

CHINA LAW UPDATE

JUDICIAL INTERPRETATIONS OF PROVISIONS OF THE
SUPREME PEOPLE’S COURT ON SEVERAL ISSUES
CONCERNING THE HEARING OF CASES BY INTERNET
COURTS

ZHOU Yuhang*

I. INTRODUCTION	176
II. DETERMINING THE JURISDICTION OF THE INTERNET COURT	177
III. ESTABLISHMENT OF A FULL-LINE ONLINE LITIGATION MODEL TO ENSURE THE SECURITY AND AUTHENTICITY OF JUDICIAL DATA	179
IV. ESTABLISHMENT OF ONLINE TRIAL PRINCIPLES AND PROCEDURAL RULES TO GENUINELY ACHIEVE “PAPERLESS” TRIALS	180
V. CONCLUSION.....	181

* This update is prepared by ZHOU Yuhang, an LL.B. candidate at Tsinghua University School of Law.

JUDICIAL INTERPRETATIONS OF PROVISIONS OF THE SUPREME PEOPLE'S COURT ON SEVERAL ISSUES CONCERNING THE HEARING OF CASES BY INTERNET COURTS

Zhou Yuhang

I. INTRODUCTION

On August 18, 2017, China's first Internet Court was established in Hangzhou, Zhejiang Province. By the end of August 2018, the Hangzhou Internet Court had accepted and heard 12,103 Internet cases and concluded 10,646 cases. An online trial process takes only 28 minutes on average and the average trial period is 41 days, saving 60% of the time compared with the traditional trial procedure.¹ In the past year, the Hangzhou Internet Court created a successful model that can be replicated and promoted across China. In this regard, the Beijing Internet Court and the Guangzhou Internet Court were subsequently established on September 9, 2018 and September 28, 2018, respectively.

In order to regulate the litigation system of the three Internet Courts in China and protect the legitimate rights of the parties and other participants during the litigation process, on September 3, 2018, the Supreme People's Court Judicial Committee issued the "*Provisions of the Supreme People's Court on Several Issues Concerning the Hearing of Cases by Internet Courts*"² (hereinafter referred to as the "Provisions").

The Provisions covers a broad range of matters in connection with the jurisdiction of the Internet Courts, the appeal mechanism, and the requirements for the construction of the Internet litigation platforms.³ It also clarifies the online litigation procedural rules

¹ Qiao Wenxin (乔文心), *Zuigao Renmin Fayuan Sigaiban Fuzeren jiu Hulianwang Fayuan Shenli Anjian Sifa Jieshi da Jizhewen* (最高人民法院司改办负责人就互联网法院审理案件司法解释答记者问) [The person in charge of the reform office of the Supreme People's Court responded to the judicial interpretation of the trial of the Internet Courts], *RENMIN FAYUAN BAO* (人民法院报) [PEOPLE'S CT. DAILY], Sept. 8, 2018, http://rmfyb.chinacourt.org/paper/html/2018-09/08/content_143323.htm?div=-1.

² *Zuigao Renmin Fayuan Guanyu Hulianwang Fayuan Shenli Anjian Ruogan Wenti de Guiding* (最高人民法院关于互联网法院审理案件若干问题的规定) [Provisions of the Supreme People's Court on Several Issues Concerning the Hearing of Cases by Internet Courts] (promulgated by Sup. People's Ct., Sep. 6, 2018, effective Sep. 7, 2018) (WestlawChina).

³ *Id.*

including identity authentication, case filing, response to lawsuits, evidence exchange, trial proceedings, delivery, signature, and archiving, with an aim to promoting the rule of law in cyberspace governance.⁴

II. DETERMINING THE JURISDICTION OF THE INTERNET COURT

Article 2 of the Provisions prescribes the specific scope of the jurisdiction of the Internet courts.⁵ Based on the original scope of jurisdiction of the Hangzhou Internet Court, it states that “Internet lawsuits concerning public interest shall be initiated by procuratorates”.⁶ It also extends the scope of disputes from those “arising from online infringement of the personality rights of others” to disputes “arising from infringement on the personal rights, property rights and other civil rights and interests of other persons on the Internet”.⁷ Moreover, it refines the term “online administrative disputes” in the sense that only “administrative disputes arising from administration over the Internet information services, the administration over the Internet commodity trading and other administrative conducts of administrative organs” will fall under the jurisdiction of the Internet courts.⁸

