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A Study on the Punitive Damages System in China's Copyright Law under the Calabresi-Melamed Framework

Zhenyan Guo

School of Economic Law, Shanghai University of Political Science and Law, Shanghai, China
18082297043@163.com

Abstract. The punitive damages system in China's Copyright Law represents a significant component of the recent reforms in the intellectual property protection regime. Its establishment signifies a paradigm shift in China's copyright protection from a purely compensatory model to a dual-function model integrating both compensation and punishment. This paper employs the Calabresi-Melamed Framework to delineate the relevant institutions of punitive damages in copyright and to analyze the current challenges they face. The study finds that in judicial practice, the punitive damages system primarily grapples with the ambiguity in determining the subjective elements of its application requirements and the difficulty in selecting the calculation base and the damages multiplier. To address these issues, this paper proposes integrating the improvement of evidentiary rules throughout the entire process of institutional refinement, adhering to the principle of disgorging the infringer's profits, enhancing guidance through typical cases, incorporating reasonable royalty fees into the calculation base, and strengthening the nexus between administrative and judicial authorities while exploring the establishment of a special compensation fund management mechanism. This paper aims to strike a balance between active and prudent application, thereby fostering the development of the punitive damages system in copyright protection and further incentivizing cultural and intellectual innovation and dissemination.

Keywords: Calabresi-Melamed Framework, Copyright Law, Property Rule, Liability Rule, Punitive Damages

1. Introduction

In 2020, the Copyright Law of the People's Republic of China underwent its third amendment, formally introducing punitive damages in Article 54. This provision explicitly stipulates that for intentional infringement of copyright or related rights where the circumstances are serious, compensation may be awarded at an amount between one and five times the sum determined according to the prescribed methods [1]. This amendment marks the advancement of the punitive damages system into intellectual property law, reflecting the state's clear stance on strengthening copyright protection. However, several factors continue to impact the effective realization of its punitive and deterrent functions in judicial application. These include the still-blurry boundary between the punitive damages system and traditional methods of calculating damages, ongoing

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disputes over its application requirements and calculation base, the broad discretionary power granted to judges in selecting the damages multiplier, and the difficulties rights holders face in producing evidence due to information asymmetry.

Based on this context, this paper will draw upon the Calabresi-Melamed (C&M) Framework to analyze the punitive damages system in China's Copyright Law from the perspective of rights remedy models [2]. The paper is structured into three main parts: first, it explores the theoretical foundations of the punitive damages system and its current challenges; second, it interprets the relevant provisions of the Copyright Law and positions the punitive damages system through the lens of the C&M Framework; and finally, it proposes targeted recommendations for addressing the identified problems. Building upon the analysis and refinement of the punitive damages system in copyright law, this paper attempts to balance several key relationships: the balance between specifying detailed application requirements and the system's operability; the balance between punishing and deterring infringers and preventing the system's abuse; and the balance between protecting copyright to incentivize innovation and facilitating reasonable access to promote dissemination.

2. Theoretical foundations and application dilemmas of the punitive damages system

2.1. The functions and necessity of the punitive damages system

Punitive damages are an institutional arrangement designed to punish and deter the defendant while granting additional compensation to the plaintiff. The system of damages is primarily compensatory, supplemented by punitive damages, which serve to reinforce and strengthen compensatory damages [3]. The punitive damages system was initially prevalent in common law jurisdictions. Its acceptance in civil law systems was long constrained by the conceptual divergence from the "make-whole principle" of civil compensation—where compensatory damages aim to fill the loss suffered by the rights holder, and punitive damages aim to punish and deter the infringer [4]. However, with the evolution of social systems, common law jurisdictions have imposed limitations on punitive damages through precedents and institutional design to prevent abuse, while civil law countries have gradually introduced the system in specific fields by adjusting their existing compensation frameworks.

In the context of copyright infringement, infringing acts typically offer a high profit margin and a low probability of detection. Under these circumstances, purely compensatory damages struggle to achieve effective deterrence. Effective deterrence is realized only when the expected liability borne by the infringer is equal to or exceeds the social loss [5]. Furthermore, one of the core objectives of copyright protection is to promote cultural and intellectual innovation. If the cost of infringement is too low, creators will find it difficult to receive their due rewards, thereby diminishing their incentive to create. Therefore, whether from the perspective of the deterrent function of tort liability or that of incentivizing innovation, there is a strong institutional necessity for introducing the punitive damages system into the Copyright Law.

