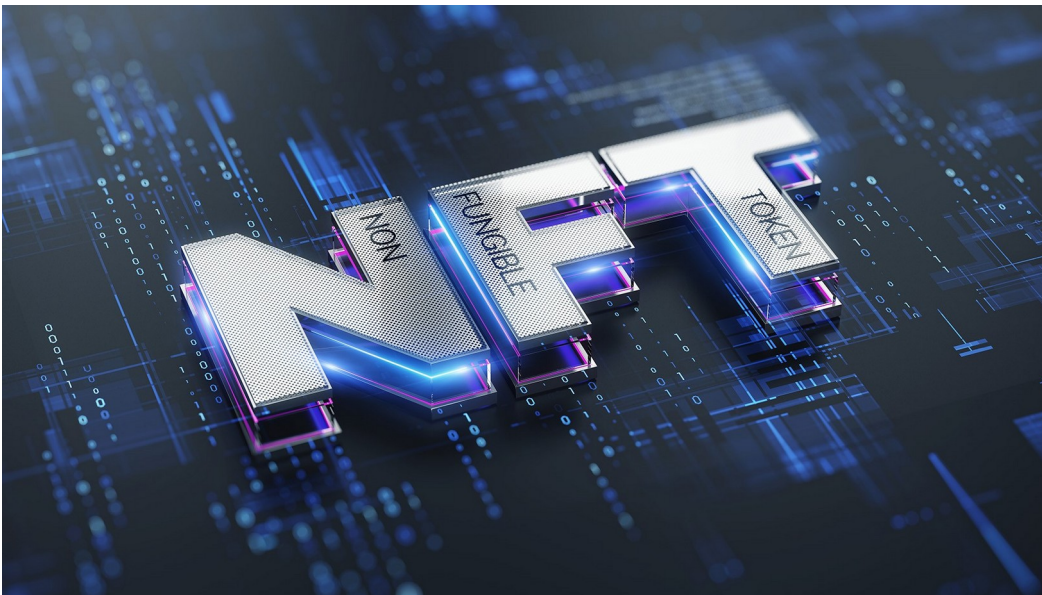


China Issues its First Court Judgment on NFT Infringement

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Unlike the current prohibitive policies on the trading and dealing of cryptocurrencies in China, the Chinese government has taken a more pragmatic approach towards non-fungible tokens (“NFTs”). It considers NFTs to be digitalized fine artworks/collectibles or ‘trending artistic digital products’ rather than digital financial products. This pragmatic approach is an effort by the Chinese government to adapt to the rising tide in NFT-related development based on block chain technology, given the rapidly increasing popularity of NFTs among Chinese traders and collectors, and the fast growing transactional market for NFTs in China.

In April 2022, China saw its first court judgment on NFT infringement, which was issued by the Hangzhou Internet Court (the “Hangzhou Court”) in the case of *Shenzhen Qice Diechu Culture Creation Co., Ltd vs Hangzhou Yuanyuzhou Technology Co., Ltd*, a.k.a “chubby tiger having its shot” case. The Hangzhou Court is a district level court which was formed in 2017 and specializes in Internet-related cases. This post provides a brief

introduction on this case and its potential influence on the dealing of NFTs by trading platforms in China.

The facts of the case are not complicated. The plaintiff, Shenzhen Qice Diechu, has been granted an exclusive license to use the copyright relating to the artwork “chubby tiger having its shot” by the copyright owner.



(the underlying artwork “chubby tiger having its shot”)

The defendant Hangzhou Yuanyuzhou operates an NFT trading platform. A third party was found to have offered and sold NFT products created and based on the artwork “chubby tiger having its shot” on the defendant’s platform. The plaintiff therefore sued the defendant for copyright infringement. The defendant sought to rely on the Safe Harbor Principle in its defense – generally, a network service provider may be protected in a “safe harbor” against any infringement claim regarding any third party contents posted/offered on its platform if it has exercised reasonable duty of care and it has adequately followed a notice and takedown procedure. The defendant therefore sought to protect itself by arguing that it was just an NFT trading platform which simply hosts content.

The Hangzhou Court held that the defendant cannot hide behind the Safe Harbor Principle in the present case and found the defendant liable for copyright infringement as a trading platform, because the role played by the defendant as a trading platform in the NFT transaction requires it to exercise its duty of care to a higher degree to ensure that the NFT products traded on its platform do not infringe the intellectual property rights of others.

The Hangzhou Court was influenced by evidence that the defendant, although seemingly acting just as a trading platform, charged gas fees for minting the NFT digital work, and also charged commissions from the sales of NFT works; therefore, the defendant was a participant in the transaction rather than merely a platform providing an online trading venue to its members. As such, the Hangzhou Court held that the defendant must assume a higher level of responsibility and a stricter duty of care in relation to the dealing of NFTs on its platform in order for it to be able to seek the protection under the Safe

Harbor Principle.

The defendant in this case poorly exercised its duty of care in monitoring for IP infringement, because the infringing NFT work based on “chubby tiger having its shot” clearly bears a watermark with the Internet name of the real copyright owner. This should have immediately raised an alarm for the defendant. The Hangzhou Court held that the defendant could have easily found the existence of copyright infringement in relation to the NFT work in question by conducting simple check on the Internet.

The Hangzhou Court discussed what it considered to be an adequate exercise of the duty of care in relation to NFTs. An NFT trading platform has to establish a pre-placement IP review mechanism. The platform must also have reasonable measures in place to conduct an ownership check of the NFT works which are to be placed on its platform and of the underlying artwork by requesting the traders/NFT creators to provide documents to prove ownership in or in relation to the underlying copyright, to the extent that a reasonable person would believe that the trader/creator is the owner of the underlying copyright or otherwise has been authorized to use the said copyright.

The Hangzhou Court also addressed certain technical issues relating to NFTs, for example, in terms of the plaintiff’s request of deleting the infringing NFT work in question from the defendant’s platform, the Court ordered the defendant to “disconnect the infringing NFT digital work on the block chain and punch it into the address black hole to stop the infringement” given that the deletion of NFTs from the Internet is not possible.

Unlike the other recent high profile cases involving NFTs in other jurisdictions, such as the *Nike, Inc. v StockX LLC* (involving Nike sneaker NFTs) and *Hermès International v Mason Rothschild* (Hermes Birkin bag-inspired NFTs), which are between the IP rights owners (as the plaintiffs) and the infringer creator of NFTs (as the defendants), this first NFT infringement case in China is against a trading platform. The reason is that the plaintiff could not ascertain the true identity of the infringing creator. As such, the plaintiff requested in the court proceeding, among other things, that the defendant provide the real identity of the creator so that the plaintiff can initiate legal proceeding against the creator as well. This indicates that the plaintiff is contemplating a new and further court proceeding against the creator of the infringing NFT work.

The defendant in this case has appealed this judgment of a first instance court to the Hangzhou Intermediate People’s Court. We will continue to monitor this case and will report on any new developments. We will also keep an eye on any new court decisions involving NFTs in China, especially those from higher level courts.