

中国法院

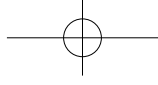
的

互联网司法

中华人民共和国最高人民法院

Chinese Courts and Internet Judiciary

人民法院出版社



图书在版编目 (CIP) 数据

中国法院的互联网司法 / 中华人民共和国最高人民法院编. -- 北京: 人民法院出版社, 2019.12

ISBN 978-7-5109-2698-3

I. ①中… II. ①最… III. ①互联网络—应用—审判—中国 IV. ①D925-39

中国版本图书馆CIP数据核字 (2019) 第256073号

中国法院的互联网司法

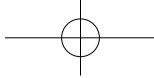
中华人民共和国最高人民法院 编

责任编辑 丁丽娜
出版发行 人民法院出版社
地 址 北京市东城区东交民巷27号 (100745)
电 话 (010) 67550608 (责任编辑) 67550558 (发行部查询)
65223677 (读者服务部)

客服 QQ 2092078039
网 址 <http://www.courtbook.com.cn>
E - mail courtpress@sohu.com
印 刷 北京瑞和祥云印刷技术服务有限公司
经 销 新华书店

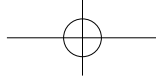
开 本 787毫米 × 1092毫米 1/16
字 数 120千字
印 张 8.5
版 次 2019年12月第1版 2019年12月第1次印刷
书 号 ISBN 978-7-5109-2698-3
定 价 40.00元

版权所有 侵权必究



目 录

前 言	1
一、互联网司法的总体发展	3
二、推进互联网专业化审判机构建设	6
三、创新互联网司法便民利民机制	9
四、完善互联网司法在线诉讼机制	16
五、健全互联网司法智能化应用机制	22
六、深化互联网司法协同治理机制	26
七、构建互联网司法裁判规则体系	30
结束语	37
附录：中国互联网司法典型案例	38



Contents

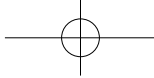
Preface.....	58
I. Overall Development of Internet Judiciary	60
II. Strengthening the Judicial Specialization for the Internet	63
III. Promoting Access to and Benefits from Internet Judiciary for the People	66
IV. Perfecting Online Litigation Procedures for Internet Judiciary ...	73
V. Improving the Intelligent Application Scenarios in the Judicial System	79
VI. Improving Governance over the Internet through Collaboration and Coordination	84
VII. Forming Legal Rules Governing the Cyberspace	89
Conclusion	100
Appendix Influential Cases of Internet Judiciary in China.....	101



前 言

当今世界，信息技术革命日新月异，互联网日益成为创新驱动发展的先导力量，深刻改变着人们的生产生活方式，有力推动着经济社会发展。2019年是中华人民共和国成立70周年，世界互联网诞生50周年，也是中国全功能接入互联网25周年。中国牢牢把握信息化时代的重大历史机遇，加快推进网络强国战略，将互联网发展作为推进改革开放和现代化建设事业的重要支撑，信息技术和互联网产业取得了显著发展成就。截至2019年6月30日，中国网民由1997年的62万人增加至8.54亿人，手机网民规模达8.47亿，数量均位居全球第一。其中，在线即时通讯用户达8.24亿，网络视频用户规模达7.59亿，网络购物用户规模达6.39亿，在线政务服务用户规模达5.09亿。移动互联网接入流量消费达553.9亿GB。

互联网技术和产业的新发展、新应用，也为国家治理和司法审判工作带来新挑战、新机遇。互联网领域发展不平衡、规则不健全、秩序不合理等问题日益凸显，广大人民群众、企业和社会组织对推进信息惠民、促进司法便民、保障社会经济发展方面的需求日益迫切。2013年以来，中国法院始终践行以人民为中心的发展思想，积极推动



中国法院的互联网司法

实施网络强国战略、国家大数据战略、“互联网+”行动，探索推动审判方式、诉讼制度与互联网技术深度融合的新路径、新领域、新模式，网络多元解纷和诉讼服务体系框架初步搭建，网络治理的司法裁判规则逐步完善，网络空间日渐清朗有序，有力促进了国家治理体系和治理能力现代化。

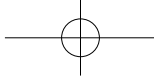


一、互联网司法的总体发展

党的十八大以来，最高人民法院依托互联网发展的规模优势、应用优势和产业优势，将推动互联网司法发展纳入深化司法体制改革的整体规划，分领域、分步骤、分层次统筹推进。随着改革不断深入，互联网司法应用领域不断扩展，网络平台日趋丰富多元，诉讼模式向网络化、智能化演进。网络空间法治建设不断健全完善，实现了从技术运用到机制变革，从诉讼程序完善到实体规则治理的历史性发展。

应用领域由司法公开向全流程全方位拓展。中国法院将司法公开作为互联网技术在司法领域应用的重要切入点。自2013年以来，中国法院积极推进审判流程、庭审公开、裁判文书、执行信息等四大平台建设，先后建立中国审判流程信息公开网、中国裁判文书网、中国庭审公开网、中国执行信息公开网，不断促进司法公开透明。为进一步满足人民群众多元司法需求，中国法院不断推动互联网司法实践向多元解纷、诉讼服务、审判执行等领域延伸，建立线上线下相结合的诉讼服务体系，打造网上调解、网上立案、网上缴费、网上开庭、电子送达等一体化、一站式在线解纷模式，逐步实现互联网司法全流程、全方位覆盖。

平台载体由单一维度向多元化系统化延伸。互联网司法平台建设从官方网站、内网办公系统起步，逐步建成覆盖全国法院的内外专网、移动网络和办案平台，信息化基础设施建设日益完备。2016年，“智慧法院”建设被纳入国家整体发展战略，司法信息化水平全面提升。截



中国法院的互联网司法

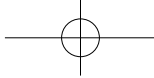
至 2019 年 6 月，全业务网上办理、全流程依法公开、全方位智能服务的“智慧法院”体系已基本建成，不仅实现内网审判业务与外网诉讼服务系统互联互通，服务平台也从电脑扩展至移动终端，与政府机关、行业组织、律师事务所和互联网企业联通的大数据共享平台初具规模。

