



**The DMCA's Influence on ISP's
Liability in China:
the Good and the Bad**

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Political Science and Law
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Good Influence: Red Flag Test

DMCA

512(c)(1) A service provider shall not be liable for monetary relief, . . . if the service provider-- . . . (A)(ii) in the absence of such actual knowledge, **is not aware of facts or circumstances from which infringing activity is apparent.**

Senate Report on DMCA

Subsection (c)(1)(A)(ii) can best be described as a "red flag" test . . . if the service provider becomes aware of a "red flag" from which infringing activity is apparent, it will lose the limitation of liability if it takes no action . . .



Regulations on Protection of the Right of Communication through Information Network (PRC, 2006)

*Article 22, a network service provider which provides an information storage space to a service recipient, . . . bears no liability for compensation if . . . (3) it does not know or **has no reasonable grounds to know** that the work is infringing.*

POCO 栏目导航

Film exchange zone

Action movie | Sci-fi film | Horror film | Comedy
Romance | Art film | War film | Animation
TV | Ethics film | Variety show | Other

Horror movie exchange zone

Sci-fi film exchange zone

TV exchange zone

China | USA | Taiwan | South Korea

MV exchange zone

Anime exchange zone

Other exchange zone

TV shows | Japan and South Korea | The exchange area of the TV game

请输入搜索关键字 Search Help

Tips: interactive online exchange portal POCO 2007 views on the use of software_ [primary user must-read] published a detailed flow of resources

- ▶ film exchange zone ▶ drama exchange zone ▶ the exchange of television programs zone ▶ TV, Japan and South Korea exchange zone ▶ horror movie area
- ▶ sci-fi film area ▶ anime exchange zone ▶ exchange zone

new 最新发布帖子 Recommended section: film review

Published by Time Updated by According to the number of on-demand

1 2 3 4 5 6 7 8 9 Next



【08 nominations for Best Picture golden】 【slum of millionaires in the words】 【DVD】

◎ slum have been translated into the millionaire / poor rich ◎ title Slumdog Millionaire

◎ during 2008

◎ United States / United Kingdom ◎ types of crime / drama / romance languages ◎ English / Hindi Chinese subtitles ◎ ◎ IMDB score 8.6/10 10861 votes Top 250: # 73

◎ file format DVDSCR-RMVB

◎ video size 640x272

◎ file size 1CD

◎ film 120 min

◎ director Danny Boyle Boyle

◎ starring Dave Patel Dev Patel Jamal Malik

Fu Leida Pinto Freida Pinto Latika

米娅德雷克 Mia Drake Adele (as Mia Inderbitzin)

Yanikapu Anil Kapoor Prem Kumar

Irfan Khan

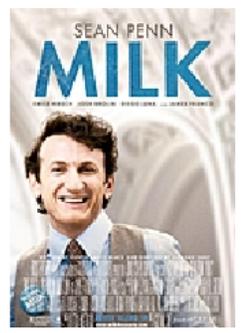
[Click to enter](#)

栏目精选

MARTIN LAWRENCE WILL SMITH

BAD BOYS II

Bad Boys 1-2 Collection



【2008 Golden Globe nomination milk】 【】 【DVD-RMVB / Chinese subtitles】

◎ translation of milk / Haweimike title ◎ Milk

◎ during 2008

United States ◎ ◎ category biography / drama ◎ ◎ English language subtitles Chinese ◎ IMDB score 8.4/10 6915 votes Top 250: # 173

◎ file format DVDSCR-RMVB

◎ video size 656x352

◎ file size 2CD

◎ film 128min

◎ director Gus Van Sant Gus Van Sant

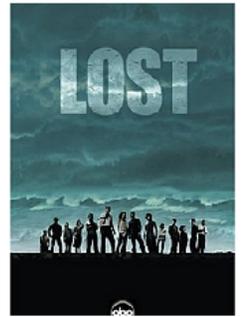
◎ starring Sean Penn Sean Penn Harvey Milk



