

Platform Rules, Private Law, and a Common Framework

Perspectives from the Hangzhou Initiative

SHAN QINTONG (IRENE)

China Society of Private International Law

sqt0524@gmail.com



The Hangzhou Initiative as an Analytical Lens

Hangzhou Initiative: Guiding Principles for Cross-Border E-Commerce Platform Rules for Cross-Border E-Commerce Platform Rules

Principle Name	Core Content
Principle of Good Faith in aligning rules with user expectations	Platform operators cannot arbitrarily change the contents of platform rules.
Fair Treatment non-discrimination	Prohibition of algorithmic discrimination and differential treatment.
Consistency of Rights and Responsibilities for platform operators	Platform operators should bear the responsibility equivalent to their power.
Proportionality in governance measures	Penalty measures match the degree of violation.
Openness and Transparency in rule-making	The internal governance measures of platform operators should match their governance.
Consultative Co-Governance with stakeholders	Merchants, consumers, and experts participate in rule-making.
Accessible Remedies for users	Establish multi-level, low-cost dispute resolution mechanisms.
Upholding Public Interest	Prohibition of acts that harm national security and public interest.



Finding 1: The The Unexpressed Foundation

Ambiguity at the Core

clauses	Baidu	NetEase Cloud	PDD	Taobao	Tmall	Wechat	Alipay	TikTok	Headline
Preface	✓	✓	✓	✓	✓	✓	✓	✓	✓
Definition	✓	✓	✓	✓	✓	✓	✓	✓	✓
Scope of application	✓	✓	✓	✓	✓	✓	✓	✓	✓
General principles	✗	✓	✗	✓	✓	✗	✓	✗	✓
Service content	✓	✓	✓	✓	✓	✓	✓	✓	✓
User obligations	✓	✓	✓	✓	✓	✓	✓	✓	✓
Fees and payments	✓	✓	✓	✓	✓	✓	✓	✓	✓
Data Protection and Privacy	✓	✓	✓	✓	✓	✓	✓	✓	✓
Intellectual Property	✓	✓	✓	✓	✓	✓	✓	✓	✓
Liability and compensation	✓	✓	✓	✓	✓	✓	✓	✓	✓
Termination and Suspension	✓	✓	✓	✓	✓	✓	✓	✓	✓
Dispute resolution	✓	✓	✓	✓	✓	✓	✓	✓	✓
Applicable law	✓	✓	✓	✓	✓	✓	✓	✓	✓
Other clauses	✓	✓	✓	✓	✓	✓	✓	✓	✓

◆ Key Observation:

- A foundational module is frequently absent: several major platforms (**Baidu, Pinduoduo, WeChat, TikTok**) lack a dedicated "General Principles" section.

◆ Significance & Implication:

- This omission leaves the platform's core governance ethos—its commitment to fairness, integrity, good faith—**implicit or ambiguous**.
- Without a declarative anchor, the interpretive framework for all subsequent, specific rules is weakened, reducing predictability for users.

“Principle of Good Faith: When formulating or amending platform rules, platform operators shall fully consider the rights and interests of platform users (including business operators on the platform and buyers), align with their reasonable expectations in specific scenarios, actively, equitably, and reasonably allocate rights, and distribute obligations on an equal, reciprocal, and proportional basis. Platform operators shall not arbitrarily alter platform rules without public disclosure, solicitation of opinions, or without justifiable cause.”



Finding 2: The Transparency Deficit

A Structural Barrier to Fair Notice

◆ Core Problem:

- Critical stipulations governing user rights and risks (e.g., **account suspension, content removal**) are routinely **dispersed across multiple, cross-referenced policy documents** (e.g. Acceptable Use Policy, Community Guidelines, Seller Agreement).

◆ Specific Challenge:

- This architecture forces users to navigate a **labyrinth of dense, legalistic texts** to understand a single material rule.
- Key definitions and procedures are often buried, undermining effective notice.

“Principle of Openness and Transparency: Platform operators shall, within a reasonable timeframe, disclose in a clear, accurate, and verifiable manner any rules and key determinants that may affect the core rights and obligations of platform users. They shall provide explanations for the key logic behind relevant automated decisions and maintain consistency and uniformity in terminology and expression to facilitate interoperability and supervision across different jurisdictions.”