The parties concerned may reach an agreement as to which court will hear the case, pursuant to the laws in the jurisdiction of the Internet court. Article 3 of the Provisions requires that an Internet court of a place which has an actual connection with the dispute shall have jurisdiction, such as the location of the defendant’s or the plaintiff’s domicile, or the location of domicile of the operators of the Internet platforms who signed or performed the contract.⁹ In *“The Second Instance Civil Ruling of the Online Shopping Contract Dispute between Zhang Yongliang and Zhejiang Taobao Network*

⁴ Qiao Wenxin (乔文心), *Zuigao Renmin Fayuan Chutai Hulianwang Fayuan Shenli Anjian Guiding* (最高人民法院出台互联网法院审理案件规定) [The Supreme People’s Court issued the provision on cases hearing of Internet Courts], *RENMIN FAYUAN BAO* (人民法院报) [PEOPLE’S CT. DAILY], Sept. 8, 2018, http://rmfwb.chinacourt.org/paper/html/2018-09/08/content_143328.htm?div=-1.

⁵ *Zuigao Renmin Fayuan Guanyu Hulianwang Fayuan Shenli Anjian Ruogan Wenti de Guiding* (最高人民法院关于互联网法院审理案件若干问题的规定) [Provisions of the Supreme People’s Court on Several Issues Concerning the Hearing of Cases by Internet Courts] (promulgated by Sup. People’s Ct., Sep. 6, 2018, effective Sep. 7, 2018) art. 2 (WestlawChina).

⁶ *Id.* art. 2 (9).

⁷ *Id.* art. 2 (8).

⁸ *Id.* art. 2 (10).

⁹ *Id.* art. 3.

Co., Ltd.”, the Court identified the case as an online shopping contract dispute, which shall therefore be subject to the jurisdiction of the location of the defendant’s or the plaintiff’s domicile¹⁰. Thus, this case should be heard by the Hangzhou Internet Court¹¹. However, where an e-commerce operator or network service provider enters into a jurisdiction agreement with the users in the form of a standard clause, such agreement shall comply with the requirements under the laws and judicial interpretations in connection with standard clause.¹² The extensive coverage of disputes is conducive to filling the gaps in current legislative and judicial practice related to Internet product infringements, where both parties have disputes over jurisdiction.

In addition, the refinement of online administrative disputes confirms the jurisdiction of Internet courts over administrative cases. On August 17, 2018, the Hangzhou Internet Court accepted its first online administrative lawsuit — “*Hu v. Defendant Jiaxing Municipality Market Supervision Administration regarding Food Safety Administrative Punishment*”.¹³ The plaintiff refused to accept the administrative punishment decision and the administrative reconsideration decision issued by the defendant, and subsequently filed an administrative lawsuit to the Hangzhou Internet Court.¹⁴ This case is of great significance in promoting the development of an innovative dispute resolution mechanism for administrative cases arising from fast growing e-commerce platforms.

¹⁰ Zhang Yongliang, Zhejiang Taobao Wangluo Youxian Gongsi Wangluo Gouwu Hetong Jiufen Ershen Minshi Caidingshu (张永亮·浙江淘宝网络有限公司网络购物合同纠纷二审民事裁定书) [The Second Instance Civil Ruling of the Online Shopping Contract Dispute between Zhang Yongliang and Zhejiang Taobao Network Co., Ltd], WEIKE XIANXING (威科先行) [WOLTERS KLUWER], Oct. 22, 2018, <http://law.wkinfo.com.cn/judgment-documents/detail/MjAyNDMyNjQwNjg%3D?searchId=05f47f42b283498484707dc715d612af&index=3&q=%E4%BA%92%E8%81%94%E7%BD%91%E6%B3%95%E9%99%A2%20%20%E7%AE%A1%E8%BE%96%E6%9D%83>.

