

The first NFT copyright infringement decision handed down in China

Given the explosive growth in the NFT market, it was just a matter of time before courts started weighing in on intricate IP issues associated with the distribution and sale of NFT digital works. A Chinese court has recently ruled in the country's first copyright infringement case involving an NFT digital work. The court held that an NFT platform must be responsible for the digital works traded on its platform.

BACKGROUND

The case revolves around a comic image showing a chubby tiger receiving a vaccine shot, which was one of the many artworks of the popular cartoon series "Fat Tiger", published by a Chinese artist on Weibo, China's primary social media site.

The lawsuit was filed by Shenzhen Qice Diechu Cultural Creativity Co., Ltd. (the **plaintiff**), the copyright owner of the "Fat Tiger" illustration series, against Hangzhou Yuanyuzhou Technology Co., Ltd. (the **defendant**), which operates an NFT marketplace called Bigverse, a digital art trading platform. On Bigverse, the plaintiff found that a user had created and sold an NFT digital work that was identical to the copyrighted work in question, and even had the artist's Weibo watermark on it. The plaintiff therefore sued the defendant in the Hangzhou Internet Court for contributory copyright infringement.¹

The case centered on an NFT platform's intermediary liability and its obligations with regard to NFT digital works on its platform.

The plaintiff argued that Bigverse has a heightened obligation as it is a specialized NFT marketplace. According to the plaintiff, Bigverse must protect the IP in such a case by conducting a preliminary review of whether a user who creates an NFT digital work on its platform owns the copyright in the underlying artwork. The plaintiff alleged that the defendant not only failed to comply with that obligation but it also charged a percentage in transaction fees. As a result, the plaintiff asked the defendant to cease the infringing conduct and claimed damages of RMB100,000 (approximately USD15,100).

In response to the plaintiff's infringement claim, the defendant argued that, as an intermediary, it should not be liable for the infringing work and its only obligation is to take down the infringing work after it receives a notice of infringement from a copyright owner.



Image by artist Bu2Ma (available at <https://weibo.com/bu2ma>)

¹ The Hangzhou Internet Court is a specialized court in China and was established in 2017 to hear internet-related disputes.

THE COURT'S DECISION

The Hangzhou Internet Court heard the case on 20 April 2022 and issued its judgment shortly afterwards. It found for the copyright owner.

Importantly, the court made clear that a transaction involving an NFT digital work is subject to the copyright owner's right of information network dissemination under the PRC Copyright Law.² The court held that the defendant contributorily infringed the plaintiff's right and ordered the defendant to destroy the infringing NFT digital work by sending it to an inaccessible address (i.e. "burning" the NFT) and pay damages to the plaintiff of RMB4,000 (approximately USD600) for economic loss and reasonable expenses.

In its ruling, the court confirmed that an NFT platform may be liable for copyright infringement in China. The court underlined that, as an internet service provider, an NFT marketplace should implement an IP review mechanism and conduct a preliminary ownership check of the digital works on its platform. The court noted that even without receiving a notice from a copyright owner, the platform should generally assess the likelihood that an NFT digital work infringes copyright and should take appropriate measures. If it fails to do so, the NFT platform may be liable for copyright infringement.

It is worth noting that the court discussed at length the transaction mode and technical features of NFT digital works, as well as the business and operational model of the defendant's Bigverse platform. The court highlighted the following in finding that the defendant has a heightened obligation to take reasonable measures to prevent copyright infringement:

1. NFT transactions involve the replication and dissemination of NFT digital works. The operator of a platform should therefore be aware that, in addition to owning the digital work itself, a seller must be the owner of the copyright in a digital work.
2. If ownership were not guaranteed, it could only serve to weaken the certainty and trust in NFT transactions, which are at the core of the NFT ecosystem, built on blockchain and smart contract technology.
3. The platform has significant control over the digital works and possesses the ability to review and monitor the IP without incurring additional cost.
4. The platform directly profits from NFT digital works by charging both gas fees (as transaction fees) and commissions on every transaction.

CONCLUSION

In the first NFT copyright infringement case in China, the Hangzhou Internet Court's decision sheds some light on how copyright law applies to a new asset class in the booming NFT space. It will be interesting to see how the case law in this space further develops. For now, NFT platforms should be aware of their potential intermediary liability, as at least one Chinese court has imposed a general obligation of preliminary IP review and monitoring of NFT works on their platforms.

² The right of information network dissemination refers to the right to provide the public with works through the internet or by other wired or wireless information transmission network

Key contacts



Victor Ho
Registered Foreign Lawyer, Cal
Hong Kong
Tel +852 2974 7288
victor.ho@allenoverly.com



Jill Ge
Partner, Shanghai
Tel +86 21 2036 7124
jill.ge@allenoverly.com



Andre Da Roza
Of Counsel, Hong Kong
Tel +852 2974 6980
andre.daroza@allenoverly.com



Cynthia Shen
Associate, Lang Yue
Tel +86 21 2067 6836
cynthia.shen@allenoverly.com

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales. The term partner is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

© Allen & Overy LLP 2022. This document is for general information purposes only and is not intended to provide legal or other professional advice.