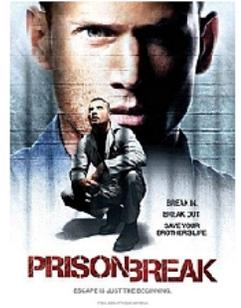
The Fast and the Furious 1-3 Collection



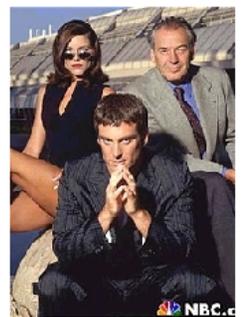
Time :2006-02-17



Time :2006-02-16



Time :2006-01-12



donated a novel, 'Brothers in Arms.' After reading the Tom Hanks was deeply moved later to give the novel to Spielberg, the latter regret "not to see this book as soon as possible" and made into a TV series. June 6 is a World War II Allied offens

This movie sharing is infringing!

[Download resources](#)

After the broadcast of the most popular elements of the latest series. ... the actor most performances, has become the most watched p ... a major airliner crashed on the island in the Pacific, a total of 48 ... ward to the arrival of rescue forces, they gradually found that the is ... has been broadcast for 16 years, but no one seems to find that they

... ed, how can they survive it? ... good medical equipment, Jack can only use the most simple way ... ed the lives of the people one by one. In the struggle for survival in the process, Jack has become a h ...
 However, there will be a hero, even if hidden secret ... all kinds of survivors, nationality, ethnic origin, cultural background, different personality, starting in 14 brothers and sisters, sons, friends, husband and wife, but also the enemy. They have to overcome bad weathe ... Huang Man in the tropical jungle in search of food, water, but also a

[Download resources](#)

... escape the first quarter of a ... Michael Scofield is a desperate w ... death penalty for murder, but ... as locked up in Lincoln and ... f the prison, with Lincoln ... The transformation o ... fellow inmates, Michael ... ers Charles Westmorela ... Lincoln's former girlfriend ... In the meantime, Lincoln 15-year ... include the prison doctor Sara Tancred,

I didn't know they were infringing

- Austin Powers Collection 1-3
- _ New comedy University _DVD
- _ Large Japanese comedy _DVD
- _ Drama gorgeous leave _DVD
- _ Romance Atonement _DVD
- _ Summer camp comedy father _DVD
- _ Thriller Joshua _DVD
- _ Comedy show Jackass 2.5 _DVD
- _ Thriller temptation of Eve: Angel _DVD
- Documentary disappearance of the ancient civilization _DVD
- _ Romance love manual 2 _DVD
- Shadow boxing action movie _2_DVD
- _ Millions of war film The Great Escape _DVD
- _ Natural drama substructure _DVD
- _ Drama Charlie Wilson's War _DVD
- _ Drama story home _DVD
- Fantasy film _ you only hear _DVD
- _ April a three-week drama two days _DVD
- _ Romance is love _DVD
- _ Thriller old age in accordance with _DVD

To camouflage in the first quarter
 Chinese name: to camouflage (with Chinese subtitles) (first quarter)
 English name: The Pretender
 Alias: TP
 Types of resources: RMVB
 Version: (first quarter) the whole set of 22 (updated timetable for the story a ...
 Issue: 1996, actor: JAROD Mike T. Davis Michael T Weiss
 Miss Parker安德里亚帕克Andrea Parker
 Patrick Sydney. Bao Chao Patrick Bauchau
 Region: U.S. Language: English:
 【】 Original name: The Pretender





Zhongkai Co. v. POCO.com (Shanghai High Court, 2008)

*As a professional video website, in its daily operation of the website, **it must have known, or at least should have known** that the movie concerned was unauthorized by viewing the poster and the introduction of the movies by the users.*

Originally created videos

TV shows

Movies



视频

感动SJ-M

搜索

hi, wzfwxy2 | 优酷 (退出)

仙剑三 爱神的黑白羽翼 人间正道 | 我属牛人 | 排行榜 高级搜索

上传视频 | 点播单 | 帮助

战台风！莫拉克登陆福建全力防御



福清人网站上传

播放:180,411 评论:114

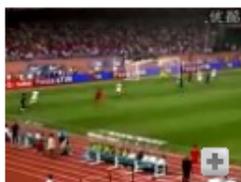
今年第8号台风"莫拉克"从福建沿海登陆，最高风力14级，福建各地全力防御。 [视频详情>>](#)