2.2. Application dilemmas of the punitive damages system

The Copyright Law stipulates the application requirements for punitive damages as "intentionality" plus "serious circumstances", with a damages multiplier ranging from one to five times [1]. To refine the standards for application, the Supreme People's Court issued the Interpretation on the Application of Punitive Damages in the Trial of Civil Intellectual Property Infringement Cases

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(hereinafter referred to as the "Interpretation") in 2021, which provides specific provisions on the factors for determining "intentionality" and "serious circumstances",the determination of the compensation base, and the consideration of the multiplier [6]. Article 3 of the Interpretation enumerates circumstances that can preliminarily establish "intentionality", including the continuation of infringement after notification by the rights holder and the existence of a labor or licensing relationship between the defendant and the rights holder. Article 4 specifies the criteria for judging "serious circumstances" from aspects such as the means, frequency, duration, geographical scope, scale, and consequences of the infringement. Although the Interpretation has detailed these issues, a degree of uncertainty remains in its judicial application.

2.2.1. Ambiguity in determining the subjective application requirements

The "intentionality plus serious circumstances" standard inherently possesses a strong subjective character. Among these, the determination of "intentionality" is currently a subject of considerable academic debate; some scholars argue that "intentionality" and "maliciousness" should be distinguished, while others hold that their meanings can be construed as equivalent [7]. Furthermore, relative to "intentionality", "serious circumstances" can be quantified through various objective aspects, as stipulated in the aforementioned Interpretation. Yet, the inclusion of a catch-all clause ultimately signifies that the determination of "serious circumstances" remains unclear [8].

2.2.2. Uncertainty in the selection of the calculation base and the multiplier

The Copyright Law stipulates three primary calculation bases for punitive damages: the actual loss suffered by the infringed party, the illegal gains of the infringer, and a reasonable royalty fee [1]. In judicial practice, however, statutory damages—a method outside these provisions—are frequently used as the calculation base [7, 9]. This is because losses from copyright infringement are difficult to calculate precisely [10-11] and can undergo dynamic changes over time and across geographical regions [12]. This problem is compounded by the fact that evidence of infringement is often in the hands of the infringer, causing significant difficulties for the rights holder in adducing evidence.

The range for the punitive damages multiplier is typically one to five times. Due to the varying degrees of "intentionality" and "seriousness" across different infringement cases, the multiplier is usually determined in judicial practice based on the severity of the infringing act. However, the aforementioned uncertainty in the determination standards can lead to situations where a multiplier within the one-to-five range fails to cover the infringer's profits. When the profits from infringement exceed its costs, the punitive and deterrent functions of the punitive damages system are weakened [5].

Overall, the two aspects discussed above constitute the core issues in the current application of punitive damages. While other problems exist in the application of punitive damages, the author believes that most of them fundamentally stem from the ambiguity of the application requirements and the issues related to compensation calculation. These problems share common underlying causes, which consequently constrain the system's effectiveness and operability.

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3. Analysis of the punitive damages system from the perspective of the C&M framework

3.1. A typological analysis of rules in copyright law under the C&M framework

The C&M Framework is a classic analytical tool in the field of law and economics, proposed by Guido Calabresi and A. Douglas Melamed. This framework classifies legal rules into "Property Rules", "Liability Rules", and "Inalienability Rules" based on the mode of remedy provided by law when a legal interest is infringed [2]. All three types of rules presuppose a clear initial allocation of legal entitlements. On this basis, they can be distinguished into "Inalienability Rules" and "Transferable Rules" depending on whether the private transfer of the entitlement is permitted, and further into "Property Rules" and "Liability Rules" based on whether the pricing mechanism is consensual. The authors posit that once an interest becomes a legally protected "entitlement", the state is typically required to provide a corresponding remedy, thus making the framework applicable to the analysis of copyright law [13].

A property rule means that others may not acquire or use the entitlement without the voluntary consent of the rights holder. Anyone wishing to use or acquire it must engage in a voluntary transaction and reach an agreement with the rights holder, who determines the transaction price autonomously. Under a property rule, the state primarily assumes a duty of passive protection and generally does not intervene in the specific valuation of the entitlement. Property rules are typically applied when transaction costs are low, facilitating the transfer of entitlements to the most efficient user through voluntary transactions to increase social wealth [2, 13]. In the Copyright Law, property rules are primarily manifested in the pathway of obtaining rights through prior licensing and payment of remuneration before use. Property rules allow copyright owners to freely transfer their rights and voluntarily set prices for them, thereby encouraging creation and innovation to a certain extent.