诉讼模式由线性封闭向集成开放智能转变。在互联网技术支持下，司法活动和诉讼方式从时间线单一、场景封闭、参与方固定的传统模式，逐步转向时间线开放、场景灵活、多方参与交互的线上线下融合新模式。各地法院大力推动各项诉讼活动在线完成，通过庭审语音识别、电子证据展示、文书自动纠错、电子卷宗随案生成、智能辅助办案、审判流程管理等模块化应用，借助大数据、云计算、区块链、人工智能等新技术，逐步将个体分散的司法实践和经验，深度集成整合为开放、共享、智能的综合运用模式。

工作重心由机制创新向推动依法治网演进。互联网司法发展起步阶段，工作重点是紧跟技术发展趋势，探索在线诉讼机制，强化技术应用，促进司法便民利民。随着互联网产业与经济社会发展深度融合，中国法院准确把握时代脉搏，以设立互联网法院为契机，通过审理新类型互联网案件，不断提炼总结裁判规则，全面提升互联网司法治理能力。



党的十八大以来人民法院互联网司法发展重要节点图



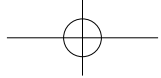
二、推进互联网专业化审判机构建设

为适应互联网时代发展需要，各地法院因地制宜，推动“互联网+司法”审判机制创新。2015年4月，浙江省高级人民法院率先在辖区法院开展电子商务网上法庭试点，集中审理网络支付纠纷、网络著作权纠纷、网络交易纠纷等案件。在充分总结试点经验基础上，2017年8月18日，杭州互联网法院正式成立。2018年9月9日、9月28日，北京互联网法院、广州互联网法院先后成立。三家互联网法院共设置8个互联网专业审判庭，配备84名法官，法官平均从事审判工作年限10年以上，年人均结案700件以上。

互联网法院作为集中管辖互联网案件的基层人民法院，主要实行“网上案件网上审理”的新型审理机制，集中管辖所在市辖区内的网络金融借款合同纠纷、网络购物合同纠纷、网络服务合同纠纷、网络侵权纠纷、网络著作权纠纷等十一类互联网案件，在案件审理、平台建设、诉讼规则、技术运用、网络治理等方面，形成了一批可复制可推广的经验。

截至2019年10月31日，杭州、北京、广州互联网法院共受理互联网案件118764件，审结88401件，在线立案申请率为96.8%，全流程在线审结80819件，在线庭审平均用时45分钟，案件平均审理周期约38天，比传统审理模式分别节约时间约五分之三和二分之一，一审服判息诉率达98.0%，审判质量、效率和效果呈现良好态势。

