

ESSAYS



# INTERNET COURT ON SOLVING ONLINE CONSUMER CONTRACT DISPUTES: CASE OF CHINA

Jianing Sang

University of Fribourg  
20 Av. de l'Europe, Fribourg, Switzerland, 1700

## Abstract

The COVID-19 pandemic has deeply influenced people's way of life. The need to comply with various social restrictions has posed new and previously unknown challenges to humanity. Internet here plays a significant role in helping to maintain people's life as usual. As online behavior increases, many disputes arise therefrom grow simultaneously. It is proposed that international online disputes would be solved effectively if Internet technologies were referred to and adopted. Therefore, online litigation, a judicial method specially established to solve online disputes, provides an ideal alternative to the traditional litigation process in this regard. Such litigation can be operated through Internet courts (or cyber courts).

Today the palm in their establishment belongs to China that has successfully introduce the world's first three, and only, Internet courts. Thus, the Chinese experience has been chosen as the primary empirical support of the study on Internet courts.

In this essay, a detailed review of the online litigation process will be analyzed using the example of the adopted rules and regulations for resolving disputes, as well as the judgements handed down by the Hangzhou Internet Court, the world's first cyber court successfully resolving multiple online disputes over four years. The essay firstly reviews the current rules and procedures of Hangzhou Internet court; this would serve for a better understanding of how the world's first Internet court is operated. After that, the essay discusses in what circumstances foreign courts can recognize and enforce Internet courts' judgments. The essay ends up with giving personal recommendations on the future development of Internet courts to solve online consumer contract disputes.

## Keywords

online consumer contract disputes, online dispute resolution (ODR), Hangzhou Internet court, online trial process, online enforcement

### Conflict of interest

The author declares no conflict of interest.

### Financial disclosure

The study is sponsored by the China Scholarship Council (CSC).

### Acknowledgments

The author would like to express big and special thanks to Prof. Dr. Walter A. Stoffel, the supervisor of the author's Ph. D. study, for his invaluable assistance to author's research in Switzerland.

#### For citation

Sang, J. (2021). Internet court on solving online consumer contract disputes: Case of China. *Digital Law Journal*, 2(3), 23–45. <https://doi.org/10.38044/2686-9136-2021-2-3-23-45>

Submitted: 5 Sept. 2021; accepted: 27 Sept. 2021; published: 30 Sept. 2021

ЭССЕ

# РАЗРЕШЕНИЕ ОНЛАЙН СПОРОВ С УЧАСТИЕМ ПОТРЕБИТЕЛЕЙ: ОПЫТ КИТАЯ

Цзяньин Сан

Университет Фрибура  
1700, Швейцария, Фрибург, Авеню дё л'Ороп 20

## Аннотация

Пандемия COVID-19 самым серьезным образом повлияла на обычное течение общественной жизни и породила новые ранее неизвестные вызовы, связанные с увеличением объема отношений в онлайн среде. Увеличение числа международных онлайн-споров вызывает необходимость применения Интернет-технологий. Судебный процесс онлайн — процедура, специально разработанная для разрешения споров, вытекающих из отношений в цифровой среде — представляет собой идеальную альтернативу традиционному судебному процессу. Такой порядок рассмотрения споров может осуществляться посредством создания специальных Интернет-судов (кибер-судов).

На сегодняшний день пальма первенства в учреждении Интернет-судов принадлежит Китаю. Поэтому китайский опыт избирается основной эмпирической опорой исследования.

В эссе анализируется порядок разрешения споров онлайн на примере принятого регламента и судебных решений Интернет-суда г. Ханчжоу, вынесенных за последние годы. Особое внимание уделяется обстоятельствам, при которых онлайн-судебное решение может быть признано и приведено в исполнение судебными органами иных государств. В заключение представлены рекомендации автора по дальнейшему развитию Интернет-судов для разрешения споров, возникающих из договоров с участием потребителей в цифровом пространстве.

## Ключевые слова

онлайн договоры с участием потребителей, онлайн-урегулирование споров (ODR), Интернет суд Ханчжоу, судебное разбирательство онлайн, исполнение судебных актов онлайн

#### Конфликт интересов

Автор сообщает об отсутствии конфликта интересов.

#### Финансирование

Исследование проводилось при спонсорской поддержке Китайского совета по стипендиям (CSC).

#### Благодарность

Автор выражает особую благодарность профессору, доктору Вальтеру А. Штоффелю, научному руководителю автора при подготовке диссертации, за неоценимую помощь в ходе написания исследования в Швейцарии.

**Для цитирования**

Сан, Ц. (2021). Разрешение онлайн споров с участием потребителей: опыт Китая. *Цифровое право*, 2(3), 23–45. <https://doi.org/10.38044/2686-9136-2021-2-3-23-45>

Поступила: 05.09.2021, принята в печать: 27.09.2021, опубликована: 30.09.2020

## Introduction

Online shopping is closely linked with almost everyone globally; people are getting used to purchasing goods and achieving services through Internet, a more efficient and convenient approach for business or household use.

More than 90 % of Chinese people would probably give the same answer when being asked which website they most frequently choose to purchase from, and that answer would doubtless be Taobao and Tmall. These two websites belong to the well-known Alibaba Group, though they operate different types of electronic commerce.<sup>1</sup> Take 2020, for instance, Alibaba's Single's Day Sales on November 11 totaled a record \$ 74.1 billion (¥ 498.2 billion) gross merchandise volume, an increase of 26 % over 2019.<sup>2</sup> Accompanied by the rapid development of online shopping, disputes arising therefrom increase as well.

Traditionally, dispute resolution for a consumer contract is a domestic law issue due to the low involvement of foreign elements. Two solutions take effect in parallel and are mutually complementary based on their nature and characteristics. These solutions are the judicial approach of litigation and Alternative Dispute Resolution (ADR).

With the high involvement of the Internet in consumer transactions, online consumer contract disputes increase. Online consumer contract disputes can be solved through a litigation process and Online Dispute Resolution (ODR). A litigation process can proceed both online and offline. Online litigation can provide both online consumers and online sellers a higher level of efficiency and convenience to solve their contractual disputes compared with the offline litigation process. This online service is provided by the Internet court.

The headquarter of Alibaba Group locates in Hangzhou, Zhejiang Province, a city that combines the beauty of modernity and ancience in the south of Yangtze River. According to the statistics published by the Supreme People's Court in 2018, more than 70 % of online consumer contract disputes involve either Taobao or Tmall.<sup>3</sup> Online consumer contract transactions face the challenge of virtuality, intelligence, high-speed, and so forth, which requires the disputes arising thereof need to be solved with high efficiency but without hampering justice. Traditional courts could help to realize justice. However, contracting parties, especially the consumer, may bear the burden of the long and complicated litigation procedure, which is both time and money-consuming. In consideration

<sup>1</sup> On *Taobao*, the barriers for entry of the seller are less restrict than those on *Tmall*, therefore the *Taobao* is preferable by individual sellers, whereas medium and large sized enterprises are registered on *Tmall*. In consideration of this, *Taobao* is a typical C2C website while *Tmall* mainly serves for B2C business.

<sup>2</sup> On "Single Days" (Nov. 11), in order to entice customers, the retailers on Tmall, Taobao and other online shopping platforms will offer their goods at a discount. Business-wire. (n.a.). *Alibaba Generates RMB498.2 Billion (US \$ 74.1 Billion) in GMV During the 2020 11.11 Global Shopping Festival*. <https://www.businesswire.com/news/home/20201111005881/en/Alibaba-Generates-RMB498.2-Billion-US74.1-Billion-in-GMV-During-the-2020-11.11-Global-Shopping-Festival>

<sup>3</sup> China Justice Big Data Institute. *Judicial big data special report: Online consumer contract dispute*, figure 6. <http://www.court.gov.cn/fabu-xiangqing-119911.html>

of the reasons above, an idea to adjust the current judicial system was proposed. It was first launched in practice in Hangzhou, where such a solution is more urgently needed.