A liability rule means that others may use the entitlement without the rights holder's consent but must subsequently pay an objectively determined compensation set by a third party (usually a court). Liability rules are mainly applied when transaction costs are so high that voluntary negotiation becomes difficult or economically inefficient. In such scenarios, the state facilitates the flow of entitlements through a mechanism akin to a "forced transaction", substituting the consensual price with a legally determined damages award [2]. In the Copyright Law, liability rules are primarily evident in collective management systems and specific circumstances such as the reprinting of published works in newspapers and periodicals, the compilation of textbooks, and the production of sound recordings of musical works that have already been lawfully recorded. In these cases, strictly adhering to the aforementioned pathway of prior permission and payment before use could lead to problems such as excessively high pricing by the copyright owner or prohibitive negotiation costs. Therefore, to reduce transaction costs, lessen the public burden, and achieve overall social welfare, the law establishes transparent and publicly available charging methods similar to a "license fee".

An inalienability rule is the most stringent; it prohibits the free transfer of a specific entitlement regardless of the rights holder's consent. This rule typically applies to inalienable interests such as human dignity and fundamental rights or is used to prevent social welfare losses caused by externalities [2]. In the Copyright Law, the inalienability rule is primarily reflected in Article 5, which enumerates objects not protected by copyright. From the perspective of the institutional objectives of the Copyright Law, imposing undue restrictions on certain information or works would not only contravene the purpose of promoting dissemination but could also generate negative social externalities. The author believes this is a significant reason why inalienability rules are far fewer than property and liability rules in the Copyright Law. As the punitive damages system in the

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Copyright Law does not involve inalienability rules, the subsequent analysis of this system will focus on property rules and liability rules.

3.2. Positioning the punitive damages system under the C&M framework

The main distinction between property rules and liability rules lies in the fact that a property rule entails a "voluntary transaction", whereas a liability rule involves an "involuntary forced transaction" [2]. Punitive damages are a form of civil liability with punitive and deterrent functions imposed after a copyright has been infringed. However, it cannot be simply viewed as a traditional liability rule, because pricing under a liability rule is typically compensatory in nature, whereas punitive damages require the payment of an amount exceeding the actual loss to achieve the goals of punishing and deterring the infringing act. Simultaneously, the punitive damages system does not fall under the property rule category, as the transfer of the copyright has not obtained the prior consent of the rights holder.

Therefore, we can understand the punitive damages system in the Copyright Law within the framework of these two types of rules. From the perspective of the property rule, punitive damages can be seen as an ex post facto reinforcement mechanism for the restraint against unauthorized use. By increasing the cost of infringement so that the expected costs to the infringer exceed their potential gains, it serves to curb the occurrence of unauthorized use to a certain degree, thereby maintaining the voluntary transactional order of copyrights. From the perspective of the liability rule, the punitive damages system represents a strengthening of the existing compensation mechanism, whereby the punitive damages amount must be higher than the price set by an authoritative third party to enhance the deterrent effect. To reduce transaction and negotiation costs, the Copyright Law has already explicitly stipulated circumstances such as fair use and statutory licenses, along with their fee standards. These effectively function as a more economically efficient form of "third-party pricing". On this basis, an infringer who is still unwilling to pay the usage fee should be ordered to pay punitive damages under the liability rule. However, when the damages award approaches the level of statutory damages, its function aligns more with the "make-whole principle" rather than the deterrent and content functions characteristic of punitive damages [3]. This, in effect, partially transforms a property rule into a liability rule, thereby diminishing the level of copyright protection. This necessitates that courts, when awarding punitive damages, make reasonable choices regarding the application requirements, the compensation calculation base, and the multiplier to determine an amount that can both disgorge the infringer's profit and simultaneously achieve punitive and compensatory effects.

The C&M Framework comprehensively considers transaction costs and coordinates rights protection with the efficiency of resource allocation [2, 13]. It is both reasonable and necessary to employ the C&M Framework to analyze the issues surrounding the punitive damages system in China's Copyright Law. Punitive damages are not an isolated form of liability but rather a remedial reinforcement mechanism that straddles property rules and liability rules. Essentially, an act of copyright infringement constitutes a dual violation: it undermines the autonomy inherent in the property rule and the efficiency of the liability rule. The punitive damages award serves as a punitive consideration for the actor's malicious circumvention of the voluntary copyright licensing order and evasion of the obligation to pay remuneration under statutory licenses, thereby genuinely achieving a balance among rights protection, infringement deterrence, and social efficiency.