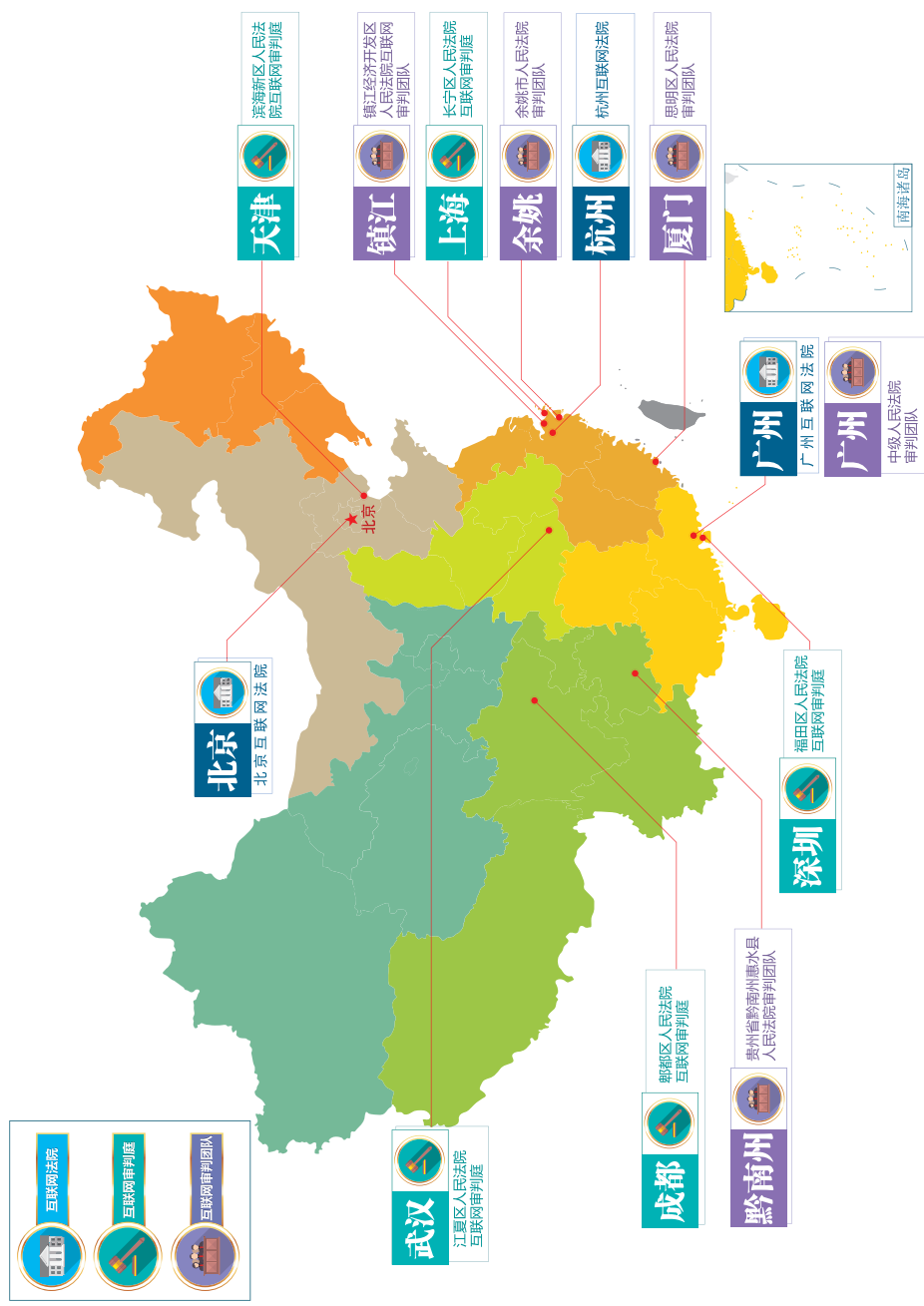
各地法院结合自身工作实际，积极组建互联网审判机构或办案组



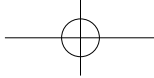
织，大力探索创新新型互联网审判机制。上海市长宁区人民法院、天津市滨海新区人民法院、广东省深圳市福田区人民法院、湖北省武汉市江夏区人民法院、四川省成都市郫都区人民法院等设立了互联网审判庭，江苏省镇江经济开发区人民法院、浙江省余姚市人民法院、福建省厦门市思明区人民法院、广东省广州市中级人民法院、贵州省黔南州惠水县人民法院等组建了互联网合议庭或审判团队，有力提升了互联网审判专业化水平。

各地互联网审判庭和互联网合议庭针对辖区内互联网纠纷和互联网产业的不同特点，积极整合线上线下资源，探索具有地域特色的发展途径，不断丰富互联网司法的实践样本。上海市长宁区人民法院互联网审判庭针对辖区内互联网服务型企业众多、纠纷批量化类型化等特点，从个案审判出发，以司法建议的形式向互联网平台企业提出合规警示，先后推动互联网企业修改完善平台管理和自治规则 12 批次，有效推动互联网纠纷诉源治理。广东省深圳市福田区人民法院设立互联网和金融审判庭，建设“巨鲸智平台”，推动金融类案要素式、全流程在线审理，不断提升审判质效；2017 年 6 月以来，平台受理案件 42987 件，结案 37053 件，法官团队年均办案量增长两倍以上，案件审理周期缩短二分之一。四川省成都市郫都区人民法院互联网审判庭针对辖区内文创园区和项目众多的情况，加大对知识产权和创新保护力度，上线司法区块链平台，推动文创作品进行链上新技术存证，解决电子证据取证难、认证率低的问题。贵州省黔南州惠水县人民法院设立专门审判庭，跨区域集中管辖全州范围内涉及互联网数据保护、互联网交易和网络侵权等案件，利用集中化、专业化审理优势公正高效处理互联网纠纷。

中国法院的互联网司法



互联网专业化审判机构设置示意图

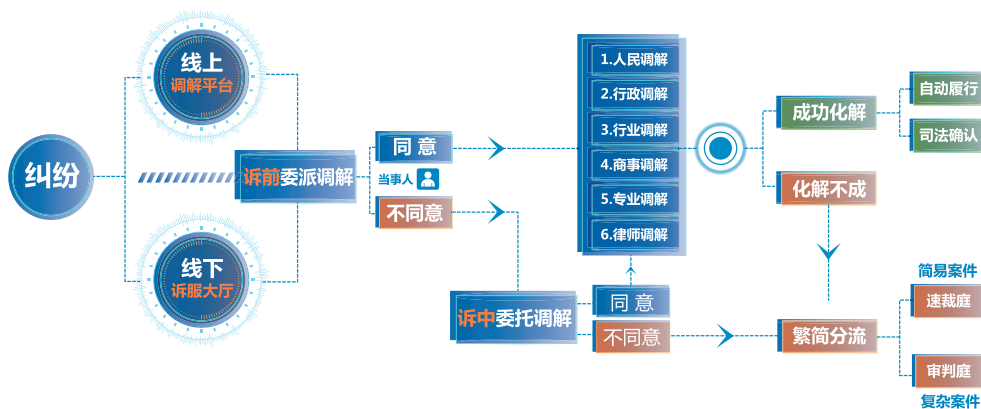


三、创新互联网司法便民利民机制

信息化时代，人民群众的司法需求日趋多元化，期待更加公正、高效、便捷、精准、透明的司法运行模式。中国法院以互联网技术为依托，不断完善诉讼服务体系和纠纷化解机制。全面推行在线立案和跨域立案机制，健全一站式多元解纷平台和一站式诉讼服务平台，不断提升诉讼便利程度，降低当事人诉讼成本。

构建一站式多元解纷平台。中国法院充分利用互联网开放、快捷、高效的特点，拓展纠纷化解渠道，优化纠纷解决方式，逐步建立在线流程全贯通、解纷业务全覆盖、线上线下全融合的一站式多元化纠纷解决平台，支持纠纷当事人根据纠纷性质、解纷成本等理性权衡，为当事人精准匹配解纷力量及方案，实现调解、仲裁、诉讼程序之间的顺畅转换。2016年10月，最高人民法院启动统一在线调解平台，推动覆盖纠纷受理、分流、调解、反馈等流程，实现在线办理当事人诉前调解、诉中和解和司法确认等事项。截至2019年10月31日，最高人民法院在线调解平台有2679个法院入驻，在线汇集21379个专业调解组织和79271名专业调解员，共调解案件1369134件。北京法院2018年通过“多元调解+速裁”方式导入诉前调解30.4万件，多元调解成功和速裁结案17.8万件，占同期一审民事案件结案数的39.0%。四川省成都市中级人民法院上线“和合智解”在线司法服务平台，并与成都市公共服务平台“天府市民云”对接，为当事人提供解纷指引、申请调解、调解智库选择、诉讼咨询、智能问答等多项服务，实现全流

程便捷操作，形成一体多元、集约全域的全天候普惠式诉讼服务网络体系。广州互联网法院多元解纷平台汇聚粤港澳大湾区 25 个调解机构、284 位调解员，其中港澳专业调解员 22 名，成功调处跨北京、广州、新加坡、香港、澳门五地的互联网肖像权侵权等案件。