## Internet Court

### Internet Court and ODR

When it comes to the Internet age, if a contract is concluded online, and that cyber deal goes sour, perhaps the online community itself can best resolve it.<sup>4</sup> ODR, which is known as “Online Dispute Resolution”, was proposed to apply for solving online disputes in addition to the traditional judicial litigation process. Definition of ODR could be illustrated both narrowly and broadly. In the first sense, ODR is defined as an alternative dispute resolution that operates online, that is, an online alternative dispute resolution. The *American Bar Association Task Force on E-Commerce and Alternative Dispute Resolution* (the ABA Task Force) proposed workable regimes for online transactions and ODR. According to their *Final Recommendations and Report*, ODR is defined as:

“A broad term that encompasses many forms of alternative dispute resolution (“ADR”) that incorporate the use of the Internet, websites, e-mail communications, streaming media, and other information technology as part of the dispute resolution process. Parties may never meet face to face when participating in ODR. Rather, they might communicate solely online.”<sup>5</sup>

The EU treats ODR as “alternative dispute resolution (ADR) transferred to the online environment”.<sup>6</sup> Even though ODR is often regarded as an online ADR, I would say that this perception is too narrow to achieve a thorough and clear understanding of ODR.

In practice, Internet court operation is not isolated from other online alternative methods, namely, online negotiation, online mediation, and online arbitration. These alternative methods are often asked to be applied before the last step of the online judicial solution. This requirement is in consideration of the commonality that both Internet court and online alternative methods share. Just as the EU admitted, the public justice system – courts and judges, when being transformed into online Internet courts, should be the most satisfactory long-term solution to dispute resolution online and in cross-border consumer disputes.<sup>7</sup> The technology assisted in ODR can be either stand-alone or connected with an official body, such as a court.

### An Overview of Internet Court

Though it has not been generally accepted that Internet court, is an ODR method. The Internet court has already been adopted in practice and has provided some successful experiences. It is a dispute resolution method, no matter being deemed an extension of court procedure from offline to online, or to be regarded as an independent ODR method that could effectively help solve disputes over online consumer contracts.

<sup>4</sup> Martin, M. S. (2002). Keep it online: The Hague convention and the need for online alternative dispute resolution in international business-to-consumer ecommerce. *Boston University International Law Journal*, 20, 150.

<sup>5</sup> American bar association task force on e-Commerce and alternative dispute resolution. (2002). Addressing disputes in electronic commerce-Final report and recommendations. *The Business Lawyer*. 58(1), 419.

<sup>6</sup> Edwards, L., Wilson, C. *Redress & alternative dispute resolution in cross-Border e-Commerce transactions*. Briefing note. IP/A/IMCO/NT/2006-206. Directorate-General for Internal Policies of the Union. <https://www.europarl.europa.eu/document/activities/cont/201406/20140602ATT84796/20140602ATT84796EN.pdf>

<sup>7</sup> Ibid, 9.

The first Internet court in China was launched in Hangzhou, Zhejiang Province, on August 18, 2017. One month later, the Beijing Internet Court and the Guangzhou Internet Court were also established, these three Internet Courts constitute the current Chinese Internet Court system. According to the statistics published by the Supreme People's Court (June 18, 2021), from 1 January 2020 to 31 May 2021, 12.19 million cases were filed online, accounting for 28.3 % of the total number of the cases filed; 1.28 million online hearings were conducted, taking an average of 42.34 minutes for each hearing; as for court-referred mediation, 6.51 million cases were mediated online and 6.14 million cases were successfully mediated in the pre-trial.<sup>8</sup> In this paper, illustrations are mainly given from Hangzhou Internet Court, with its operational Litigation Platform of Hangzhou Internet Court.<sup>9</sup> Since it is the first Internet court litigation platform established in China, more detailed rules and cases could be found compared with the other two more recent Internet courts. Therefore, this article would mainly refer to the Hangzhou Internet Court for further discussions.

## Hangzhou Internet Court

### General Information

According to the statistics published by Hangzhou Internet Litigation Platform, it has received more than 11 600 cases ever since its establishment. In 99.06 % of the cases, the judgments were accepted by litigants. Rather than existing in a virtual, isolated way, the Hangzhou Internet Court is closely linked with the real world and the judicial system hereinto. To build up the connection between cyberspace and the actual physical world, the Hangzhou Litigation Platform works as the bridge in between. For instance, during the process of case categorization, this litigation platform takes charge of the case distribution upon acceptance of the case submitted by the Case-filing Division of the Internet Court, with the help of the Information Management System of the People's Court of Zhejiang Province, in which all case-related electronic files will be stored.<sup>10</sup>

Besides substantive functions, this litigation platform also helps the Internet court and the litigants stay in touch. For instance, upon successful acceptance of the case by the platform, the plaintiff and the defendant can browse the litigation documents such as the notice of the acceptance of the case or the notice of the response to lawsuits, the notice of evidence submission, the notice of rights and duties.<sup>11</sup>

<sup>8</sup> The supreme people's court of the PRC, *The SPC releases the rules of online litigation of people's court*. [http://english.court.gov.cn/2021-06/18/content\\_37545136.htm](http://english.court.gov.cn/2021-06/18/content_37545136.htm)

<sup>9</sup> Hangzhou Internet Court. (n.d.). Retrieved September 13, 2020, from <https://www.netcourt.gov.cn/portal/main/domain/index.htm>. In addition to the website provides, parties could also use the mini program of Hangzhou Litigation Platform through the application of WeChat on the phone. While so far, the mini program only supports the litigation brought about by natural person.

<sup>10</sup> Article 14 of the *trial procedure of the Litigation Platform of Hangzhou Internet Court* ("Trial Procedure"): "The case-filing division of Internet Court will put the case-related electronic files into the information management system of the people's court of zhejiang province on the day when the court accepts the case, and synchronously put them into the Litigation Platform online. The litigation platform distributes the case to the judge on the day when it accepts the case." Hangzhou Hulanwang Fayuan Susong Pingtai Shenli Guicheng (杭州互联网法院诉讼平台审理规程) [Trial procedure of the litigation platform of Hangzhou Internet Court] (promulgated by the Hangzhou Internet Court, May. 31, 2018), <https://www.netcourt.gov.cn/portal/indexRpc/viewProcedure.json?fileIdStr=EyGmDRYbBzklQqHCx7oAHQ> (China).

<sup>11</sup> Supra, n. 10, Article 12.

Before we go further into the specific procedural operation of Hangzhou Internet Court, it should be noted that, although it is called an Internet Court, it is still not an isolated court that merely exists online. According to the *Organic Law of the People's Republic of China*, courts in China could be classified into three types: The Supreme People's Court, the Local People's Court, and the Special People's Court. On the local level, courts could be divided into the High People's Court, the Intermediate People's Court, and the Basic People's Court. Even though Internet courts hear cases that with a special characteristic, their establishment has no legal basis such as the establishment decision made by the Standing Committee of the People's Congress. Therefore, the establishment of Internet courts does not meet the requirements of the law, Internet courts are not listed as Special People's Courts.<sup>12</sup> Internet courts are at the level of Basic People's Courts, they specifically have centralized jurisdiction over Internet cases that fall within the cities' jurisdiction where these Internet courts locate.

### Legislation over Internet Court

A clear sign that Internet court is treated as an independent online dispute resolution is that the court is regulated under specific legislation. The legal basis that governs the operation of these three Internet Courts are:

1. *Rules of Online Litigation of the People's Court of China* ("Online Litigation Rules"). It is a recently established Supreme People's Court judicial interpretation, aims at regulating the online litigation process regarding the legal validity, basic principles, applicable scope, and applicable conditions of online litigation.<sup>13</sup>

2. The *Supreme People's Court on Several Issues Concerning the Trial of Cases by Internet Courts* ("Judicial Interpretation of Internet Courts").<sup>14</sup> It was specifically established in terms of online disputes and Internet courts. Different from the *Online Litigation Rules*, this judicial interpretation emphasizes, more precisely, the online litigation process of the three Internet courts.

3. The *Civil Procedure Law of the People's Republic of China* ("the Civil Procedure Law").<sup>15</sup> It provides general procedural rules in the situation where no detailed regulations could be found from the *Judicial Interpretation of Internet Courts*.

4. *Interpretations of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China* ("Interpretation of Civil Procedure Law").<sup>16</sup>

<sup>12</sup> Article 15, *Zhonghua Renmin Gongheguo Renmin Fyuan Zuzhi Fa* (中华人民共和国人民法院组织法) [Organic law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Jul. 01, 1979, last modified Oct. 26, 2018, effective Jan. 1, 2019), [http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-10/26/content\\_2064483.htm](http://www.npc.gov.cn/zgrdw/npc/xinwen/2018-10/26/content_2064483.htm) (China).