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4. Pathways for refining the punitive damages system based on the C&M framework

To refine the punitive damages system, externally, we can draw on the relevant institutional experience of common law jurisdictions; internally, we can refer to and analogize with other areas of law where the system was established earlier, while also comparing and summarizing the practice of punitive damages in Patent Law and Trademark Law [7, 14]. The root cause of the current difficulties in determining the subjective application requirements of punitive damages and in choosing the calculation base and multiplier lies in the failure to delineate the boundaries of application according to the nature of the rule and to determine the scale of compensation based on transaction costs and the degree of rights infringement [2, 13]. To this end, the C&M Framework should be integrated to ensure that the protection and utilization of copyright consistently revolve around the principle of private autonomy under the property rule and the efficient allocation under the liability rule, thereby steering the punitive damages system in copyright towards a more mature and rational development.

In general, the improvement of evidentiary rules and the disgorgement of the infringer's profits should be run through the entire process of institutional refinement. Enhancing the evidence system can not only assist judges in assessing the infringer's subjective malice but also enable them to select the calculation base and damages multiplier more scientifically and reasonably. Improving evidentiary rules can alleviate the problem of information asymmetry inherent in copyright infringement [12]. To address the difficulty rights holders face in producing evidence because infringement-related data is controlled by the infringer, in cases of property-rule type infringement, a system can be implemented where the copyright owner first adduces evidence, and after making diligent efforts to do so, the burden of proof may be shifted to the defendant. In cases of liability-rule type infringement, the evidentiary threshold for the rights holder should similarly be lowered. When an infringer refuses to provide crucial evidence such as profit ledgers, the court may directly admit the rights holder's claims that have a causal relationship with the infringing act or presume relevant facts to be established, ensuring that the subsequent calculation can truthfully reflect the property value of the copyright and the harm caused by the infringement. The amount of punitive damages should primarily aim to completely eliminate the infringer's illegal gains [3]. The calculation should include a comparison to ensure that the total punitive damages award is significantly higher than the legitimate authorization cost under the property rule and the statutory compensation standard under the liability rule, thereby thoroughly blocking the arbitrage opportunity that "infringement is more economical than authorization" [5]. By disgorging the benefits of infringement and imposing an additional burden, the intended deterrent function of the punitive damages system under both property and liability rules can be restored, guiding potential infringers towards legal licensing.

4.1. Typification of application requirements and case guidance mechanism

The issuance of typical cases can clarify the applicable standards for different rule types in various infringement scenarios, achieving a balance between active and prudent application [15]. For "malicious" acts that treat infringement as a business model and deliberately circumvent the voluntary negotiation mechanism under the property rule, punitive damages should be actively applied. Conversely, for situations where rights boundaries are unclear or transaction costs are excessively high—where liability rules should originally apply—a prudent approach to application should be adopted. Simultaneously, the publication of classic cases helps to refine the criteria for determining "intentionality" and "serious circumstances," transforming subjective judgments into

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objective identification criteria based on the degree of violation of the property rule and intent to evade the liability rule, thereby reducing the subjective tinge in judicial determinations [7]. This will lead to fewer instances of significantly divergent judgments in cases of similar severity and can better prevent infringers from deliberately converting their tort liability from the ambit of a property rule to that of a liability rule.

4.2. Optimization of the compensation calculation mechanism and construction of an administrative synergy mechanism

The reasonable royalty fee under the property rule should be adopted as the core basis for the compensation base, reflecting the inherent value of autonomous pricing by the rights holder [9]. Actual losses and the infringer's profits under the liability rule should serve as supplementary bases, giving due consideration to third-party valuation. Concurrently, the choice of the damages multiplier should be strictly linked to the degree of rule violation. For infringements that seriously depart from the property rule or maliciously evade the payment obligation under the liability rule, a higher multiplier should be applied, transforming the selection of the multiplier from a matter of broad discretion into a scaled determination guided by relatively clear rule-based criteria.

Administrative agencies may, ex officio or upon application, proactively investigate and penalize acts of malicious infringement, securing key evidence and imposing administrative penalties, thereby providing a factual basis for subsequent civil punitive damages and establishing a linkage mechanism between administrative supervision and judicial protection [15]. Furthermore, the establishment of a special compensation fund management system should be explored. Some scholars suggest that through such a system, a portion of the amount exceeding the compensation due to the rights holder could be centrally managed, used to cover the rights holder's litigation costs and support copyright protection and development, and be subject to public disclosure [14]. The author believes that such a system not only deters infringers but also curtails the activities of some "professional trademark squatters" who seek to obtain exorbitant profits through copyright litigation. Additionally, given the dynamic nature of the harm suffered by the infringed party, this management entity could track cases with significant infringement impacts. If the infringer continues to profit or the harm to the infringed party subsequently worsens, the entity could petition the court to levy additional compensation. This would forge a dual force of proactive administrative supervision and strong judicial deterrence, weaving a tighter net of rules for protection.