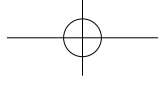
一站式多元解纷机制示意图

打造一站式诉讼服务平台。中国法院依托互联网技术，大力推进在线立案，健全线上线下一体化诉讼服务渠道，规范诉讼服务流程，提升诉讼服务质量。当事人通过电脑或手机客户端，足不出户即可享受 24 小时在线自助服务，实现在线咨询立案、提交材料、交纳费用，大大节约了时间和经济成本。截至 2018 年 12 月 31 日，全国 2995 个法院开通诉讼服务网，1623 个法院上线诉讼服务应用程序，2813 个法院设立 12368 服务热线。北京法院推出“立体化线上立案系统”，为当事人及其代理人提供全天候、零距离、全方位在线立案服务，包括网上预约立案、微信预约立案等主要业务；系统试运行一年期间，共在线立案 100361 件，占全市法院案件的 14.2%。上海法院针对历年诉讼服务中积累的近万个常见程序性问题，根据诉讼法梳理后，收录形成

了关于诉讼程序 2300 个常见问答的“法宝智查”知识库，以诉讼服务机器人、微信公众号等方式，多端口多渠道向公众开放，满足当事人多元诉讼需求。江苏南京法院诉讼服务平台开通五大通道，为当事人、律师、检察官、人民陪审员、社会公众提供精准、及时的诉讼信息和服务，同时依据对调解及裁判结果的大数据分析，引导当事人适时选择合适的纠纷解决途径和方案。



一站式诉讼服务示意图



中国法院的互联网司法

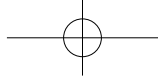
探索实行跨域立案新模式。中国法院积极推进“互联网+立案”，探索实行跨域立案机制。当事人及其代理人可以选择就近的法院提交立案申请，通过法院之间信息系统的数据库联通流转，提交到有管辖权的法院，在线完成案件受理工作。跨域立案机制打破时空限制，极大降低了当事人诉讼成本，重塑了法院立案模式，开创了跨地域、跨法院、跨层级的诉讼服务新格局。2015年1月，福建省泉州市中级人民法院首创推出跨域立案机制，在全市范围内实现异地受理立案申请，随后跨域立案模式逐步在全国法院推广。2018年，全国法院跨域立案超过12万件。2019年1月至6月，浙江法院网上立案和跨域立案已实现省内全面畅通，网上立案开通率达100%，全省法院民事案件网上立案数为25.3万件，网上立案率达59.7%。2019年8月，北上广、长三角、京津冀地区法院之间已实现省市区三级法院跨域立案，跨区域远程办理、跨层级联动办理，最大限度地便利当事人。

推广“移动微法院”诉讼平台运用。针对互联网时代手机和微信广泛普及应用新趋势，中国法院大力建设推广以微信小程序为依托的“移动微法院”电子诉讼平台，利用人脸识别、远程音视频、电子签名等技术，用手机登录移动端在线完成立案、送达、开庭、证据交换、调解等诉讼活动，实现当事人指尖诉讼、法官掌上办案。2017年10月，浙江省余姚市人民法院率先上线“移动微法院”诉讼平台。2018年1月，浙江省宁波市中级人民法院开通“宁波移动微法院”，并于同年10月向浙江全省法院推广。2019年3月，最高人民法院在总结浙江法院实践经验的基础上，推动在北京等12个省区市辖区内法院全面试点，截至2019年10月31日，移动微法院注册当事人已达116万人，注册律师73200人，在线开展诉讼活动达314万件。