<sup>13</sup> Renmin Fayuan Zaixian Susong Guize, Fashi [2021] Shier Hao (人民法院在线诉讼规则, 法释【2021】12号) [Rules of online litigation of the people's court of China, Judicial Interpretation No. 12 [2021]] (promulgated by the Judicial Comm. Sup. People's Ct., May. 18, 2021, effective Aug. 01, 2021), <http://www.court.gov.cn/zixun-xiangqing-309551.html> (China).

<sup>14</sup> Zuigao Renmin Fayuan Guanyu Hulanwang Fayuan Shenli Anjian Ruogan Wenti De Guiding, Fashi [2018] Shiliu Hao (最高人民法院关于互联网法院审理案件若干问题的规定, 法释【2018】16号) [Supreme people's court on several issues concerning the trial of cases by Internet courts, Judicial Interpretation No. 16 [2018]] (promulgated by the Judicial Comm. Sup. People's Ct., Sep. 3, 2018, effective Sep. 7, 2018), <http://www.court.gov.cn/zixun-xiangqing-116981.html> (China).

<sup>15</sup> *Zhonghua Renmin Gongheguo Minshi Susong Fa* (中华人民共和国民事诉讼法) [Civil procedure law of the people's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 9, 1991, effective Apr. 9, 1991, last modified Jun. 27, 2017), [http://www.moj.gov.cn/Department/content/2018-12/25/357\\_182594.html](http://www.moj.gov.cn/Department/content/2018-12/25/357_182594.html) (China).

<sup>16</sup> Zuigao Renmin Fayuan Guanyu Shiyong <Zhonghua Renmin Gongheguo Minshi Susong Fa> De Jieshi, Fashi [2015] Wu Hao, (最高人民法院关于适用《中华人民共和国民事诉讼法》的解释, 法释【2015】5号) [Interpretations of the Supreme People's court on the application of the civil procedure law of the People's Republic of China, Judicial Interpretation No. 5 [2015]] (promulgated by the Judicial Comm. Sup. People's Ct., Dec. 18, 2014, effective Feb. 4, 2015), Sup. People's Ct. Gaz, Jan. 30, 2015. <http://gongbao.court.gov.cn/Details/63ff48da6a9792f8ad1cb65a8b99d1.html> (China).

### 5. The *Cyber Security Law of the People's Republic of China* ("Cyber Security Law").<sup>17</sup>

In addition to aforesaid laws, each Internet Court has established its own procedural rules.<sup>18</sup> For instance, on the official website of Hangzhou Internet Court, the following litigation documents could be accessed: the *Outline of Online Court Trial* ("Simplified Procedure")<sup>19</sup>, *Guidelines Regarding the Litigation and Jurisdiction of Internet-involved Cases* ("Jurisdiction Guideline")<sup>20</sup>; *Online Trial Norms of Hangzhou Internet Court*<sup>21</sup>; *Notice Regarding the Parties' Rights and Duties and The Trial Procedure of the Litigation Platform of Hangzhou Internet Court*<sup>22</sup>; *Trial Procedure*<sup>23</sup>. All these will be the basis for the upcoming illustration as to the operation procedure of Hangzhou Internet Court.

## Jurisdiction

According to article 2 of the *Judicial Interpretation of Internet Courts*, the Internet courts in Beijing, Guangzhou, and Hangzhou shall have *centralized jurisdiction* over the following cases that the basic people's courts shall accept within the jurisdiction in their respective cities as courts of the first instance:

1. Disputes arising from the signing or performance of online shopping contracts through e-commerce platforms.
2. Disputes over the network service contracts, which are both signed and performed on the Internet.
3. Disputes over the financial loan contracts or small loan contracts which are both signed and performed on the Internet.
4. Disputes over the ownership of the copyrights or neighboring rights of the works published on the Internet for the first time.
5. Disputes arising from infringements upon the copyrights or neighboring rights of the works published or disseminated online through the Internet.
6. Disputes over Internet domain name ownership, infringements, and contracts.

<sup>17</sup> Zhonghua Renmin Gongheguo Wangluo Anquan Fa (中华人民共和国网络安全法) [Cyber security law of the people's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Nov. 07, 2016, effective Jun. 01, 2017), Standing Comm. Nat'l People's Cong. Gaz. 899 (China).

<sup>18</sup> Specific rules concerning trial procedure of Beijing Internet Court (Beijing Internet Court. (n.d.). Guideline on trial procedure. Retrieved September 13, 2021, from <https://www.bjinternetcourt.gov.cn/cgi/PreActionfindAllMore.htm?cid=1023>). For Guangzhou Internet Court (Guangzhou Internet Court. Guideline on trial procedure. Retrieved September 13, 2021, from <https://ols.gzinternetcourt.gov.cn/portal/main/domain/lassen.htm#lassen/guangzhou/litigationDocuments>).

<sup>19</sup> Hangzhou Hulanwang Fayuan Wangshang Tingshen Tigang (杭州互联网法院网上庭审提纲) [The outline of online court trial] (promulgated by the Hangzhou Internet Court, May 31, 2018), <https://www.netcourt.gov.cn/portal/indexRpc/viewProcedure.json?fileIdStr=jyy6j9MzXT1qrGvqszl-2g> (China).

<sup>20</sup> Hangzhou Hulanwang Fayuan Guanxia Zhiyin (杭州互联网法院管辖指引) [Hangzhou Internet Court's guidelines regarding the litigation and jurisdiction of Internet-involved cases] (promulgated by the Hangzhou Internet Court, May 31, 2018), <https://www.netcourt.gov.cn/portal/indexRpc/viewProcedure.json?fileIdStr=qIHvgglAbUzTbImtgxCDPg> (China).

<sup>21</sup> Hangzhou Hulanwang Fayuan Wangshang Tingshen Guifan (杭州互联网法院网上庭审规范) [Online trial norms of Hangzhou Internet Court] (promulgated by the Hangzhou Internet Court, May 31, 2018), <https://www.netcourt.gov.cn/portal/indexRpc/viewProcedure.json?fileIdStr=W6gvywJ4pHKkK-NG8memd8w> (China).

<sup>22</sup> Hangzhou Hulanwang Fayuan Dangshiren Quanli Yiwu Gaozhishu (杭州互联网法院当事人权利义务告知书) [Notice regarding the parties' rights and duties and the trial procedure of the Litigation Platform of Hangzhou Internet Court] (promulgated by the Hangzhou Internet Court, May 31, 2018), [https://www.netcourt.gov.cn/portal/indexRpc/viewProcedure.json?fileIdStr=GF4xuySAVK96BwS\\_J00lRA](https://www.netcourt.gov.cn/portal/indexRpc/viewProcedure.json?fileIdStr=GF4xuySAVK96BwS_J00lRA) (China).

<sup>23</sup> Supra, n. 10.



7. Disputes arising from infringements upon others' personal rights, property rights, and other civil rights and interests on the Internet.

8. Product liability disputes arising from the infringements upon others' personal and property rights and interests by the products purchased through e-commerce platforms due to product defects.

9. Internet public interest litigation cases filed by procuratorial organs.

10. Administrative disputes arising from the administrative actions taken by administrative organs, such as Internet information service management, Internet commodity trading, and related service management.

11. Other Internet civil and administrative cases the jurisdiction over which is designated by the people's court at higher levels.

More specifically, they could be classified into the following types of disputes. This essay here would separately illustrate each type of them in detail.

### **Online Shopping Disputes**

According to the *Jurisdiction Guideline*, online shopping disputes refer to contract disputes arising from online shopping: seller displays its products on the Internet and makes an offer, the buyer searches the information online and accepts the offer, and then the two parties reach an agreement and thereby form a contract of sale. Their dispute arises out of the *signing* or the *performance* of the contract.<sup>24</sup>

Disputes over Internet service contracts also belong to online shopping disputes with the contract's object to be the service rather than the product. In this case, disputes arise from the signing or performance of Internet service contracts. An Internet Service Provider (ISP) offers its customers access to the Internet, or an Internet Content Provider (ICP) provides information on the Internet.<sup>25</sup>

Besides, product liability disputes arising from online shopping are also governed by the Hangzhou Internet Court. After the producers, sellers of the product produce and sell the defective products, the consumers suffer a personal injury, property damage. Consequently, the disputes arising from the liability of the producers and/or sellers.<sup>26</sup>

It should be noted here that the online shopping contract does not equal the online consumer contract. The latter one has strict requirements on the party of the consumer and the seller. To be regarded as the consumer, he shall be a natural person who is both the buyer and the end-user of the product purchased, with the only intention to fulfill personal or household use. Whereas for the seller, either to be a natural or a legal person, he shall conduct business behavior that falls within his trade, business, and profession. These have led to a clear distinction between online shopping contracts and online consumer contracts, which is the protection over the consumer. Only when the buyer could be regarded as the consumer could he be entitled to special protection from the law.