5. Conclusion

This paper has systematically reviewed the punitive damages system in China's Copyright Law and its associated controversies and employed the C&M Framework to position the punitive damages system. The research demonstrates that punitive damages are neither a pure property rule nor a typical liability rule, but rather a remedial reinforcement mechanism used to safeguard the autonomy of the property rule and bolster the deterrent effect of the liability rule. To address issues such as the application requirements and compensation calculation of the punitive damages system in the Copyright Law, this paper proposes a series of improvement measures. These include the throughout-the-process refinement of evidentiary rules, adherence to the objective of disgorging the infringer's profits, issuing typical cases, incorporating reasonable royalty fees into the calculation base, strengthening the nexus between administrative and judicial authorities, and establishing a special compensation fund management mechanism. These measures aim to punish and deter infringers, safeguard the legitimate rights and interests of copyright owners, and enhance the

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practical vitality of the system. This paper still has the following limitations: first, the application of the C&M Framework remains somewhat macroscopic and idealized, lacking a typological empirical analysis grounded in a large volume of judicial decisions, and the criteria for distinguishing between property-rule and liability-rule scenarios need further refinement; second, the literature review is primarily based on domestic normative studies, with insufficient comparative law analysis drawing on punitive damages systems in jurisdictions like the EU and the USA, resulting in a lack of cross-jurisdictional institutional reference; third, the operability of the special compensation fund's operational mechanism, distribution process, and supervision methods needs further strengthening. Subsequent research could enhance the argumentative strength through methods such as statistical analysis of judgment documents, comparative case studies, and law and economics modeling. Nonetheless, the author believes that whatever improvement measures are adopted in the future, the persistent goals should be to enhance the system's efficacy and vitality, while simultaneously preventing its abuse or deviation from the core objectives and legislative intent of copyright law.

References

[1] Standing Committee of the National People's Congress. (2020). Copyright Law of the People's Republic of China (2020 Amendment) [Statute].
[2] Calabresi. G., & Melamed, A. D. (1972) Property rules, liability rules, and inalienability: One view of the cathedral. Harvard Law Review, 85(6): 1089-1128.
[3] Wang, L.M. (2000) Research on punitive damages. Social Sciences in China, (4): 112–122.
[4] Zhang, X.B., & Li, Q. (2009) Legislative choices of punitive damages. Tsinghua Law Journal, 3(4): 5–20.
[5] Cooter, R., & Ulen, T. (2017) Law and economics (J. Shi et al., Trans.). Gezhi Press.
[6] Supreme People's Court. (2021). Interpretation on the application of punitive damages in the trial of civil intellectual property infringement cases (Fa Shi [2021] No. 4) [Judicial interpretation].
[7] Jiang, G. (2015) The "non-punitive" nature of punitive damages in copyright and patent law. Chinese Journal of Law, 37(1): 80–97.
[8] Wang, J.Y. (2024-12-18). On the restrictive application of punitive damages in copyright infringement disputes. UCASS Law. https: //law.ucass.edu.cn/info/1031/7724.htm
[9] Li, M.D. (2016) Reflections on intellectual property damages. Intellectual Property, 26(5): 3–9.
[10] Wei, Y.S. (2023) Improving China's punitive damages system for intellectual property from the perspective of the "Calabresi–Melamed framework". Western Law Review, (2): 1–13.
[11] Wei, Y.S. (2021) Dilemmas and solutions of China's punitive damages system for intellectual property (Doctoral dissertation, Xiangtan University). https: //doi.org/10.27426/d.cnki.gxtdu.2021.002029.
[12] Wu, H.D. (2018) Market value analysis of intellectual property damages: Theory, rules, and methods. Law Review, 36(1): 65–74.
[13] Ling, B. (2015) Rule selection of legal remedies: Property rules, liability rules, and the law and economics reconstruction of the Calabresi–Melamed framework. China Legal Science, (5): 5–20.
[14] Cao, X.M. (2013) An analysis of punitive damages in intellectual property infringement: Also on the revision of three intellectual property laws in China. Intellectual Property, 23(4): 3–9.
[15] Luo, L. (2014) The introduction and application of punitive damages in intellectual property law. Legal Science, (4): 22–31.