深度阅读: [莫拉克 台风 福建 浙江](#)

- [\[资讯\] 台风莫拉克进入温州境内实地拍摄](#)
- [\[资讯\] 实拍第8号台风莫拉克袭击瑞安](#)
- [\[资讯\] 莫拉克登陆浙江沿海 狂掀滔天巨浪](#)

今日热点视频

加入点播单连播



实拍超级杯震撼现场

205,038 280



六部委释放"从紧"信号

14 0



上海南汇区划入新浦东

14 0



珠海体育中心惹恼市民

63,633 160



范冰冰迁就郭德纲脱鞋

224,192 273



酒井法子向日警方自首

717,991 924



Hi, wzfwxy2 (退出)

管理视频

管理专辑

管理评论

查看订阅

查看点播单

查看站内信



寂静岭6：情定女特工

[详细信息 >>](#)

最佳原创视频

[\[更多原创视频\]](#)



仙剑奇侠传三



仙剑3发生在仙剑1的五剑元年开始，邪剑仙、锁妖塔并...



Film exchange area

- Action movie
- Science fiction
- Horror film
- Comedy
- Romance
- Dramas
- War
- Cartoon
- TV
- Ethics film
- Variety show
- Other

Horror film exchange area

Science fiction film exchange area

TV exchange area

Mainland | United States | Taiwan | Korea

MV exchange area

Animation Exchange District

Other exchange areas

Television program | Japanese and Korean TV series | Game Exchange District



栏目精选



请输入搜索关键字

搜索

Search Help

Tips: users interact with the entrance

POCO 2007 software views | [primary users reading] published detailed flow of resources

- film exchange area
- Exchange Zone TV
- TV Programme Exchange District
- Japan and South Korea exchange area TV
- horror movie zone
- sci-fi film area
- animation Exchange District
- MV exchange area

You are here: Home > RES Resource List> TV > United States



Time :2006 -10-16

Ugly have their day

In high fashion, imagination is everything. Fashion style is always short-lived, the only constant is wearing their slim beauty. If a girl looks ugly, but some body fat, you can do a fashion model? If you are willing to take the time to know Betty Suarez, you will find that she is a lovely, intelligent and hard working snow girl ... but no one cares about her, because in the fashion world, Betty too fat, not fit for doing this.

Publishing magnate Bradford Meade ready to his company's most prestigious fashion magazine "Mode" to take care of his son Daniel, he specifically hired Betty as his son's new assistant. The reason is simple: Maybe the whole New York City, Betty is the most reluctant Daniel to go to bed with a woman. The beginning, Daniel reluctantly accepted the Betty, but Betty never say die spirit and Emmanuel frequent intelligence won him the favor and trust. The two men actually know nothing about all the ins and outs of the fashion industry, but they decided to join forces to make a point to respond to those who want to see them score a joke people.

The first episode tells the story of the girl Betty Suarez (America Ferrera) has always dreamed of publishing work ,.....

Download



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Sohu v. Tudou (Shanghai First Intermediate Court, 2010)

*As a professional video-sharing service provider, Tudou should know that . . . movies uploaded by users for free viewing are very likely to be infringing. . . . However, Tudou not only failed to take any steps to prevent the infringement, but also . . . created the channel of “movie.” . . . **Such an arrangement facilitates the uploading of movie by users onto the movie channel . . . and thus facilitates the transmission of infringing movies.***

The new Judicial Interpretation on Protection of Copyright in the Network (PRC, 2012)

*Article 12: By taking into consideration the specific situations of the case, the people's court may determine that the hosting service provider **should know** that the uploaded content is infringing under the following circumstances:*

- The popular movies or TV shows are posted on the homepage or other prominent webpages where the hosting service could easily find the movies or TV shows;*
- The hosting service provider actively selected, edited, arranged, or recommended the topic or content of the work, or produced specific “popularity lists”;*
- Other circumstances under which the hosting service provider could easily be aware of the infringing nature of the uploaded work but failed to take reasonable measures.*