### **Small Amount Financial Loan Contract**

It refers to disputes arising from the fact that the borrower, who had signed and performed the financial loan contract with the financial institution all through the Internet, failed to repay the financial institution the principal and interest on schedule. Disputes arising from the fact that the borrower, who had reached the small loan agreement with the financial institution or small loan

<sup>24</sup> Supra, n. 20, Article 2.1.

<sup>25</sup> Supra, n. 20, Article 2.2.

<sup>26</sup> Supra, n. 20, Article 2.4.



company, failed to repay them the principal and interest on schedule; the loan amount in the small loan contract is 500,000 Chinese yuan or less.<sup>27</sup>

### **Internet Copyright Disputes**

Disputes arising from the Internet copyright ownership of infringement refers to disputes arising from the ownership, infringement of the Internet works (works created in digital form, and published for the first time on the Internet, such as novels, movies, games, but not including computer software program), and disputes arising from the infringement of information network transmission rights of non-Internet works.<sup>28</sup>

On August 20, 2018, in the *Peppa Pig Case*<sup>29</sup>, the Hangzhou Internet Court sentenced two Chinese companies: Jufan Limited and Jiale Toys Industrial, to pay \$ 22 000 to Peppa Pig rights holders Entertainment One UK Limited and Astley Baker David Limited for copyright infringement, and to stop producing and selling a product with the image of Peppa Pig on it. This case shows respect for equal protection of Intellectual Property. It proves that the Hangzhou Internet Court can trial cases with foreign elements involved, just as empowered by law.

### **Internet Domain Name Disputes**

This type of dispute refers to those arising from Internet domain name contracts, Internet domain name ownership, and infringement, including disputes arising from Internet domain name registration contracts, Internet domain name transfer contracts, Internet domain name license agreements, Internet domain name ownership, Internet domain name infringement.<sup>30</sup>

### **Infringement of Personal Rights**

This type of case refers to disputes arising from the Internet's use to infringe another person's right to reputation, another person's right to privacy and/or personal information.<sup>31</sup>

### **First Instance Administrative Cases**

Cases caused by Internet administration refer to the administrative litigation cases of the first instance arising from the administrative management of the relevant administrative law enforcement departments, which implement the *Cyber Security Law* and any other laws.<sup>32</sup>

### **Centralized jurisdiction over Internet cases**

As indicated at the beginning of this section, Internet courts are at the level of Basic People's Courts, they exercise centralized jurisdiction over Internet cases that fall within the jurisdiction

<sup>27</sup> Supra, n. 20, Article 2.3.

<sup>28</sup> Supra, n. 20, Article 2.5.

<sup>29</sup> Aisilibei Daiweisi Youxian Gongsi, Yvleyi Yingguo Youxian Gongsi Su Shantou Shi Jufan Dianzi Shangwu Youxian Gongsi, Shantou Shi Jiale Wanju Shiye Youxian Gongsi, Zhejiang Taobao Wangluo Youxian Gongsi Zhuzuoquan Qinquan Jiufen An (艾斯利贝克戴维斯有限公司、娱乐壹英国有限公司诉汕头市聚凡电子商务有限公司、汕头市嘉乐玩具实业有限公司、浙江淘宝网络有限公司著作权侵权纠纷案) [Astley Baker Davies Co., Ltd. & Entertainment One UK Co., Ltd. v. Jufan Electronic Business Co., Ltd. & Shantou Jiale Toy Co., Ltd. & Zhejiang Taobao Network Co., Ltd., A dispute over copyright infringement], Aug. 20, 2018, Hangzhou Internet Court0129, No. 5227, <https://wenshu.court.gov.cn/website/wenshu/181107ANFZ0BXS4/index.html?docId=cd9f9a2397244dfeaf91abd600b4996c>.

<sup>30</sup> Supra, n. 20, Article 2.6.

<sup>31</sup> Supra, n. 20, Article 2.7.

<sup>32</sup> Supra, n. 20, Article 3.

of the cities where these courts locate. Centralized jurisdiction does not equal to special jurisdiction that Special People's Courts have. Therefore, centralized jurisdiction does not have the effect of exclusivity and priority that special jurisdiction has.

Article 34 of the *Judicial Interpretation of Civil Procedure Law* endows parties to a contractual dispute to designate jurisdiction via a valid choice of court clause unless such a clause violates exclusive jurisdiction. Centralized jurisdiction Internet courts have does not have the effect of exclusivity. When parties of an online consumer contract, for instance, designate the jurisdiction of an offline court via a valid choice of court clause, that offline court shall hear the case rather than an Internet court. Thus, the application of centralized jurisdiction may leave a potential tension between Internet courts and offline courts.

Additionally, based on the classification of online disputes as afore discussed, the only criterion adopted here to distinguish jurisdiction between Internet courts and offline courts is whether the case involves the use of the “Internet”. However, the traditional connecting factor, such as domicile, can still be applied to decide the jurisdiction of a contractual dispute (especially consumer domicile in online consumer contract disputes). Offline courts still have jurisdiction to deal with these cases even though they involve the use of the Internet. Meanwhile, the aforementioned illustrations of each type of Internet dispute are rather too descriptive. There lacks a standard to help courts reach a consensus on assessing: 1) whether a dispute involves the use of the Internet or not, and 2) whether the involvement of the Internet has reached a level to make the jurisdiction of an Internet court more suitable than the offline court. Different courts may have different considerations over one dispute, there is a potential risk of “jurisdiction conflicts” between Internet courts and offline courts.

These possible questions triggered by applying “centralized jurisdiction” can be solved by the following solutions. First, clarify the status of centralized jurisdiction, specifically in case of a valid choice of court clause. Second, on explaining what disputes shall be governed by Internet courts, focus shall be given on whether the content of the case involves the use of Internet technology on a level that makes Internet courts more suitable to hear the case than offline courts. Commonly recognized standards are in need to be established, which relies on the review of more new types and difficult Internet disputes.<sup>33</sup>

---

## Process Before Trial Initiation and Acceptance of Lawsuit

---

### ***Initiation of a Lawsuit Online***

The initiation process is conducted completely through the Hangzhou Litigation Platform, where the parties shall go through the identity authentication process before the formal initiation of a legal procedure. The identity authentication<sup>34</sup> is carried out at the Litigation Platform. It could be

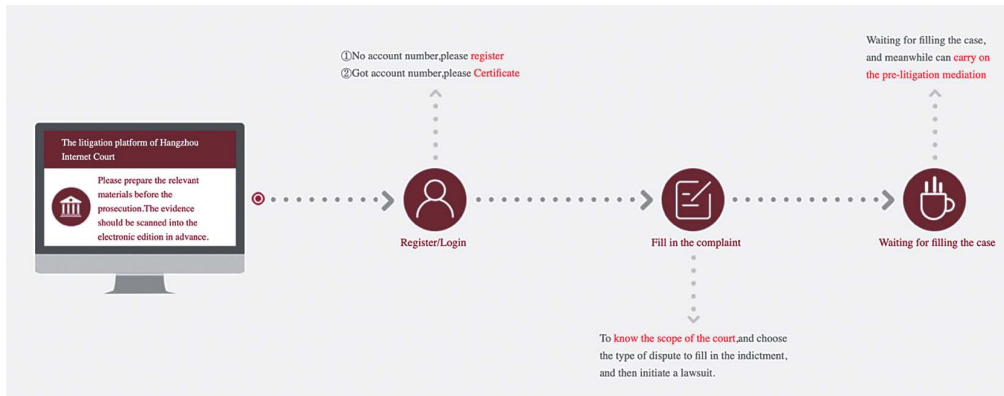
<sup>33</sup> Z. Liu, X. Li (2019), Commentary on the jurisdiction rules of the Internet Court. *Business and Economic Law Review*, 5, p. 130.

