐	2016/12/6 18:16	2020/4/12 9:04	iPhone 6s Plus	ios	女	27	辽宁 锦州	Weixin	15004160998	615
4	阿狸 空白蒙	0:04:35	43.224.45.107	8545114	花落晴川	2015/10/11 20:19	2020/4/14 15:09	CLT-AL00	android	女	30	北京 北京	SINA	13717917127	666
5	吃胖了的小小云	0:01:18	39.171.3.98	749022	十点清尘	2014/8/10 17:01	2020/4/14 12:04	iPhone12	ios	男		上海 上海	SINA	15958069168	80
6	小小云长大了	0:02:27	139.214.251.3	682472	高歌笑	2014/8/7 1:51	2020/3/18 10:54	vivo X20A	android	女	31	中国 吉林 长春	QQ	13634416413	127
7	小小云好像棉花糖哦	0:02:21	139.214.251.3	682472	高歌笑	2014/8/7 1:51	2020/3/18 10:54	vivo X20A	android	女	31	中国 吉林 长春	QQ	13634416413	127
8	吃胖了的小小云	0:01:18		496454	psy2520	2014/7/21 18:09	2017/2/12 19:53			女	27	云南 大理	QQ		0
9	吃胖了的小小云	0:01:18		4306705	小玩纸	2015/7/12 12:29	2015/8/5 13:31			女	31	中国 河北 石家庄	QQ		6
10	小小云原来吃货	0:01:50	139.214.251.3	682472	高歌笑	2014/8/7 1:51	2020/3/18 10:54	vivo X20A	android	女	31	中国 吉林 长春	QQ	13634416413	127
11	吃胖了的小小云	0:01:18	123.139.87.181	954605	巴戈	2014/8/22 14:57	2019/5/14 17:16	MHA-AL00	android	男		北京 北京	QQ	13195393998	1884
12	吃胖了的小小云	0:01:18		6547935	晚梦初醒 ??	2015/9/11 22:58	2015/9/21 21:48			女	20	中国 广西 南宁	QQ		0
13	阿狸	0:01:54		16024317	糖	2016/6/1 20:40	2017/10/7 12:52			未知			Weixin		7
14	阿狸和云	0:00:56	124.23.133.110	143484935	涵9互粉	2017/4/9 21:01	2018/8/20 19:06	BND-AL00	android	女	21	陕西 咸阳	Weixin	13892999396	360

04

**Contributory Infringement &  
Safe Harbor**



## direct infringement

Conduct that is controlled by the exclusive right without the permission of the copyright owner.

No subjective element for direct infringement.

## secondary infringement

abets or assists another person in committing copyright infringement.

a culpable mind is a determine factor.





# Contributory infringement & Safe Harbor

The four safe harbors provided by Congress, in the following subsections of Section 512 of the U.S. Code, are:

- A. Transitory digital network communications
- B. System caching
- C. Information residing on systems or networks at the direction of users
- D. Information location tools

Designated Agent: DMCA s512(c)(2)  
Notice-takedown Procedure: DMCA s512(c)(1), (3)  
Termination Policy about Repeat Infringers: DMCA s512(i)(1)(A)  
standard technical measures: DMCA s512(i)(1)(B); DMCA s512(i)(2)





**Article 22** of the Regulation: Under the following circumstances, a network service provider that provides information storage space to a service object or provides works, performances, or audio-visual recordings to the public through the information network, shall not be liable for compensation:

1. Having clearly mentioned that the information storage space is provided to the service object, and also having publicized the name, contact information, and web address of the network service provider;
2. Having not altered the work, performance, or audio-visual recording provided to the service object;
3. **Having not known and having no justified reason to know** that the works, performances, or audio-visual recordings provided by the service object have infringed upon an other's right;
4. Having not directly obtained economic benefits from the service object's provision of the work, performance, or audio-visual recording;
5. After receiving the notification from the owner, having deleted the work, performance, or audio-visual regarded as infringing on the right of the owner according to the provisions of this Regulation.

## *Regulations on the Right of Communication Through Information Networks*





*How to  
determine  
“know” or  
“should  
know”?*



### *Provisions of the Supreme People's Court on Several Issues concerning the Application of Law in Hearing Civil Dispute Cases Involving Infringement of the Right of Dissemination on Information Networks*

**Article 9** The people's court shall determine whether a network service provider ***should have known*** an infringement based on a clear fact that a network user has infringed upon the right of dissemination on information networks and by taking into account the following factors:

- (1) **The network service provider's capability of information management**, as required according to the nature of services provided, manners of provision of services, and possibility of infringement attributable thereto.
- (2) The type and popularity of the disseminated work, performance, or audio or video recording and the visibility of the infringing information.
- (3) Whether the network service provider has, on its own initiative, chosen, edited, modified, recommended or otherwise dealt with the work, performance, or audio or video recording.
- (4) Whether the network service provider has proactively taken reasonable measures to prevent infringement.
- (5) Whether the network service provider has set up any convenient programs to receive notice of infringement and make reasonable response to the notice of infringement in a timely manner.
- (6) Whether the network service provider has taken reasonable measures against a user's repeated infringements.
- (7) Other relevant factors.



**The business model of the defendant and the possibility of its inducing infringement.**

**01**

**02**

**The popularity of the plaintiff’s works and the obviousness of infringement.**

**03**

**Whether the defendant has made profits from the infringing video and fulfilled his duty of care corresponding to his profits.**

05

Conclusion



*The defendant has a fault in that it did not take reasonable measures to prevent the infringement, so it should bear tort liability.*

# THANKS