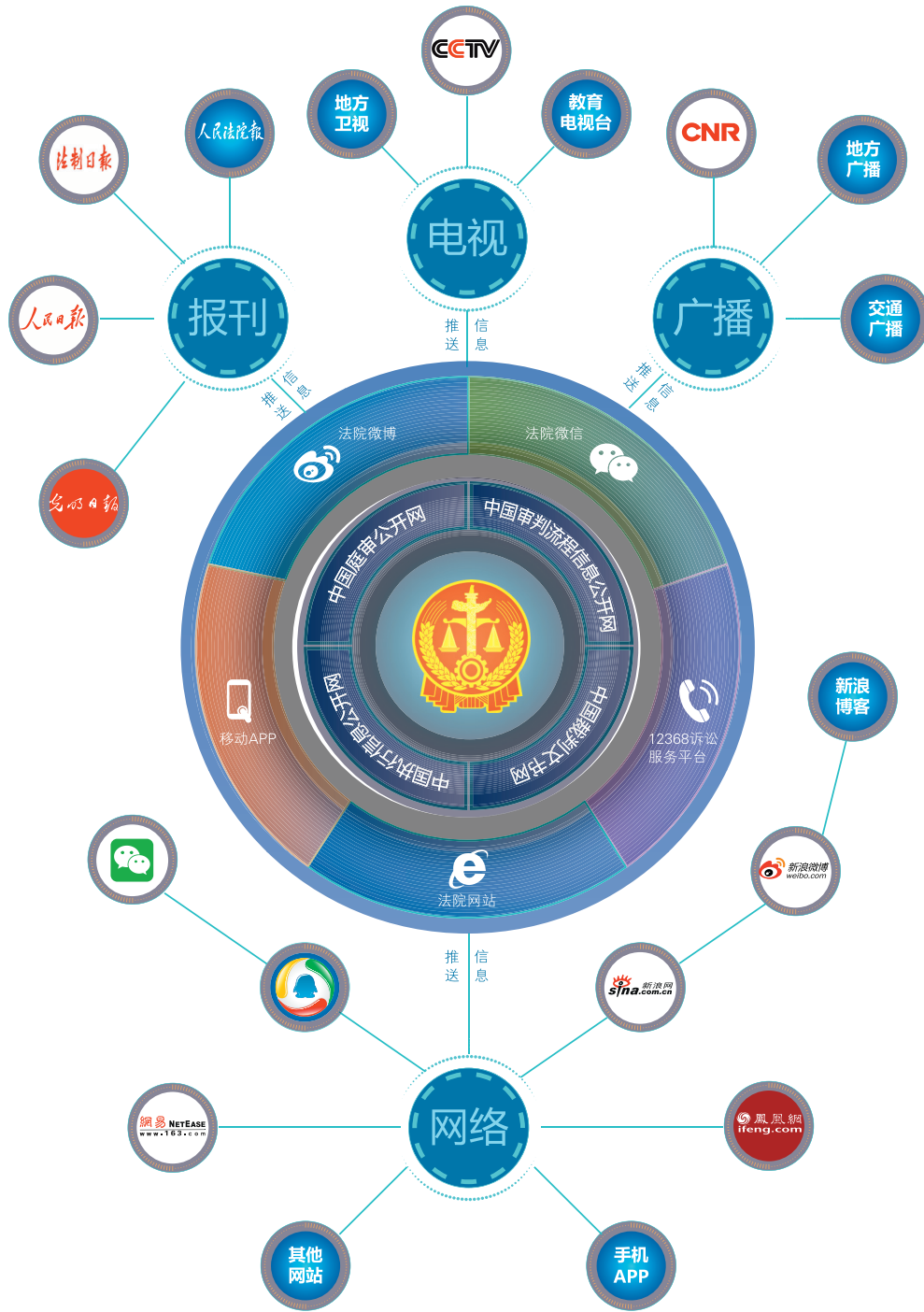
“中国移动微法院”功能示意图

完善律师执业在线服务机制。2015年12月30日，最高人民法院正式开通律师服务平台，为律师提供网上立案、网上阅卷、案件进程查询、庭审排期避让、联系法官、电子送达等多项诉讼服务，切实保障律师执业权利，为律师依法履职提供最大支持和便利。**上海法院**自2011年开始建设在线律师服务平台，诉讼服务项目从仅限于法院基本信息公开逐步扩大至5大项26小项，覆盖律师执业各个领域。截至2019年6月30日，上海律师服务平台已面向全国律师开放，累计使用达441.4万人次。**福建厦门法院**的律师服务平台与司法局律师综合管理系统无缝对接，面向厦门市160多家律师事务所开放，有效搭建律师、法官和司法行政机关之间的联系交流通道。

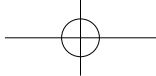


中国法院的互联网司法

全面深化司法信息公开。2013年以来，最高人民法院以互联网平台为载体，全面推进审判流程、庭审活动、裁判文书和执行信息四大公开平台建设，覆盖审判执行全部环节，及时、有效、充分地保障人民群众知情权、参与权、监督权。截至2019年10月31日，**中国审判流程信息公开网**公开案件超过2200万件，公开案件信息超过11亿条，电子送达诉讼文书超过5万件；**中国庭审公开网**直播庭审550万件，点击率超过200亿次；**中国裁判文书网**公开各类裁判文书8030万份，网站访问量突破370亿次，访客覆盖210多个国家和地区，建成全世界最大的司法公开数据信息资源库；**中国执行信息公开网**正处于公布中的限制消费信息613万人次，公开终结本次执行案件1006万件，访问量超过2.2亿人次。截至2019年10月31日，全国法院入驻新浪微博账户3585个，粉丝总数达8130万人；其中最高人民法院官方微博粉丝总数超过1750万人，累计发布微博超过2万条；最高人民法院微信公众号发布1.4万期图文信息，订阅用户达151万人。中国法院司法公开的广度、深度、维度不断拓展，司法信息的及时公开、充分公开，有效推动了以公开促公正、树公信。