<sup>34</sup> The identity authentication is of great importance in online litigation, unlike in offline trial procedure, where the parties' identities could be verified through their present. Whereas in online situation, in lack of physical contact, the account registered on the Litigation Platform take the function of identification verification. According to the *Judicial Interpretation of Internet Court*, the account could only be granted once the exclusive identity authentication was finished through: ID verification, biometric recognition, or national unified identity authentication platform. Any behaviors conducted through that account shall be deemed as the action of the verified person, except in the case where system error happens due to technical reasons of the platform, or where the verified person is able to prove that the account has been stolen. (Supra, n. 14, Article 6).

done through online real-name authentication or face recognition. Offline authentication at court is also acceptable.<sup>35</sup> Parties could choose their status in litigation according to their demands as to the plaintiff or the defendant, as shown in the figure below:

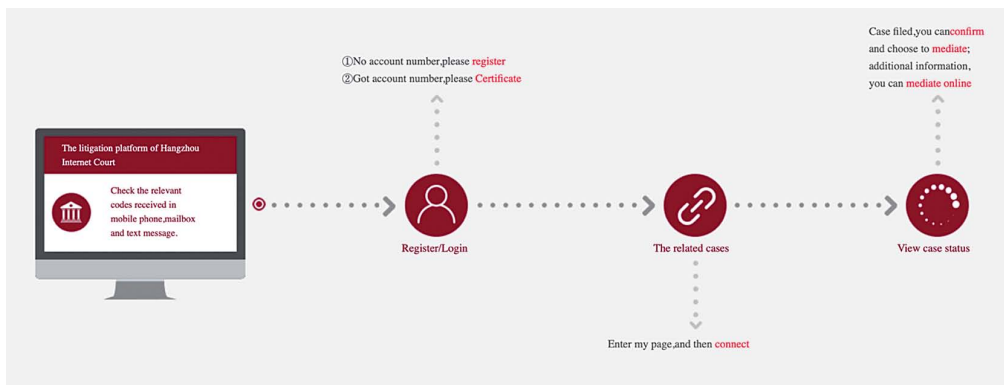
**Figure 1**

*Procedure for the plaintiff to follow<sup>36</sup>*



**Figure 2**

*Procedure for the defendant to follow<sup>37</sup>*



For the plaintiff, as indicated in figure 1, after completing the registration and logging into the account, he could choose “I am the plaintiff”, the type of lawsuit, and the cause of action. Relevant

<sup>35</sup> Supra, n. 10, Article 3.

<sup>36</sup> Hangzhou Internet Court. (n.d.). Guidelines for litigation. Retrieved September 13, 2021, from <https://www.netcourt.gov.cn/portal/main/domain/index.htm>

<sup>37</sup> Ibid.

materials could directly be submitted online.<sup>38</sup> Internet disputes have already been classified into eleven types within the jurisdiction of Hangzhou Internet Court. Specific types of disputes could be structurally categorized into specific cases and could be input into the Litigation Platform system as required.<sup>39</sup> Therefore, the same type of cases is filed together online, the workload of the Internet court is therefore lightened.

Parties that are entitled to file online litigation are not limited to Chinese citizens or Chinese entities. Foreign natural persons and foreign entities can also initiate an online litigation process. On February 3<sup>rd</sup>, 2021, the Supreme People's Court enacted the *Several Provisions of the Supreme People's Court on Providing Online Case Docketing Services for Parties to Cross-border Litigation* ("Provisions for Parties to Cross-Border Litigation").<sup>40</sup> This Provisions provides foreigners, residents of the Hong Kong and Macao Special Administrative Region, residents of the Taiwan region, citizens of the Chinese mainland who habitually reside abroad or in Hong Kong, Macao and Taiwan, and enterprises and organizations registered abroad in Hong Kong, Macao and Taiwan docketing services of online litigation.<sup>41</sup> The only requirements for them to file online litigation in China are:

1. Pass the identity authentication process by providing corresponding identity certification (e.g., passports);<sup>42</sup>

2. The language used throughout the online litigation shall be the common language of China, materials submitted shall use the common language of China or with a translation provided by a qualified translation company.<sup>43</sup>

To protect personal data in the process of submitting identity certification and other relevant materials, the *Judicial Interpretation of Internet Courts* requires the Internet court litigation platform shall comply with the *Cyber Security Law* in terms of data use and storage.<sup>44</sup>

### **Pre-trial online mediation**

In consideration of promoting out-of-court dispute resolution to best suit the parties' needs, a mediation process is set up by the Litigation Platform before the litigation procedure. The mediator manager would assign a mediator to the cases submitted for the pre-trial mediation. The mediation process proceeds online, both parties are entitled to input their intention for mediation into the "online mediation" of the Litigation Platform. However, online pre-trial mediation is not limited to the non-face-to-face procedure. In the case where both parties agree to proceed with the online mediation in video or audio form, the mediator will arrange the corresponding procedure for the parties to ensure they can have personal communication and

---

<sup>38</sup> Supra, n. 10, Article 4.

<sup>39</sup> Supra, n. 10, Article 5.

<sup>40</sup> Zuigao Renmin Fayuan Guanyu Wei Kuajing Susong Dangshiren Tigong Wngshang Li'an Fuwu De Ruogan Guiding (最高人民法院关于为跨境诉讼当事人提供网上立案服务的若干规定) [Several provisions of the supreme people's court on providing online case docketing services for parties to cross-border litigation] (promulgated by the Judicial Comm. Sup. People's Ct., Feb. 03, 2021, effective Feb. 03, 2021), <http://www.court.gov.cn/shenpan-xiangqing-286341.html> (China).

<sup>41</sup> Supra, n. 40, Article 1.

<sup>42</sup> Supra, n. 40, Article 5.

<sup>43</sup> Supra, n. 40, Article 6 and 7.

<sup>44</sup> Supra, n. 14, Article 5. Detailed regulations regarding data protection and information security, see Chapter 4 of *Cyber Security Law* (Supra, n. 17).

contact.<sup>45</sup> Upon a successful conclusion of a mediation agreement, the mediator will summarize the written feedback on the “mediation information” of the Litigation Platform.

The mediation would usually last for fifteen calendar days. Proper postponement is allowed, nevertheless, with the consent of both parties. If two parties fail to settle in the mediation period, the case will enter the case-filing stage for approval and will be submitted to the case-filing judge for review.<sup>46</sup>

**Figure 3**

*The online pre-trial mediation process<sup>47</sup>*



### **Acceptance of an online case**

Once the case has been submitted, the Hangzhou Internet Court would appoint a person specifically responsible for reviewing the case online. The court should review the litigation materials

<sup>45</sup> It should be noted here that, even though from Hangzhou Internet Court’s litigation documents, a video or audio form of pre-trial online mediation is not specifically indicated. However, article 6 of the currently in process legislation (Zuigao Renmin Fayuan Guanyu Renmin Fayuan Zaixian Banli Anjian Ruogan Wenti De Guiding (Zhengqiu Yijian Gao) (最高人民法院《关于人民法院在线办理案件若干问题的规定（征求意见稿）》 [Provisions of the supreme people’s court on several issues regarding online case hearing of people’s courts (draft)] (drafted by the Judicial Comm. Sup. People’s Ct., Jan. 21, 2021)) stipulates that online pre-trial mediation process in video or audio form shall not be recorded by parties to the mediation process. Therefore, it could be inferred that, an online pre-trial mediation process can be proceeded via video or audio form.

<sup>46</sup> Supra, n. 10, Article 7. In addition to the mediation process, negotiation, evaluation and arbitration are also available upon request, the Online Diversified Dispute Resolution Platform provides other kinds of out-of-court dispute resolution (<https://yundr.gov.cn>).