¹¹ *Id.*

¹² Zuigao Renmin Fayuan Guanyu Hulanwang Fayuan Shenli Anjian Ruogan Wenti de Guiding (最高人民法院关于互联网法院审理案件若干问题的规定) [Provisions of the Supreme People’s Court on Several Issues Concerning the Hearing of Cases by Internet Courts] (promulgated by Sup. People’s Ct., Sep. 6, 2018, effective Sep. 7, 2018) art. 3 (WestlawChina).

¹³ Hu Moumou Su Beigao Jiaxingshi Shichang Jiandu Guanli Ju Shipin Anquan Xingzheng Chufa Ji Beigao Zhejiang Shipin Yaopin Jiandu Guanli Ju Xingzheng Fuyi Jueding An (胡某某诉被告嘉兴市市场监督管理局食品安全行政处罚暨被告浙江省食品药品监督管理局行政复议决定案) [Hu v. Defendant Jiaxing Municipality Market Supervision Administration Regarding Food Safety Administrative Punishment]. HANGZHOU HULIANWANG FAYUAN(杭州互联网法院) [HANGZHOU INTERNET COURT], Aug. 17, 2018, http://hztl.zjcourt.cn/art/2018/8/17/art_1.225222_20884566.html.

¹⁴ *Id.*

III. ESTABLISHMENT OF A FULL-LINE ONLINE LITIGATION MODEL TO ENSURE THE SECURITY AND AUTHENTICITY OF JUDICIAL DATA

In this information era, most of the evidence related to the Internet cases are kept and displayed in the form of electronic data. The question regarding how to ensure the security and authenticity of judicial data is becoming an increasingly difficult problem the Internet Courts. Under Article 5 of the Provisions, the Internet Courts shall establish the Internet litigation platforms (hereinafter referred to as “litigation platforms”), which act as the special platforms for the courts to handle cases and for the parties concerned and other litigation participants to participate in litigation proceedings.¹⁵

The case-related data for trial shall be provided by e-commerce platform operators, network service providers, and relevant State administrations. It will be connected in an orderly manner to the litigation platforms for online verification, real-time fixation, and security management by the Internet courts. The storage and use of the case-related data by the litigation platforms shall conform to the Network Security Law as well as other relevant laws and regulations.¹⁶

In practice, the electronic evidence platform created by the Hangzhou Internet Court standardizes the format, join-up, transmission, and access to open up data sources. By solidifying the data while it is being generated, electronic evidence submitted to the court becomes more credible, usable and storable.

The Hangzhou Internet Court further leveraged on the latest technological advancement by confirming the legal effect of blockchain technology for deposited evidence, and clarified the method of reviewing and judging the electronic deposit of blockchain for the first time.¹⁷ On September 18, 2018, the Court announced that the Hangzhou Internet Court Judicial Blockchain

¹⁵ See *Zuigao Renmin Fayuan Guanyu Hulianwang Fayuan Shenli Anjian Ruogan Wenti de Guiding* (最高人民法院关于互联网法院审理案件若干问题的规定) [Provisions of the Supreme People's Court on Several Issues Concerning the Hearing of Cases by Internet Courts] (promulgated by Sup. People's Ct., Sep. 6, 2018, effective Sep. 7, 2018) art. 5 (WestlawChina).

¹⁶ *Id.*

¹⁷ Yu Jianhua (余建华), *Hangzhou Hulianwang Fayuan Shouci Queren Qukuailian Dianzi Cunzheng Falv Xiaoli* (杭州互联网法院首次确认区块链电子存证法律效力) [The Hangzhou Internet Court Confirmed the Legal Effect of Blockchain Technology for the First Time], *RENMIN FAYUAN BAO* (人民法院报) [PEOPLE'S CT. DAILY], Jun. 29, 2018, http://rmfyb.chinacourt.org/paper/html/2018-06/29/content_140597.htm?div=-1.