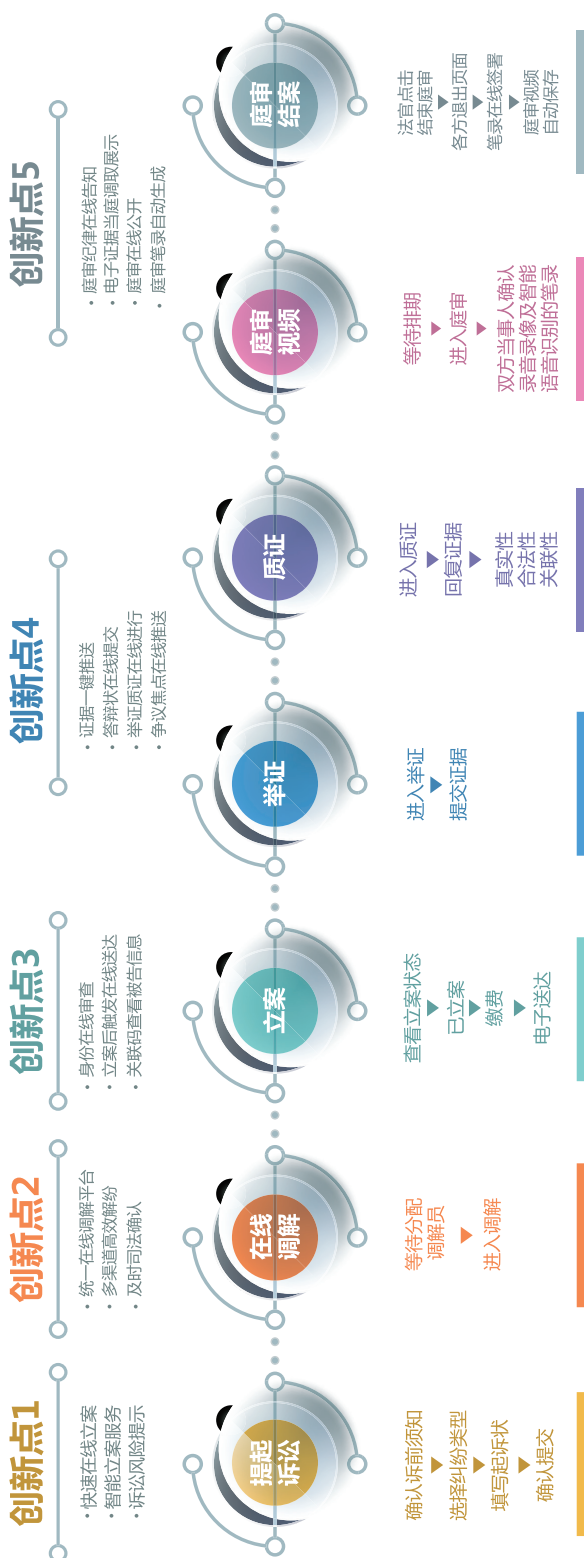
人民法院司法公开机制全景图



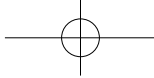
四、完善互联网司法在线诉讼机制

互联网技术飞速发展，给传统司法运行机制带来前所未有的机遇和挑战，在线诉讼成为司法发展的必然趋势。中国法院紧扣时代脉搏和现实需求，大力推进在线诉讼机制建设，完善在线诉讼规则，深度应用大数据、云计算、人工智能、区块链等新兴技术，推动互联网时代诉讼流程和司法模式实现革命性重塑。

探索全流程在线审理机制。中国法院依托互联网法院改革试点，大力探索“网上纠纷网上审理”司法新模式，推动实现案件起诉、立案、调解、举证、质证、庭审、宣判、执行等诉讼环节全部在线完成。北京互联网法院实现当事人立案申请在线提交率 100%，诉讼费用在线交纳率 90.3%，在线庭审率 98.7%，平均庭审时长 52 分钟，裁判文书电子送达率 96.8%。杭州互联网法院针对当事人因上班、出差、出国等原因产生的诉讼“时间差”问题，探索“异步审理”模式，允许当事人不同时、不同地、不同步登录平台参与调解、质证等诉讼活动，“异步审理”结案 2495 件，平均每案节约当事人在途时间约 6 小时。广州互联网法院创造性推出“在线示范性庭审”，针对同类型合同纠纷，选定一起案件作为先导案件排期开庭，并通知同类型案件当事人在线旁听庭审，以个案示范审理促进类案纠纷化解；目前该院受邀旁听庭审的其他案件当事人，在庭后自动履行和主动和解率达 37%，有效实现“审理一件、化解一片”的示范作用。



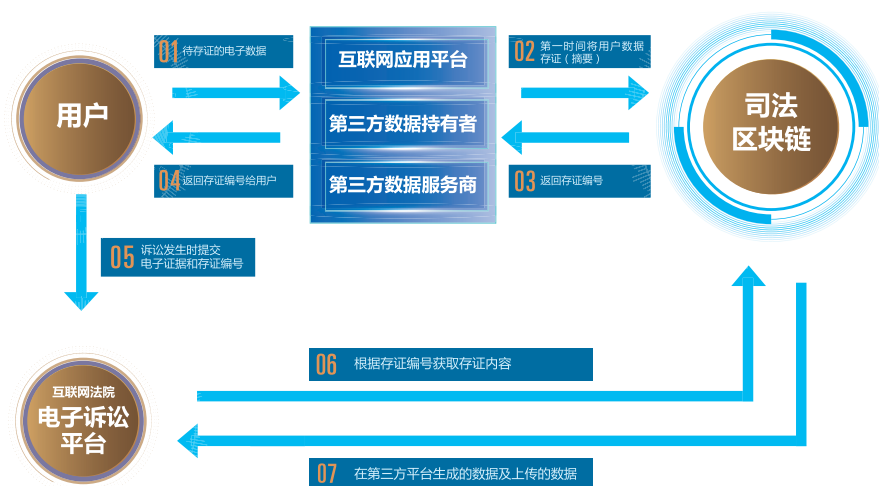
全流程在线审理机制示意图



中国法院的互联网司法

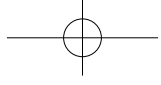
完善在线诉讼程序规则。2018年9月，最高人民法院印发《关于互联网法院审理案件若干问题的规定》，确定了互联网法院案件管辖范围和上诉机制，明确了身份认证、立案、应诉、举证、庭审、送达、签名、归档等在线诉讼规则，有力推动电子诉讼制度机制发展完善。北京、杭州、广州互联网法院立足审判工作实际，细化在线诉讼操作规范，针对网上立案、在线庭审、法庭纪律、电子送达等方面，制定出台审理规程、诉讼指引、审判指南等文件，确保在线诉讼开放有序、交互充分、庄严规范，有效保障当事人合法诉讼权利。

创新电子证据在线存证方式。针对在线诉讼中电子证据取证难、存证难、认证难的问题，中国法院积极探索“区块链+司法”模式，以大数据、云存储和区块链技术为基础，利用区块链技术防伪造、防篡改的优势，大幅提高电子证据的可信度和真实性。截至2019年10月31日，全国已完成北京、上海、天津、吉林、山东、陕西、河南、浙江、广东、湖北等省（市）的22家法院及国家授时中心、多元纠纷调解平台、公证处、司法鉴定中心的27个节点建设，共完成超过1.94亿条数据上链存证固证，支持链上取证核验。北京互联网法院建设“天平链”电子证据平台，被纳入中央网络安全和信息化委员会办公室首批备案的区块链单位，完成跨链接入区块链节点18个，实现互联网金融、著作权等9类25个应用节点数据对接，在线采集证据数超过472万条，跨链存证数据达1000万条。杭州互联网法院在杭州华泰公司与深圳道同公司侵害作品信息网络传播权一案中，对通过第三方平台对侵权事实形成的区块链存证记录予以审核确认，肯定了区块链电子存证的效力。广州互联网法院会同当地司法行政机关、电信运营商、互联网企业等50余个单位，共建“网通法链”智慧信用生态系统，自2019年3月30日上线以来，在线存证数据超过545万条。