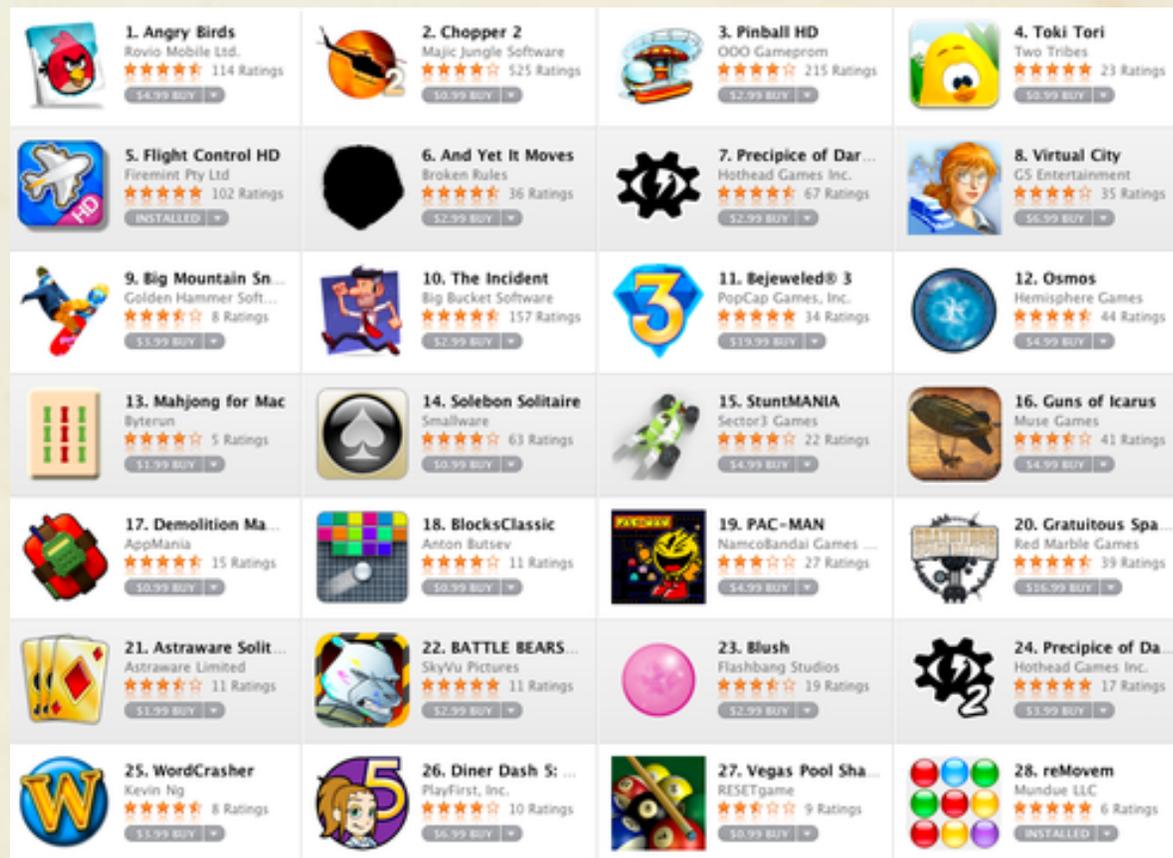
Bad Influence: Vicarious Liability

DMCA

512(c)(1): A service provider shall not be liable for monetary relief . . . if the service provider . . . (B) *does not receive a financial benefit directly attributable to the infringing activity*, in a case in which the service provider has the right and ability to control such activity.

The Regulation in China

Article 22: a network service provider . . . bears no liability for compensation if it *does not directly benefit financially from the works, performances or sound or video recordings uploaded by users.*



If a paid application (eBook, music, software) is infringing, should Apple be held liable for developer's' infringement since Apple obtains direct economic benefit from the paid application?



Li Chengpeng v. Apple (Beijing Second Intermediate Court 2012)

*As the operator of the App store, Apple has very **strong controlling and managing power** over **the App store** . . . [and] it gained substantial **direct economic benefit** through its paid downloading service. So Apple should bear a higher duty of care. In this case, Apple failed to properly fulfill its duty of care, so it should be held liable for the infringing application.*



Thank You!

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