

# Principles for User Generated Content Services

## 用户制作内容服务商指导原则

Foster Innovation. Encourage Creativity. Thwart Infringement.

培育创新·鼓励原创·抵制侵权

Leading commercial copyright owners (“**Copyright Owners**”) and services providing user-uploaded and user-generated audio and video content (“**UGC Services**”) have collaborated to establish these Principles to foster an online environment that promotes the promises and benefits of UGC Services and protects the rights of Copyright Owners. In this context, UGC Services are services such as Soapbox on MSN Video, Myspace, Dailymotion and Veoh.com, and not other technologies such as browsers, applets, email, or search services. While we may differ in our interpretation of relevant laws, we do not mean to resolve those differences in these Principles, which are not intended to be and should not be construed as a concession or waiver with respect to any legal or policy position or as creating any legally binding rights or obligations. We recognize that no system for deterring infringement is or will be perfect. But, given the development of new content identification and filtering technologies, we are united in the belief that the Principles set out below, taken as a whole, strike a balance that, on a going-forward basis, will result in a more robust, content-rich online experience for all.

本原则由业内领先的商业版权所有人（以下简称“**版权所有人**”）以及专业提供用户上传及用户制作的视听内容的服务商（“**UGC 服务商**”）协商制定，旨在培育一个促进 UGC 服务商发展、发扬其优势并维护版权所有人权利的网络环境。在本原则中，UGC 服务商是指如 MSN Video 的 Soapbox、Myspace、Dailymotion 以及 Veoh.com 等服务商，不涉及浏览器、小应用程序、电子邮件或者搜索等其他技术服务。虽然我们对相关法律法规的解读可能存在分歧，但我们无意在本原则中解决该分歧，这不是也不应被解释为对各自法律或政策立场的退让或放弃，或设立任何具有法律约束力的权利或义务。诚然，版权保护制度现在或将来均很难达至完美，但随着内容识别与过滤技术的发展，我们相信，整体而言，下文所述之原则的实践将带大家充满活力、内容丰富的在线体验。

In coming together around these Principles, Copyright Owners and UGC Services recognize that they share several important objectives: (1) the elimination of infringing content on UGC Services, (2) the encouragement of uploads of wholly original and authorized user-generated audio and video content, (3) the accommodation of fair use of copyrighted content on UGC Services, and (4) the protection of legitimate interests of user privacy. We believe that adhering to these Principles will help UGC Services and Copyright Owners achieve those objectives.

在会商本原则的过程中，版权所有人与服务商确认享有以下几项重要的共同目标：

- (1) 清除 UGC 服务上存在的侵权内容；
- (2) 鼓励用户上传自己原创以及获得授权的用户制作的视听内容；
- (3) 允许 UGC 服务上版权内容的合理使用；
- (4) 保护用户合法隐私权。

我们相信坚持本原则有助于 UGC 服务商与版权所有人达到上述目标。

1. UGC Services should include in relevant and conspicuous places on their services information that promotes respect for intellectual property rights and discourages users from uploading infringing content.

UGC 服务商应在其服务平台的相关且显著位置上标明鼓励其用户尊重知识产权、禁止上传侵权内容的信息。

2. During the upload process, UGC Services should prominently inform users that they may not upload infringing content and that, by uploading content, they affirm that such uploading complies with the UGC Service's terms of use. The terms of use for UGC Services should prohibit infringing uploads.

在用户上传过程中，UGC 服务商应以明显的方式告知用户不得上传侵权内容，且其上传行为将被视为其已确认遵从服务商的使用条款。而服务商应在其使用条款中对禁止上传侵权内容做出明确规定。

3. UGC Services should use effective content identification technology ("**Identification Technology**") with the goal of eliminating from their services all infringing user-uploaded audio and video content for which Copyright Owners have provided Reference Material (as described below). To that end and to the

extent they have not already done so, by the end of 2007, UGC Services should fully implement commercially reasonable Identification Technology that is highly effective, in relation to other technologies commercially available at the time of implementation, in achieving the goal of eliminating infringing content. UGC Services should enhance or update the Identification Technology as commercially reasonable technology that makes a meaningful difference in achieving the goal becomes available.

UGC 服务商应使用有效的内容识别技术（以下简称“**识别技术**”），以便清除用户上传的、版权所有人已提供参考材料（以下详述）的所有侵权视听内容。为此，若 UGC 服务商尚未达到上述要求，则最迟至 2007 年底，UGC 服务商必须全面使用已面市的相比同期其他技术更为高效的识别技术，以达到清除侵权内容之目的。如果有为达到该等目标具有本质不同的识别技术面市，UGC 服务商应对原有识别技术进行升级或更新。

- a. If a Copyright Owner has provided: (1) the reference data for content required to establish a match with user-uploaded content, (2) instructions regarding how matches should be treated, and (3) representations made in good faith that it possesses the appropriate rights regarding the content (collectively, “**Reference Material**”), then the UGC Service should apply the Identification Technology to that content to implement the Filtering Process described below. UGC Services should ensure that reasonable specifications, as well as any tools and/or technical support, for the delivery of Reference Material are made available to Copyright Owners. If a Copyright Owner does not include in the Reference Material instructions regarding how matches should be treated, the UGC Service should block content that matches the reference data.