司法区块链典型应用模式示意图

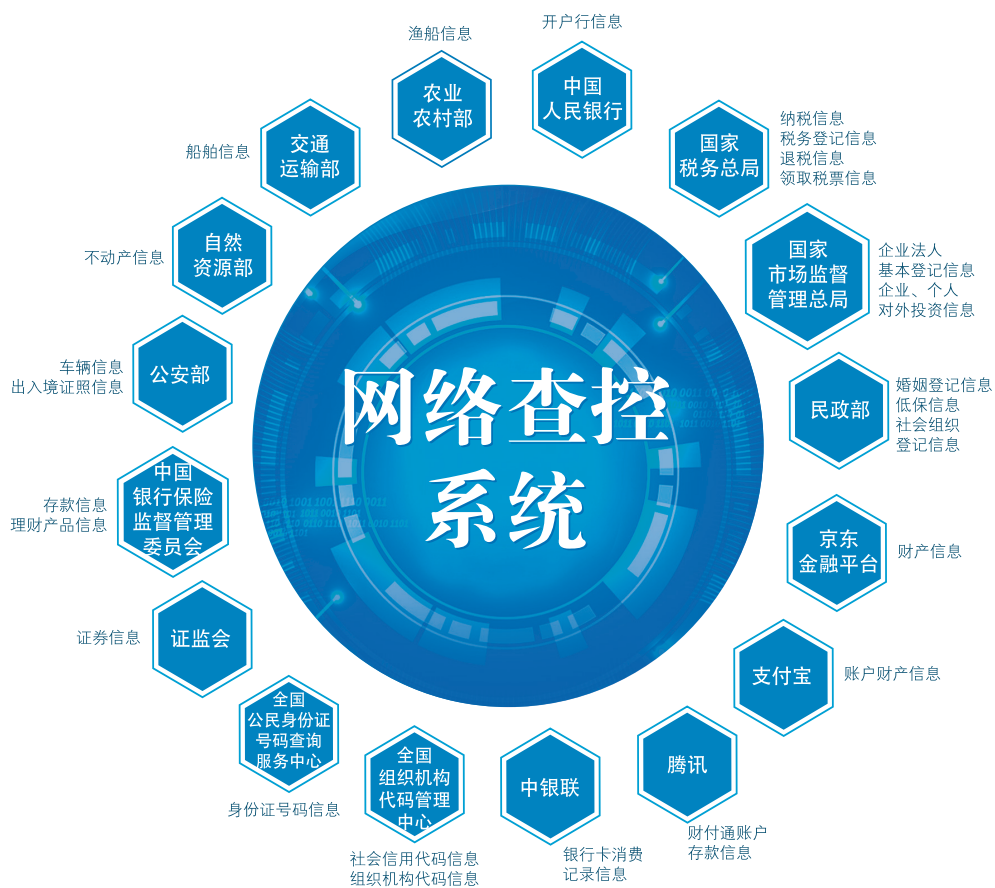
完善在线文书送达机制。中国法院大力完善电子送达机制，拓宽电子送达渠道，优化电子送达方式，推动送达模式重构。2018年，最高人民法院开发上线全国法院统一送达平台，目前已在部分地方法院试点运行，通过该平台可以向当事人及诉讼代理人的电子邮箱、手机号码、即时通讯账号等电子地址送达诉讼材料及文书。**中国审判流程信息公开网**设置电子送达专栏，诉讼参与人可以通过证件号和唯一签名码，登录该平台获取法院送达信息，在线签收电子文书。各地法院大力建设专门电子送达平台，加大电子送达适用力度，促进电子送达规范化、标准化、集约化。截至2019年10月31日，三家互联网法院通过电话、邮箱、微信、短信、公众号等在线送达文书96857次。江西法院建立全省法院集约送达中心，统一送达流程、服务标准和评估机制，以统一的12368号码对外开展送达，截至2019年6月30日，全省法院累计送达564292人，电子送达成功率达77.4%，47.7%的电



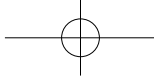
中国法院的互联网司法

子送达由微信签收，平均用时 0.9 天，较邮寄送达快 11 倍。**浙江省嘉兴市中级人民法院**利用大数据信息技术建设智能化送达平台，汇集当事人手机号、民事活动活跃地址、行政部门登记地址和法院成功送达记录等地址信息，由平台智能筛选送达地址、自动生成送达文书，触发送达任务。

推进执行财产网络查控处置机制建设。2014 年，最高人民法院建立“总对总”网络查控系统，陆续与公安部、交通部、民政部、中国人民银行、中国银行保险监督管理委员会等 16 家单位和 3900 多家银行业金融机构建设信息共享机制，可以依法查询被执行人在全国范围内的不动产、存款、金融理财产品、船舶、车辆、证券、网络资金等 16 类 25 项信息，全面覆盖被执行人主要财产形式和信息，从根本上改变了传统线下执行模式，有效破解执行效率低、覆盖财产范围窄、查控人力成本高等难题。为提高执行财产处置效率、透明度和公信力，最高人民法院与主要互联网平台合作，通过网络大数据询价方式对涉案财产进行估价，并大力推进网络司法拍卖。自 2017 年 1 月 1 日全国法院实行网络拍卖起，财产处置成交率、溢价率成倍增长，流拍率、降价率、拍卖成本明显下降，拍卖环节违纪违法“零投诉”。自网络拍卖系统上线至 2019 年 10 月 31 日，全面实行网络拍卖的法院超过 3300 家，全国网络司法拍卖超过 159 万次，成交 43.6 万件，成交额 9387 亿元，标的物成交率 66.8%，溢价率 89.8%，为当事人节约佣金 291 亿元。