<sup>47</sup> Hangzhou Internet Court. *Mediation Platform*. Retrieved September 13, 2021 from <https://hzhftiaojiecloud.com>. Translation is provided by the author.

within seven (7) calendar days after the expiry of the online mediation and then decide whether to accept it or not.<sup>48</sup>

Three results may be led to based on the fact:

First, dismiss. If the plaintiff does not meet the conditions for filing a lawsuit or, after online notification from the judge, the plaintiff raises a valid objection. The court will dismiss the case filed.<sup>49</sup>

Second, return. If the case does not belong to the scope of acceptance, after online notification from the judge which the plaintiff has no objection towards; or, when additional materials are needed whereas the plaintiff fails to submit them within the time limit provided by law, an online ruling of return would be made.<sup>50</sup>

Third, acceptance. Once the Case-filing Division of the court has reviewed the case and decided that all the conditions are fulfilled, the court shall accept the case within the time limit required by law and issue the notice of acceptance of the case online. After the case has been accepted, the plaintiff and the defendant could see the litigation documents, such as the notice of the acceptance of the case or the notice of the response to lawsuits, the notice of evidence submission, the notice of rights and duties, and anti-corruption and supervision card in an automatically generated electronic version.<sup>51</sup>

Once the case has been accepted and filed, an automatic notice would be sent to the plaintiff to pay for the litigation fee within seven calendar days after the day of receipt. If the payment were unsuccessful, a notice would also be given, and the judge would verify the situation and treat the case as withdrawal. Such a decision is available to be viewed in the system.<sup>52</sup>

The same day as the case has been formally accepted, it would be sent online by the Case-filing Division of the Internet Court to the Information Management System of the People's Court of Zhejiang Province, synchronously it would be put on the Litigation Platform online. The platform would distribute the case to the judge on the day when it accepts the case.<sup>53</sup>

## Responding to the Lawsuit and Defense

Upon receiving the case file information, the Litigation Platform will automatically send the case information, case linkage code, and the website of the Litigation Platform to the defendant through his phone number provided by the plaintiff. When the defendant has received the afore listed materials, he could therefore respond to the lawsuit. All he needs to do is log in to the Litigation Platform and then finish the identity authentication by typing the case linkage code received into the system.<sup>54</sup>

After the defendant has linked with the case, he could then file a response to the lawsuit and actively submit pieces of evidence during the period of defense and evidence submission. The defendant's failure to defend or submit evidence does not affect the trial process of the court.

If the defendant has any objection to the jurisdiction over the case, he could raise this objection during the defense period. The court shall review the objection raised by the parties. If the objection

<sup>48</sup> Supra, n. 10, Article 8.

<sup>49</sup> Supra, n. 10, Article 10.

<sup>50</sup> Supra, n. 10, Article 11.

<sup>51</sup> Supra, n. 10, Article 12.

<sup>52</sup> Supra, n. 10, Article 13.

<sup>53</sup> Supra, n. 10, Article 14. Besides, although in general all the cases submitted and accepted shall be trial online, for those complicated cases or other cases that are not suitable for a trial in the Litigation Platform, they would be transferred to the court for a trial offline.

<sup>54</sup> Supra, n. 10, Article 15.

is established, the case shall be ordered to be transferred to a people's court with jurisdiction; if not, the court shall rule to reject the objection.<sup>55</sup> After the objection to the jurisdiction procedure is finished, the court will reset the evidence submission time.<sup>56</sup>

## **Evidence**

### ***Online Evidence Exchange***

Where Internet courts organize the online exchange of evidence, the parties shall present evidence online by uploading electronic data and importing it into the litigation platform or uploading it to the litigation platform after digitalizing it through methods such as scanning, photographing, or recording, and may also use electronic data that has already been imported to the litigation platform to prove their viewpoints.<sup>57</sup> In general, physical evidence shall be requested to be sent by mail to the judge before the trial process. The time limit of online evidence exchange is the same as the time limit of the offline process. According to the simple procedure, the time limit of evidence submission is fifteen (calendar) days.<sup>58</sup>

### ***Online Cross-Examination***

Once the online evidence exchange period has been expired, the system will automatically or manually move to the cross-examination process. The court will guide the parties to express their positions about evidence online before the trial. The parties could click on the checkbox to approve or disapprove of the authenticity, legitimacy, and relevance of evidence through the system. A supplementary explanation of the probative force of the evidence could also be submitted.<sup>59</sup>

### ***Verification of the Authenticity of Evidence***

An online dispute usually involves two kinds of evidence: the evidence materials in paper (such as documentary evidence, appraisal opinions, or inquest records) and the evidence materials in form of electronic data. The latter one can be directly uploaded by parties to a dispute, whereas the first situation will be different. If the evidence is in paper form, it shall be digitalized by parties before submission.

Both digitalized paper evidence and evidence in form of electronic data are much easier to be modified compared to evidence in pure paper formation. Thus, when a party doubts evidence falsification, he is entitled to the right to raise objections to the authenticity of the evidence submitted. the Internet courts shall verify the authenticity of that evidence.

This verification process proposes different requirements regarding the type of evidence in dispute. For evidence in paper form that has been digitalized, the Internet courts shall request the party who submit that evidence to provide the originals.<sup>60</sup>

For evidence in the form of electronic data, the Internet courts shall review and assess the authenticity of electronic data's creation, collection, storage, and transfer. If the authenticity of the evidence can be verified via electronic signatures, reliable time stamps, hash values checks, blockchain,

<sup>55</sup> Supra, n. 15, Article 127.

<sup>56</sup> Supra, n. 10, Article 16.

<sup>57</sup> Supra, n. 14, Article 9.

<sup>58</sup> Supra, n. 10, Article 25.

<sup>59</sup> Supra, n. 10, Article 26.

<sup>60</sup> Supra, n. 14, Article 10.



and other technological methods for collecting, fixing, and preventing alteration of evidence; or can be verified through the electronic evidence collection and storage platform.<sup>61</sup> The authenticity of the evidence in suspicion shall be confirmed by the Internet courts.<sup>62</sup>

Additionally, parties may apply for persons with specialized knowledge to submit comments on electronic data techniques. Internet courts may retain an evaluation of the authenticity of electronic data or collect other relevant evidence for comparison, based either on the application of the parties or its authority.<sup>63</sup>

## Trial Process

### Pre-Trial Preparation

Upon confirmation of delivery by the defendant, or after the parties have completed the cross-examination process, the judge could schedule the trial procedure.<sup>64</sup> An online pre-trial meeting could be arranged based on the facts of the case. It has the function as follows:

1. Verify parties' identities, give notice of rights and obligations, give an announcement about courtroom discipline.

2. The exchange of evidence from both parties promotes the parties to reach an agreement upon uncontested facts and, therefore, determine the dispute's focus in advance.

Those afore listed processes that have been done before the trial procedure could be skipped during the trial. Evidence that is not in contention does not need to be presented or debated again.<sup>65</sup> Therefore, the online trial could be simplified, which could respond to the demand for efficiency required by online transactions and dispute resolution.

Besides, to help maintain the trial process's operation, an online pre-trial test would be held. The technicians will make sure that the Internet conditions, equipment, and the places used by each party are suitable for the online trial. Each party will be kept in contact with for an online pre-trial test, and, if necessary, technical support would be provided.<sup>66</sup> The pre-trial test is an indispensable procedure in the online trial process. Except where it is found to be due to the network failure, equipment damage, power outages, or *force majeure*, where parties do not punctually participate in online hearings, it is to be viewed as "refusal to appear at court"; and where they leave without authorization, it will be viewed as "leaving court during a proceeding".<sup>67</sup>

<sup>61</sup> These platforms are operated via a neutral third party, that platform will obtain and fix the existing target evidence in electronic form. These platforms will also store the fixed electronic data to confirm that the data has not been tampered and remains intact. The standards and criteria these platforms shall abide by in the process of verification of the evidence in form of electronic data is regulated in article 17-19 of Supra n. 13, and article 93 of *Zuigao Renmin Fayuan Guanyu Minshi Susong Zhengju De Ruogan Guiding, Fashi* [2019] Shijiu Hao (最高人民法院关于民事诉讼证据的若干规定, 法释【2019】19号) [Some provisions of the supreme people's court on evidence in civil procedures, No.19 [2019]] (promulgated by the Judicial Comm. Sup. People's Ct., Dec. 06, 2001, modified Oct. 14, 2019, effective May 01, 2020) Sup. People's Ct. Gaz., Dec. 25, 2019, <http://www.court.gov.cn/zixun-xiangqing-212721.html> (China).

<sup>62</sup> Supra, n. 14, Article 11.

<sup>63</sup> Supra, n. 14, Article 11. Supra, n.13, Article 19.

<sup>64</sup> Supra, n. 10, Article 27.

<sup>65</sup> Supra, n. 14, Article 13.

<sup>66</sup> Supra, n. 10, Article 29.

<sup>67</sup> Supra, n. 14, Article 14.