如果版权所有人提供了：（1）可与用户上传内容进行对比的参考数据；（2）如何进行对比的指示；以及（3）对内容享有合法权利的善意声明（以下合称“**参考材料**”），则 UGC 服务商应使用识别技术对该内容执行下文所述之过滤过程。UGC 服务商应确保版权所有人可获得有关参考材料交付的合理说明以及所需工具和/或技术支持。如果版权所有人未在参考材料的指导中说明如何进行比对，则 UGC 服务商应屏蔽与参考数据相一致的内容。

- b. The Identification Technology should use Reference Material to identify user-uploaded audio and video content that matches the reference data and should permit Copyright Owners to indicate how matches should be treated.

识别技术应以参考材料为依据，对用户上传的与参考数据匹配的视听内容进行识别，并且应允许版权所有人对如何匹配进行指导。

- c. If the Copyright Owner indicates in the applicable Reference Material that it wishes to block user-uploaded content that matches the reference data, the UGC Service should use the Identification Technology to block such matching content before that content would otherwise be made available on its service (“**Filtering Process**”). The Copyright Owner may indicate in the applicable Reference Material that it wishes to exercise an alternative to blocking (such as allowing the content to be uploaded, licensing use of the content or other options), in which case, the UGC Service may follow those instructions or block the content, in its discretion.

如果版权所有人在适用的参考材料中说明其希望屏蔽与参考数据相匹配的用户上传内容，则 UGC 服务商应在公众从网络上获得该等相关内容之前，使用识别技术对其加以屏蔽（以下简称“过滤过程”）。版权所有人可在适用的参考材料中说明其希望实施屏蔽以外的其他处理办法（比如允许该内容的上传、许可该内容的使用或其它选择）。在此情形下，UGC 服务商可以自主决定遵循上述指示或者直接屏蔽该内容。

- d. Copyright Owners and UGC Services should cooperate to ensure that the Identification Technology is implemented in a manner that effectively balances legitimate interests in (1) blocking infringing user-uploaded content, (2) allowing wholly original and authorized uploads, and (3) accommodating fair use.

版权所有人与 UGC 服务商应相互合作以确保识别技术乃为达到有效平衡以下合法利益之目的而使用：（1）屏蔽用户上传侵权内容；（2）允许上传完全原创与获得授权的内容；（3）允许合理使用。

- e. UGC Services should use the Identification Technology to block user-uploaded content that matches Reference Material regardless of whether the UGC Services has any licensing or other business relationship with the Copyright Owners who have provided such Reference Material (except that UGC Services may require that Copyright Owners enter into agreements with respect to the specifications for delivery of Reference Material that are commercially reasonable and that facilitate the provision of Reference Material by Copyright Owners and promote the goal of the elimination of infringing content). If a Copyright Owner authorizes specific users to upload content that would otherwise match Reference Material submitted by the Copyright Owner, the Copyright Owner should provide to the UGC Services a list of such users (a so-called white list).

不论 UGC 服务商是否与已提供参考材料的版权所有人存在任何许可或者其它商业关系，UGC 服务商都应使用识别技术屏蔽与该参考材料相匹配的用户上传内容（但 UGC 服务商可要求版权所有人就参考材料的交付说明签订协议，且该协议须在商业上有可操作性，并有助于版权所有人提供参考材料及清除侵权内容之目标的实现）。如果版权所有人授权特定用户上传在某些方面可能与版权所有人提交之参考材料相匹配的内容，则版权所有人应向 UGC 服务商提供该类用户的名单（即所谓的白名单）。

- f. UGC Services may, at their option, utilize manual (human) review of all user-uploaded audio and video content in lieu of, or in addition to, use of Identification Technology, if feasible and if such review is as effective as Identification Technology in achieving the goal of eliminating infringing content. If a UGC Service utilizes such manual review, it should do so without regard to whether it has any licensing or other business relationship with the Copyright Owners. Copyright Owners and UGC Services should cooperate to ensure that such manual review is implemented in a manner that effectively balances legitimate interests in (1) blocking infringing user-uploaded content, (2) allowing wholly original and authorized uploads, and (3) accommodating fair use.