Finding 3: Structural Power Asymmetry

A Systemic Imbalance of Rights and Liabilities



◆ Platform Prerogatives (Direct Clause Examples):

- “We may modify these Terms at any time at our sole discretion.”
- “We reserve the right to terminate your access... for any reason.”
- “Our aggregate liability shall not exceed the fees you paid in the preceding 12 months.”

Platform	Logistics	Payment	Product Quality	Governing Law
Amazon	Seller liable; buyer liable under extreme circumstances; platform exempted Risk mitigation: Use official platform logistics for platform liability coverage	Platform exempted	Defect Recall Policy Supply Chain Standards Policy	Platform's local law and dispute resolution body
eBay	Seller liable; buyer liable under extreme circumstances; platform exempted Risk mitigation: Merchants purchase insurance	Platform exempted	Prohibited and Restricted Items Shipping Policy	Platform's local law and dispute resolution body
Alibaba.com International	Subject to buyer-seller agreement; platform exempted: 1. EXW: Ex Works - common for small orders 2. FOB/CIF: Risk transfer after goods delivered to carrier; most commonly used 3. DDP: Risk transfer after goods delivered to buyer's designated address; less commonly used Risk mitigation: Merchants purchase insurance	Platform exempted	Product compliance rules, including intellectual property rules, national prohibited/restricted sales rules, category restrictions, compliance guidelines, product quality and recall rules, etc.	Hong Kong law, Hong Kong International Arbitration Centre (HKIAC)
Mercado Libre	Seller liable; buyer liable under extreme circumstances; platform exempted Risk mitigation: Use official platform logistics for platform liability coverage	Platform exempted	Prohibited products rules, intellectual property protection rules, etc.	Platform's local law and jurisdiction
Coupang	Seller liable; buyer liable under extreme circumstances; platform exempted Risk mitigation: Use official platform logistics for platform liability coverage	Platform exempted Merchants hold electronic payment service providers liable	Establishes product sales standards	South Korean law, jurisdiction determined in accordance with Civil Procedure Act

Finding 3: Structural Power Asymmetry

A Systemic Imbalance of Rights and Liabilities

◆ User-Side Deficits

Lack of Prior Consultation: Meaningful input mechanisms before significant rule changes are rare.

Disproportionate Sanctions: Penalties often lack a published, proportional scale, leading to potentially severe outcomes for minor or ambiguous infractions.

“Principle of Consistency of Rights and Responsibilities: As the formulators and enforcers of platform rules, platform operators shall assume responsibilities commensurate with their powers. They shall strictly comply with the laws and regulations of the countries or regions where they are located and where their business operations are conducted, fulfil the contractual obligations under platform rules, and respect the public order and social norms of jurisdictions relevant to platform activities.”

“Principle of Proportionality: Internal governance measures by platform operators shall be proportionate to their governance objectives, prioritizing options with the least restrictive impact, and ensuring that the public interest safeguarded by such measures significantly outweighs the constraints imposed on the rights and interests of platform users. Due regard shall be given to the fundamental, legitimate, and lawful operational rights of business operators on the platform. When imposing governance measures that deprive or restrict the transaction qualifications or capabilities of business operators on the platform, strict proportionality between penalties and offenses shall be observed to avoid abuse of platform authority.”



Finding 4: The Remedial Gap

Design Challenges in Dispute Resolution Pathways

◆ The Two-Tiered Barrier:

- **Opaque Internal Appeals:** Processes are often vaguely defined, impose a high burden of proof on the user, and offer no guarantee of timely, substantive review by an independent party.
- **Restrictive External Forums:** Agreements commonly mandate **binding arbitration in a specified distant jurisdiction** (e.g.,), imposing **prohibitive costs and complexity on individual users and SMEs**.

◆ Core Consequence:

- The formal contractual "right" to challenge decisions is rendered **largely illusory in practice**.

“Principle of Accessible Remedies: Platform operators shall provide platform users with full and effective opportunities for objection and defense, establish independent review mechanisms, and ensure the accessibility to external remedies for relevant parties. Internal governance rules of platforms shall not impede the jurisdiction and adjudication of judicial or alternative dispute resolution mechanisms. Proper procedures for penalties, remedies, and appeals shall be formulated, and the establishment of linkages with diversified dispute resolution pathways shall be encouraged to uphold a fair, just, and predictable governance and transactional order.”