## Online Trial

### ***Start the Procedure***

Automatic notice of “enter the trial” will appear when the trial process begins. Both the judge and parties could get access to the online trial by simply clicking that button. The judge would first verify the parties’ identities, then by clicking “start the trial”, video recording starts, the online trial will officially begin. The judge can click on the “adjournment” button if needed during the trial procedure. Once the trial procedure has been finished, the judge would click on the “adjournment” button. The video recording will stop, whereas the picture of each party would appear continuously.<sup>68</sup>

### ***Procedure on-going***

The online trial process is relatively flexible than the offline one. In general, the trial procedure consists of different steps: party statements, court investigation, and courtroom debate. While in an online trial, those steps may be conducted together with the parties’ consent. Besides, for cases that the facts are clear (simple cases), hearings may be conducted directly revolving around the litigation demands rather than be restricted by the procedural order of the trial process. For those cases that the elements and key points thereof are relatively centralized, hearings may be conducted directly revolving around the case elements.<sup>69</sup>

### ***End-up the Procedure***

When the hearing has been finished, the court clerk will upload the transcripts with the system’s support. The parties could read and check the transcripts online. Modifications and corrections could be made, upon request of the parties, when it is necessary, through the live video. Upon click of the button “confirm” by each party, the court clerk would save the transcripts. Accordingly, the whole trial process would be finished once the judge has clicked the “end of trial” button, all the parties may leave the online trial court.<sup>70</sup>

Technical methods are adopted for the benign operation of the trial procedure. The entire procedure of an online trial is audiotaped and videotaped. If the fact of the case is relatively clear with little controversy, the court clerk may absent himself from the trial once the preparation work has been done.<sup>71</sup> Besides, another technology is also adopted to facilitate the trial procedure, the intelligent voice recognition system. Transcripts would be used as the trial record and can be confirmed by the parties by clicking on the button.<sup>72</sup> After the electronic records are checked and confirmed through online methods, they possess the same force as written records.<sup>73</sup>

### ***Online Announcement and Judgment Making***

The judge can announce the judgment in court by the end of the trial procedure. Civil cases that adopt small claim procedure, and civil and administrative cases that adopt the simplified

<sup>68</sup> Supra, n. 10, Article 32.

<sup>69</sup> Supra, n. 14, Article 13 (3).

<sup>70</sup> If the trial transcripts are replaced by audio or video recordings, the trial judge and judicial assistant shall keep all the recordings on file. After the judge click on the “end of the trial” button, all the parties may leave the trial court. (Supra, n. 10, Article 32)

<sup>71</sup> Supra, n. 10, Article 33.

<sup>72</sup> Supra, n. 10, Article 34.

<sup>73</sup> Supra, n. 14, Article 20.

procedure, shall be announced in the court, in principle. For cases that have not been announced in court, the Litigation Platform announcement should be made. At the time of the announcement, the judge would upload the judgment document to that platform, make sure each party could review it. Meanwhile, a hard copy of the judgment document would be sent to the parties by postal mail.<sup>74</sup>

Judgment is automatically generated. The judge uses artificial intelligence technology to make the judgment document. All or part of the documents are automatically generated in the Litigation Platform and then can be revised and modified by the judge.<sup>75</sup> If a judgment is announced in court, the judgment document can be simplified appropriately. A civil case judgment document is not needed with the consent of all the parties if the judgment has been immediately implemented in court and the relevant information has been recorded as a transcript.<sup>76</sup>

---

## Enforcement of Judgments

---

### Service of Documents

#### *Service methods and electronic service*

In general, electronic service is adopted in an online trial process. However, if the location of the party is unknown, or the party does not have any response in the Litigation Platform, or if a document could not be served through the methods mentioned above, this document shall be served by public announcement. Accordingly, the case shall be transferred to a trial offline.<sup>77</sup>

With the consent of the parties, the Internet courts *shall* use electronic means such as the China Trial Process Information Disclosure Network, the litigation platform, mobile phone text messages, fax, e-mail, and instant messenger accounts<sup>78</sup> to serve litigation documents and evidentiary materials submitted by the parties. Whereas there is no express consent, the parties may still be viewed as having consented to the electronic service under the following two situations. First, parties have agreed, when the dispute arises, to use electronic service during litigation. Second, by completing behaviors such as confirming receipt or taking corresponding procedural action as accepting the method of electronic service.<sup>79</sup>

#### *Confirmation of the service address*

The specific method for services and the address shall be confirmed if the electronic service is adopted. In lack of a valid service address, the Internet courts shall make the preferred method of service through mobile phone numbers, e-mail accounts, instant messenger accounts, and other routine electronic addresses that can be confirmed as being in a state of regular activity by the persons receiving service for the past three months.<sup>80</sup>

---

<sup>74</sup> Supra, n. 10, Article 38.

<sup>75</sup> Supra, n. 10, Article 36.

<sup>76</sup> Supra, n. 10, Article 37.

<sup>77</sup> Supra, n. 10, Article 24.

<sup>78</sup> To be more specifically, the Hangzhou Internet Court lists several service tools for reference, such as: the party's personal account in the Litigation Platform, mobile phone number, email, Aliwangwang and WeChat (an instant communication software that supports document transform as well, it is now being frequently in China). (Supra, n. 10, Article 22)

<sup>79</sup> Supra, n. 14, Article 15.

<sup>80</sup> Supra, n. 14, Article 16.

Following the Judicial Interpretation, Hangzhou Internet Court also stipulates rules concerning confirmation of the service address in detail. In the situation when the party refuses to provide a valid service address, the following options could be chosen by the Internet court: the address agreed by the parties for the delivery of mail regarding the litigation of contract dispute; the address used by the court to contact the party in the litigation or the address used by the party to submit the materials to the court; the address provided by the party for his or her other litigation or arbitration case within a year; a frequently used address for the party's civil activities within a year, the address used by the party's online shop for the delivery of goods or; the address for the bulletin used by the party.

If, through all afore listed addresses, the service address is still failed to be confirmed. If the party is a natural person, the residence address registered with his or her household register, or his habitual residence address, could be regarded as the service address. Where a party is a legal person, its business address registered and kept on record in the department of industrial and commercial administration or other administrative departments shall be deemed the service address.<sup>81</sup>

### ***Proof of a successful service***

The proof is needed for a successful service; two situations could be discussed here in detail.

First, suppose the service is conducted via the address proactively provided or confirmed by the service recipient. In that case, it is viewed as served when the information reaches the recipient's designated system.

Second, if Internet courts conduct service to the service recipient's regular electronic address or other electronic address that could be obtained, the completion of the service is determined based on the following circumstances:

1. Where the recipient of service responds that he has already received the materials served or acted based on and corresponding to the materials served, service is viewed as completed.
2. Where the recipient of service's media system reports back that the recipient has already read it, or where there is other evidence showing that the recipient has already read it, or where there is other evidence showing that the recipient has already received it, there is a presumption that effective service has been completed. Except where the recipient can prove they did not receive the served content due to situations like an error in the storage media system, the service address not being their own or used by them, or that it was not them that accessed it.

Where effective service was completed, the Internet courts shall draft an electronic service receipt. The electronic receipt is effective as proof of service.<sup>82</sup>

## **Online Judgment Enforcement**

### ***Requirements and procedure of online judgment enforcement***

The parties' real interests in dispute could not be finally realized until the judgment is enforced and executed. An online judgment is, in nature, the same as an offline judgment. The only difference an online judgment appears when compared to an offline judgment is that it is issued through an online litigation process, which is facilitated largely by using Internet technologies. Therefore, an online judgment can also be viewed as a technology-supported judgment. Enforcement of this kind

<sup>81</sup> Supra, n. 10, Article 21.

<sup>82</sup> Supra, n. 14, Article 17.

of judgment remains similar to that of an offline judgment. Existing rules and regulations on judgment enforcement also apply to online judgment enforcement.

A final and effective judgment is enforceable under Chinese law. After the judgment comes into effect, the parties can directly apply online for enforcement without being required to be physically present in an offline court. No specific requirements thereof could be found in the *Trial Procedure* nor the *Judicial Interpretation on Internet Court*. However, it is stipulated in the *Trial Procedure* that the *Civil Procedure Law* is the basis for the two legal documents. Therefore, I would principally refer to this law and discuss the requirements and the procedures of enforcing a domestic online judgment and a foreign one separately.

*Domestic online judgment enforcement.* When a domestic judgment is issued, it shall be enforced by the people's court of the first instance or the people's court where the property is executed, which is at the same level as the people's court of the first instance.<sup>83</sup>

*Foreign online judgment enforcement.* When the judgment is a foreign one, a people's court shall review such judgment or ruling under:

1. International treaties concluded or acceded to by China; or
2. By the principle of reciprocity.

Suppose, upon such review, the people's court considers that such judgment or ruling neither contradicts the *basic principles* of the People's Republic of China's law nor violates *State sovereignty, security, and the public interest*. In that case, it shall rule to recognize the effectiveness of the foreign judgment.<sup>84</sup>

In 2019, the Hague Conference on Private International Law ("HCCH") has established the *Convention of 2 July on the Recognition and Enforcement in Civil or Commercial Matters* ("HCCH 2019 Judgments Convention") that sets forth commonly accepted conditions for recognition and enforcement of foreign judgments. This Convention is a single convention that only regulates judgment recognition and enforcement. If jurisdictional bases set up in article 5<sup>85</sup> are fulfilled, the judgment issued is therefore deemed "eligible for recognition and enforcement" under the Convention. Under the obligation of mutual recognition and enforcement indicated in article 4(1) of the Convention, once a foreign judgment is regarded "eligible for recognition and enforcement", the requested State shall recognize and enforce that foreign judgment.