如果人工检查可行且在达到清除侵权内容的目标方面与识别技术同样有效，则 UGC 服务商可以选择人工检查所有用户上传的视听内容，以代替或补充识别技术。如果 UGC 服务商使用人工检查，则无论其是否与版权所有人存在任何许可协议或者其他商业关系，其都应当屏蔽侵权内容。版权所有人与 UGC 服务商应共同合作确保人工检查的实施可有效保证以下合法利益：（1）屏蔽用户上传的侵权内容；（2）允许上传完全原创与经过授权的内容；（3）允许合理使用。

- g. Copyright Owners should provide Reference Material only with respect to content for which they believe in good faith that they have the appropriate rights to do so, and should update rights information as reasonable to keep it accurate. The inclusion of reference data for content by, or at the direction of, a Copyright Owner shall be deemed to be an implicit representation made in good faith that such Copyright Owner has the appropriate rights regarding such content. Copyright Owners should reasonably cooperate with UGC Services to avoid unduly stressing the Services' Identification Technology during limited periods when Copyright Owners, collectively, may be providing an overwhelmingly high volume of Reference Material. UGC Services should reasonably cooperate with Copyright Owners to ensure that such Reference Material is utilized by the Identification technology as soon as possible during such overload periods.

版权所有人应仅就其善意认为其享有合法权利的内容提供参考材料，并应尽可能合理地更新该权利信息以确保其准确性。版权所有人将内容之参考数据列入参考材料，或者 UGC 服务商根据版权所有人的指示将其列入参考材料，均应视为版权所有人基于善意做出的默示声明，即该版权所有人对该内容享有合法权利。版权所有人应与 UGC 服务商合理地合作，以避免众多版权所有人可能在短时间内同时提供大量参考材料，以致 UGC 服务商的识别技术超负荷运作。UGC 服务商应与版权所有人合作，确保在上述超负荷运作期间尽快使用识别技术利用所有参考材料。

- h. Promptly after implementation of Identification Technology, and at intervals that are reasonably timed throughout each year to achieve the goal of eliminating infringing content, UGC Services should use

Identification Technology throughout their services to remove infringing content that was uploaded before Reference Material pertaining to such content was provided.

一旦应用识别技术后，为了达到清除侵权内容的目标，UGC 服务商应在每年出现的合理空档期间内，通过使用识别技术，删除在关于侵权内容的参考材料被提供前就已上传的该等侵权内容。

- i. Copyright Owners and UGC Services should cooperate in developing reasonable procedures for promptly addressing conflicting claims with respect to Reference Material and user claims that content that was blocked by the Filtering Process was not infringing or was blocked in error.

版权所有人与 UGC 服务商应合作制订有关程序，以便及时解决参考材料中相互冲突的权利要求，并解决用户因过滤过程中被屏蔽之内容并未侵权或屏蔽有误而提出的要求。

4. UGC Services and Copyright Owners should work together to identify sites that are clearly dedicated to, and predominantly used for, the dissemination of infringing content or the facilitation of such dissemination. Upon determination by a UGC Service that a site is so dedicated and used, the UGC Service should remove or block the links to such sites. If the UGC Service is able to identify specific links that solely direct users to particular non-infringing content on such sites, the UGC Services may allow those links while blocking all other links.

UGC 服务商与版权所有人应共同确定明显从事且主要用于传播侵权内容或为该传播行为提供便利的网站。一旦 UGC 服务商确定某一网站致力于并被用于从事上述行为，UGC 服务商应删除或者断开该网站之链接。如果服务商在该网站中能够识别一些仅将用户引向非侵权内容的特别链接，则 UGC 服务商可以在断开所有其他链接的情况下保留该链接。

5. UGC Services should provide commercially reasonable enhanced searching and identification means to Copyright Owners registered with a service in order: (a) to facilitate the ability of such Copyright Owners to locate infringing content in

all areas of the UGC Service where user-uploaded audio or video content is accessible, except those areas where content is made accessible to only a small number of users (not relative to the total number of users of the UGC Service), and (b) to send notices of infringement regarding such content.

UGC 服务商应向已登记的具有该等服务的版权所有人提供已面市且升过级的搜索与识别工具，以便：（a）该版权所有人能够在 UGC 服务上可供用户上传视听内容的所有网站上找到侵权内容，惟内容仅向少量用户开放的区域除外。（少量用户的定义与 UGC 服务的用户总数无关），以及（b）就该内容向有关人士发送侵权通知。

6. When sending notices and making claims of infringement, Copyright Owners should accommodate fair use.

版权所有人在发送侵权通知并提出侵权指控时，应允许版权内容的合理使用。

7. Copyright Owners should provide to UGC Services URLs identifying online locations where content that is the subject of notices of infringement is found—but only to the extent the UGC Service exposes such URLs.

