

China Holds Platform Liable for Sales of Infringing NFTs

AUGUST 4, 2022

On April 20, 2022, the Hangzhou Internet Court held a Chinese NFT-trading platform responsible for copyright infringement for the conduct of one of its users in Case No. (2022) Zhejiang 0192 Minchu No. 1008, the first publicized NFT infringement case in China. The Hangzhou Internet Court released its statement about the case on its official WeChat account that described the case and rationale.

The plaintiff was the official licensee of a copyrighted work known as “Pang Hu Getting Vaccinated.” A third party created an NFT from the work and published it on the defendant’s NFT marketplace. The plaintiff issued a demand to the defendant’s platform requesting deletion of the infringing work from its platform and requesting that the platform claw back from the blockchain and destroy the previously sold infringing NFTs. The plaintiff eventually sued for failure to protect its right of dissemination under copyright principles. The defendant argued that its obligation was only to review the notification and conduct post-notification deletion, which it had done. The court held that the defendant as a platform has an enhanced duty of care given the nature of NFTs and should be responsible for infringement, *i.e.*, that it should have taken greater steps to confirm intellectual property rights before publication given the post-publication challenges to stopping infringement and the anonymity of the medium.

China, like most jurisdictions, has yet to publish laws that specifically address NFTs, and therefore, Chinese courts will have to draw from a variety of legal sources to fit NFTs within already existing categories. As background, NFT markets in China are unique because of their restrictions on cryptocurrencies (*i.e.*, *Notice on Further Preventing and Handling Speculation Risks in Virtual Currency Trading*), meaning NFT transactions would be in traditional fiat currency. Examples of Chinese NFT markets include NFT China, Huanhe, and Jingtian. The civil liability of an e-commerce platform in this type of matter is found in the *Regulations on Protection of Information Network Transmission Rights*. In short, that regulation provides a safe harbor to platforms that have links to infringing content unless they know or should know that the linked items are infringing copyright, at which time they would face joint and several liability.

The most challenging questions for the court involved which, if any, particular right within the proverbial bundle of rights of a copyright owner was infringed by the NFT creator via the defendant’s platform, *i.e.*, the right of publication, distribution, or transmission over an information network. After consideration, the court settled on finding that the right of transmission over an information network was infringed and levied a fine against the

defendant's platform that was substantially more than the amount of sales and caused the defendant's platform to cease infringement.

Ultimately, this case is a win for copyright holders and illustrates the increasing ability to obtain favorable remedies for violations of intellectual property rights in Chinese courts. Chinese legal obligations for online platforms to protect intellectual property have developed with increasing emphasis in favor of rights holders. While monetary damages may not reach the magnitude of other jurisdictions, awarded damages are not minimal, as Winston previously discussed [here](#). Furthermore, the power Chinese courts wield over China-based defendants, as well as the relative ease of obtaining certain injunctive relief, could make China a favorable forum in certain circumstances. Given the lower litigation costs in China, multinational companies may consider Chinese courts for enforcing intellectual property rights.

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Author

[Jacob Harding](#)

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