(hereinafter referred to as “Judicial Blockchain”) was officially launched. With its decentralized, open, distributive and irreversible natures, the Judicial Blockchain enables the whole process from generation to storage, dissemination and use of electronic data to be more credible.¹⁸ The establishment of Judicial Blockchain has seen comprehensive recognition of the admissibility of Blockchain evidence in China’s judicial practice, given its edges on cost efficiency and stability.¹⁹

IV. ESTABLISHMENT OF ONLINE TRIAL PRINCIPLES AND PROCEDURAL RULES TO GENUINELY ACHIEVE “PAPERLESS” TRIALS

As evidence in Internet cases is mainly generated and stored on the Internet, online trial and execution are very often perceived as a more efficient approach. In light of such, Article 1 of the Provisions prescribes that the Internet Courts shall regard hearing cases fully online as the rudimentary principle, which means that “the litigation segments including case acceptance, service, mediation, evidence exchange, pre-trial preparation, court hearing, and judgment announcement shall generally be completed online”,²⁰ unless the parties concerned otherwise request.²¹

Procedural rules of the Internet Courts, as clarified in the Provisions, are based on the experience of the Hangzhou Internet Court and the current framework of the Civil Procedural Law. These rules cover a number of key procedural issues, among which electronic delivery²² and archiving²³ deserve close attention.

The wide application of electronic delivery provided in the Provisions is conducive to solving the “difficulty in delivery”, which has been a “sore point” that plagued traditional court trials for years.

¹⁸ Hu Zhefei (胡哲斐), Zhu Yin (朱音), Hangzhou Hulanwang Fayuan Sifa Qukuailian Shangxian, Dianzi Shuju Quanliucheng Kexin (杭州互联网法院司法区块链上线, 电子数据全流程可信) [The Hangzhou Internet Court Judicial Blockchain was Put into Use, Making the Whole Process of Electronic Data Credible], ZHONGGUO FAYUAN WANG (中国法院网) [CHINACOURT NET], Sept. 19, 2018, <https://www.chinacourt.org/article/detail/2018/09/id/3508247.shtml>.

¹⁹ Yu, *supra* note 18.

²⁰ See Zuigao Renmin Fayuan Guanyu Hulanwang Fayuan Shenli Anjian Ruogan Wenti de Guiding (最高人民法院关于互联网法院审理案件若干问题的规定) [Provisions of the Supreme People’s Court on Several Issues Concerning the Hearing of Cases by Internet Courts] (promulgated by Sup. People’s Ct., Sep. 6, 2018, effective Sep. 7, 2018) art. 1 (WestlawChina).

²¹ *Id.*

²² *Id.* art. 15-17.

²³ *Id.* art. 20-21.

Specifically, Article 16 of the Provisions comprehensively stipulates the applicable conditions, scope and means of the electronic delivery, in view of the need to promote the orderly application of the electronic delivery.²⁴ Judgment documents from Internet courts can be delivered in various ways such as by China Judicial Process Information Online, Internet litigation platforms, SMS, fax, e-mail, and instant messaging services.²⁵

Archiving and storing court records and case files in the form of electronic files further enhance the automation and intelligence level of the Internet court trials. The Internet courts are allowed to use voice recognition technology to simultaneously generate electronic records during mediation and court trials, which facilitates online verification and confirmation by the parties.²⁶ Internet courts can generate electronic case files during the case through unified litigation platforms, and apply them in the fields of litigation services, trial management and intelligent assistance of case hearing.²⁷

V. CONCLUSION

The establishment of Internet court demonstrates China's effort in enhancing its cyberspace governance capability. In light of the latest development in information technology, the Provisions creates an innovative litigation mechanism under which online disputes can be settled in a more efficient manner. As Chief Justice of the Hangzhou Internet Court Du Qian says, "the establishment of the Internet court is a major institutional innovation in which the judiciary actively adapts to the general trend of Internet development. The significance is not simply to move the court's judicial function from offline to online. It is based on several factors including the Internet logic, exploring new rules on litigation and judgment in Internet-related cases, promoting the rule of law and serving the strategy of relying on the Internet to enhance the national strength."²⁸

²⁴ *Id.* art. 16.

²⁵ *Id.* art. 15.

²⁶ *Id.* art. 20.

²⁷ *Id.* art. 21.

²⁸ Yu Jianhua (余建华), Gongzheng & Xiaolv, Zai Wangluo Hulian Hutong (公正&效率, 在网络互联互通) [Fairness and Efficiency Connected in the Network], RENMIN FAYUAN BAO (人民法院报) [PEOPLE'S CT. DAILY], Aug. 18, 2018, http://rmfyb.chinacourt.org/paper/html/2018-08/18/content_142527.htm?div=-1.