版权所有人在向 UGC 服务商发送侵权通知时，应提供侵权内容的确切网络地址的 URL 链接。（仅限于服务商所显示的 URL）

8. When UGC Services remove content pursuant to a notice of infringement, the UGC Services should (a) do so expeditiously, (b) take reasonable steps to notify the person who uploaded the content, and (c) promptly after receipt of an effective counter-notification provide a copy of the counter-notification to the person who provided the original notice, and, at its option, replace the content if authorized by applicable law or agreement with the Copyright Owner.

当 UGC 服务商根据侵权通知删除相关内容时，UGC 服务商应（a）立即删除；（b）采取合理步骤通知该内容的上传者；以及（c）在收到有效的反通知后立即向提供原侵权通知的人士提供反通知的复印件，并可自主选择根据相关法律或者与版权所有人的协议恢复该内容。

9. When infringing content is removed by UGC Services in response to a notice from a Copyright Owner, the UGC Service should use reasonable efforts to notify the Copyright Owner of the removal, and should permit the Copyright Owner to provide, or request the UGC Service to provide on its behalf, reference data for such content to be used by the Identification Technology.

当 UGC 服务商根据版权所有人的通知删除侵权内容时，UGC 服务商应尽合理努力将上述删除行为通知版权所有人，并应允许版权所有人提供或者要求 UGC 服务商代表其提供识别技术将使用的该内容之参考数据。

10. Consistent with applicable laws, including those directed to user privacy, UGC Services should retain for at least 60 days: (a) information related to user uploads of audio and video content to their services, including Internet Protocol addresses and time and date information for uploaded content; and (b) user-uploaded content that has been on their services but has been subsequently removed following a notice of infringement. UGC Services should provide that information and content to Copyright Owners as required by any valid process and consistent with applicable law.

在与相关法律一致的情况下，包括关于用户隐私的法律，UGC 服务商应将以下信息至少保存 60 日：（a）有关用户上传视听内容的信息，包括因特网网络互联网协议地址以及上传内容的时间和日期；以及（b）用户已上传但在侵权通知发出后已被删除的内容。UGC 服务商应按照合法程序与法律规定的要求向版权所有人提供上述信息与相关内容。

11. UGC Services should use reasonable efforts to track infringing uploads of copyrighted content by the same user and should use such information in the reasonable implementation of a repeat infringer termination policy. UGC Services should use reasonable efforts to prevent a terminated user from uploading audio and/or video content following termination, such as blocking re-use of verified email addresses.

UGC 服务商应尽合理努力追踪同一用户对版权内容的侵权上传行为，并将该信息作为终止该重复侵权者享受服务的合理依据。UGC 服务商应尽合理努力防止反复侵权者在服务终止后继续上传视听内容，如阻止已核实的电子邮件地址再次被用于上传视听内容。

12. In engaging in the activities set forth in these Principles outside the United States, UGC Services and Copyright Owners should follow these Principles to the extent that doing so would not contravene the law of the applicable foreign jurisdiction.

在美国境外从事本原则所规定之行为的，UGC 服务商与版权所有人应在不违反相关外国法域之法律的情况下遵守上述原则。

13. Copyright Owners should not assert that adherence to these Principles, including efforts by UGC Services to locate or remove infringing content as provided by these Principles, or to replace content following receipt of an effective counter notification as provided in the Copyright Act, support disqualification from any limitation on direct or indirect liability relating to material online under the Copyright Act or substantively similar statutes of any applicable jurisdiction outside the United States.

版权所有人不应认为，UGC 服务商对本原则的遵守（包括 UGC 服务商找到或删除本原则规定之侵权内容或者在收到版权法下有效的反通知后恢复该等内容）视为丧失版权法或美国以外的其它相关法律所规定的与网络内容有关的直接侵权或间接侵权责任限制的保护。

14. If a UGC Service adheres to all of these Principles in good faith, the Copyright Owner should not assert a claim of copyright infringement against such UGC Service with respect to infringing user-uploaded content that might remain on the UGC Service despite such adherence to these Principles.

如果 UGC 服务商善意地遵守本原则的所有规定，而该等遵守仍无法避免 UGC 服务商提供的服务中可能仍存有用户上传的侵权内容，则版权所有人不应对该 UGC 服务商提起版权侵权诉讼。

15. Copyright Owners and UGC Services should continue to cooperate with each other's reasonable efforts to create content-rich, infringement-free services. To that end, Copyright Owners and UGC Services should cooperate in the testing of new content identification technologies and should update these Principles as

commercially reasonable, informed by advances in technology, the incorporation of new features, variations in patterns of infringing conduct, changes in users' online activities and other appropriate circumstances.

版权所有人与 UGC 服务商应保持合作，尽各方之合理努力创建一个内容丰富、杜绝侵权的服务环境。为此，版权所有人与 UGC 服务商应根据技术的进步、新特点的引入、侵权行为模式的变化、用户网络活动的改变以及其他适当情形，共同合作测试新的内容识别技术，并在商业合理的范围内更新本原则。