The Convention does not indicate that it also applies to online judgments. Nevertheless, considering that online judgments are in nature the same as offline judgments, there is no reason to stop applying the Convention on enforcing online judgments. So far, this Convention has not yet been in force, only Israel (March 3, 2021), Ukraine (March 4, 2020), and Uruguay (July 2, 2019) have signed the Convention. However, it is undeniable that it is a good attempt on enhancing access to justice in cross-border circumstances and on facilitating the circulation of foreign judgments. It would constitute a solid legal base for recognizing and enforcing foreign online judgments once it has been in force.

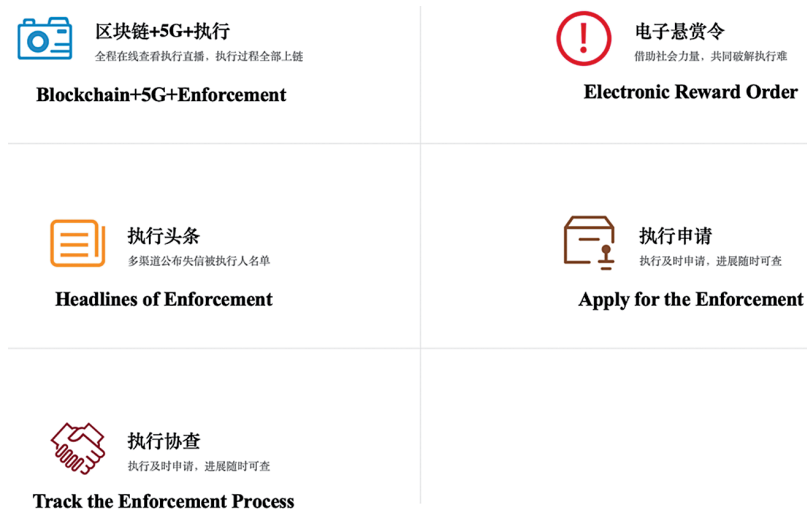
<sup>83</sup> Supra, n. 15, Article 224.

<sup>84</sup> Supra, n. 15, Article 282.

<sup>85</sup> Article 5 contains a list of rules that indicate the necessary connection between the judgment and the country of origin where that judgment was issued. Specifically, article 5(2) regulates that under certain conditions consumers can enjoy the protection rendered by the Convention. For more details regarding consumer protection and this Convention, please refer to: Nielsen, P. A. (2020). The Hague 2019 Judgments Convention: From Failure to Success? *Journal of Private International Law*. 16(2). <https://doi.org/10.1080/17441048.2020.1759854>; Araujo N., Nardi M. (2020) Consumer Protection under the HCCH 2019 Judgments Convention, *Netherlands International Law Review*. 67(1). <https://doi.org/10.1007/s40802-020-00156-5>.

Figure 4

Enforcement platform<sup>86</sup>



**The enforcement platform: methods for enforcement**

Once the judgment enforcement has been accepted, the party could directly access the Enforcement Platform from the Hangzhou Litigation Platform. The Platform uses three specific methods for enforcement, these methods can be categorized into:

1. Blockchain+5G+Enforcement.
2. Social norms: electronic reward order and headlines of enforcement.

**Blockchain+5G+Enforcement:** A technology-supported enforcement method. By using the blockchain and 5G technology, this method can provide a confidential, transparent, secure, instantaneous, and neutral service for all Internet users. This method normally involves three parties: the command center, the executed person, and the executive officers. By using the 5G blockchain judicial enforcement recorder, the executed items can be presented to the executed person remotely, the latter can witness the entire execution process and confirm the execution results. The entire procedure is operated transparently through multi-party, real-time interaction.<sup>87</sup>

**Social norms: electronic reward order and headlines of enforcement.** Additionally, Hangzhou Internet Court also uses social norms as a method by either issuing an electronic reward order or publishing detailed information about the dishonest party. These two enforcement methods apply in the situation where the person against whom enforcement is sought refuses to comply with the judgment.

<sup>86</sup> Hangzhou Internet Court. (n.d.). Retrieved September 13, 2021 from <https://www.netcourt.gov.cn/#lassen/executionPlatform>

<sup>87</sup> Zhejiang News. (2019, June 20). *The Initiative Internet-Related Enforcement Mechanism of "5G+Blockchain" by Hangzhou Internet Court.* <https://zj.zjol.com.cn/news/1225303.html>

## Conclusion

Internet court is not an occasional innovation on dispute resolution method, but an inevitable result of the evolving Internet technology. Just as it has been commonly admitted that the concept of Internet Law<sup>88</sup> is developing rather than being fixed, our acknowledgment towards Internet court shall not be stuck into the current stage. Therefore, instead of discussing whether the Internet court belongs to ODR, focus shall be put on how to refine this solution to better collaborate with other dispute solutions and protect the legal interests of Internet users.

Rules adopted for governing Internet courts in China consist of laws and regulations established by the legislature and internal rules set up separately by each litigation platform. This article would deem China's legal practice as reasonable for the current development stage since cyberspace does not exist in isolation. It has a close connection with the real physical world. People who use or control the Internet come from the real world, and their online behaviors eventually locate to the physical world and have effects on it. Therefore, at the infancy stage of the development of the Internet, the current measure is proper. It could help best realize justice without hampering the development of the Internet. The only concern here that is worth further consideration is integrating the three litigation platforms' existing rules. Since the Internet is a global network with everyone involved, fragmented regulations may create chaos and even injustice results.

Even though China was the first country that has successfully established the Internet court system, China is not the only country that has ever attempted to do so. UK and US have set up websites that provide resolutions for small claims: "Online Civil Money Claims"<sup>89</sup> and "Franklin County Municipal Court: Small Claims Courts 2.0"<sup>90</sup>. Nevertheless, these two online services need further improvement to fully function as an Internet court we discussed here. These two courts only provide monetary claims that fall within certain limits (£ 10 000 and \$ 6 000). Not all Internet-related types of disputes are covered in this regard. Besides, the Small Claims Courts 2.0 indicates that it is not a trial. Its purpose is to solve the case before it goes further through the legal system.<sup>91</sup> The main method adopted in the process is negotiation. No trial process gets involved, if no agreement could be reached through the negotiation, the dispute will continue, and the parties shall have to seek other legal options. However, it is undeniable that those efforts could help release part of the court's burden, which uses the Internet to realize the parties' interests quickly. Therefore, they could be deemed as the initial development of the Internet court. With the improvement of technology and modification of laws and regulations, Internet courts are hopefully to be found in countries outside of China.

<sup>88</sup> Lodder, A. R. (2018). Internet law: A brief introduction. In B. Warf (Ed.), *Sage Encyclopedia of the Internet* (p. 1). Sage Publications Ltd. <https://ssrn.com/abstract=3191751>

<sup>89</sup> UK Government. (n.d.). *Making a money claim online*. Retrieved September 13, 2021 from <https://www.gov.uk/make-money-claim>.

<sup>90</sup> Online Dispute Resolution Franklin County Municipal Court. (n.d.). *Welcome page*. Retrieved September 13, 2021 from <https://sc.courtinnovations.com/OHFCMC>.

<sup>91</sup> Online Dispute Resolution Franklin County Municipal Court. (n.d.). *Welcome page*. Retrieved September 13, 2021 from <https://sc.courtinnovations.com/OHFCMC/help>.



---

Information about the author:

**Jianing Sang** — Ph.D. Student, Department of International Law and Commercial Law, University of Fribourg, Fribourg, Switzerland.

[serena.sang@outlook.com](mailto:serena.sang@outlook.com)

ORCID 0000-0001-9015-0093

---

Сведения об авторе:

**Цзяньин Санг** — аспирант кафедры международного и коммерческого права Университета Фрибура, Фрибур, Швейцария.

[serena.sang@outlook.com](mailto:serena.sang@outlook.com)

ORCID 0000-0001-9015-0093