Conclusion: Toward a Shared Frame of Reference

Summary of Evidence: Diagnostic Findings on Platform Governance

◆ Summary of Evidence:

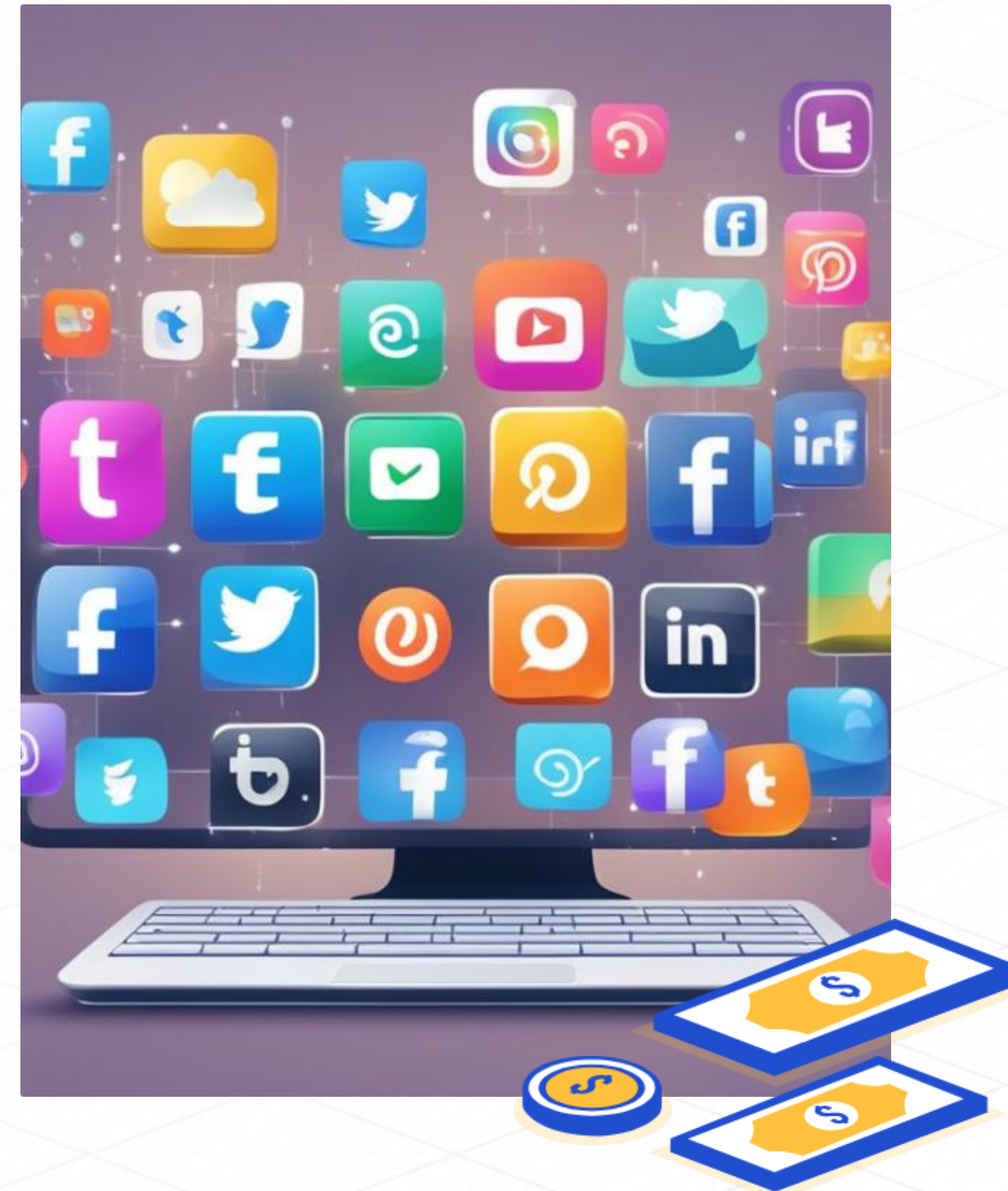
- Our diagnostic review identifies specific, recurrent friction points where platform governance models diverge from foundational private law expectations.

◆ The Value Proposition of a Common Framework:

- The **Hangzhou Initiative principles** provide an **evidence-based, neutral reference point**.
- They offer a **shared vocabulary** to articulate gaps, assess practices, and structure more productive dialogue among regulators, platforms, and users.

◆ Forward Look:

- We offer this framework and our underlying data to inform the critical discussions of this Working Group.



Thank You

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sqt0524@gmail.com