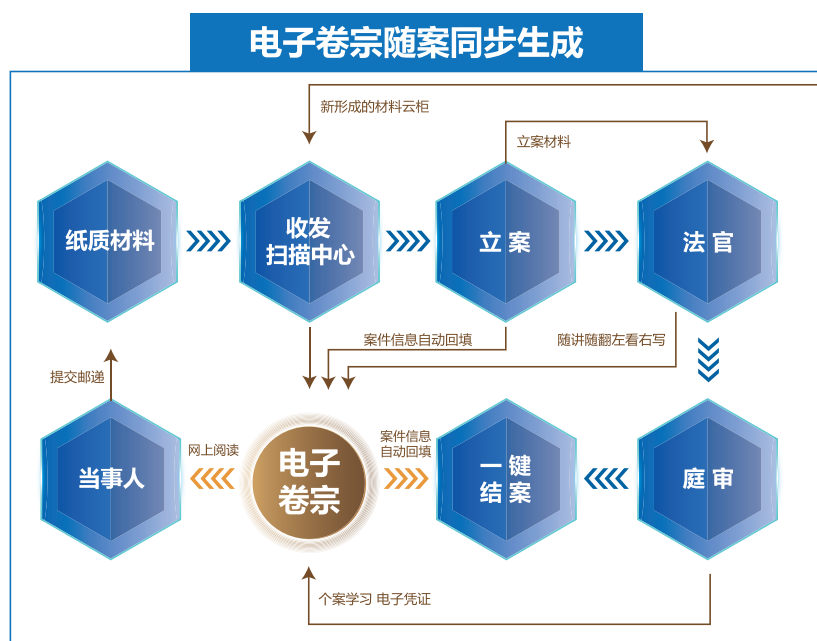
网络执行查控体系示意图



五、健全互联网司法智能化应用机制

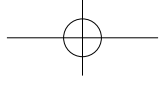
中国法院紧紧抓住人工智能蓬勃发展的时代机遇，大力建设智慧法院，全面推进智能技术在司法工作中的深度应用，为案件审理、审判监督、司法管理、社会治理提供全方位智能辅助和决策参考，推动司法运行从网络化向智能化迭代升级，促进审判体系和审判能力现代化。

建立电子卷宗随案同步生成机制。卷宗电子化是智能化审判的基础和前提。2016年，最高人民法院开始在全国法院部署推广电子卷宗随案同步生成和深度应用工作。截至2019年10月31日，全国3363个法院建设电子卷宗随案生成系统，全国67%的案件随案生成电子卷宗并流转应用，部分地方法院已基本实现全流程无纸化办案。江苏省昆山市人民法院在电子卷宗同步生成的基础上，全面推行全流程无纸化办案的“千灯模式”，实行立案扫描前置、快速标注编目、卷宗同步流转、集中保全送达、一键精准归档，动态监管、全程跟踪，实现案件办理、诉讼服务和司法管理的自动化、智能化。在无纸化办案模式下，该院人均月结案41件，同比上升16.5%，长期未结案件同比下降18.2%。



电子卷宗随案同步生成示意图

推进全方位智能化辅助办案机制。中国法院积极开发各类智能化办案辅助平台，不同程度实现了立案风险主动拦截、案件繁简甄别分流、电子卷宗文字识别、语音识别转录、案件智能画像、庭审自动巡查、法条及类案精准推送、文书自动生成、文书瑕疵纠错、裁判风险偏离度预警等智能辅助功能，促进审判质效大幅提升。最高人民法院牵头建设“法信”平台，汇聚法律法规、司法文件、案例、学术成果等法律知识资源，为法官办案提供全面、便捷的智能检索、智推服务。截至2019年10月31日，法信平台注册用户数达到93.7万人，访问量



中国法院的互联网司法

达 1649 万，浏览量达 1.41 亿。北京市高级人民法院建设智能分案系统，运用“系统算法 + 人工识别”机制，对 11 类通用型案件和 9 类自选案件共 93 个案由进行繁简分流，2018 年以来，该系统已甄别分流案件 15 万余件。江苏省苏州市中级人民法院建设以“电子卷宗 + 全景语音 + 智能服务”为核心内容，覆盖审判全流程的智慧审判系统，集成电子卷宗随案生成、材料云流转、庭审语音转写、电子质证随讲随翻、简易判决一键生成等功能，实现审判活动无纸化，法官事务性工作分离约 40%，书记员事务性工作减少约 50%。

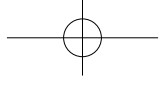
加强司法运行智能化监督管理。中国法院积极应用智能化手段完善监督管理机制，开发应用各类智能化、自动化、静默化监督管理平台，推动实现敏感案件自动标识、重点案件自动追踪、负面画像自动生成，监管行为全程留痕。最高人民法院建立执行指挥管理平台，以全国法院执行办案等系统的数据为基础，通过对案件办理、事项委托、申诉信访、网络舆情的实时监控和督办，实现对全国法院执行工作的监督管理。河北省高级人民法院创新研发“重点案件监督管理平台”，制定统一规范的监管规则，建立案件特征识别库，并以此为基础实现大数据自动分析、系统自动标记、平台实时提示、全程在线记录等，确保审判监督管理依法有序、规范到位。浙江省台州市中级人民法院研究开发“台州法院清廉司法风险防控系统”，设置 7 大类 60 个审判、执行和综合风险点指标和红黄蓝三色风险预警提示，截至 2019 年 4 月，共计触发 248 个风险节点监控，实现司法廉政风险有效防控。

提升司法大数据管理和应用水平。中国法院大力推进司法大数据建设，利用大数据平台深度分析审判执行工作态势，为科学决策提供参考，提升审判工作和司法治理的精准性、有效性。2014 年 7 月，最高人民法院正式上线人民法院大数据管理和服务平台，可以实时收集

全国 3507 个法院的审判执行、人事政务、研究信息等数据，每 5 分钟自动更新一次，截至 2019 年 10 月 31 日，已汇集全国法院 1.93 亿条案件数据，已经累计完成 700 余项专题分析报告，并向社会公开发布 38 份专题报告。福建省高级人民法院建设司法大数据中心，为全省法院提供运行态势分析、质效指标检测、案件关联检索、主题数据分析等服务，有力促进审判资源合理调配，推动审判质效全面提升。重庆市第二中级人民法院建成数据实时自动生成的高集成度、高智能化、可视化信息管理中心，所有数据以每 30 秒流动刷新方式实时更新，两级法院案件分析、审判质效、动态趋势等信息自动生成发送，为院庭长审判管理决策提供参考。



人民法院司法大数据管理和服务平台界面图

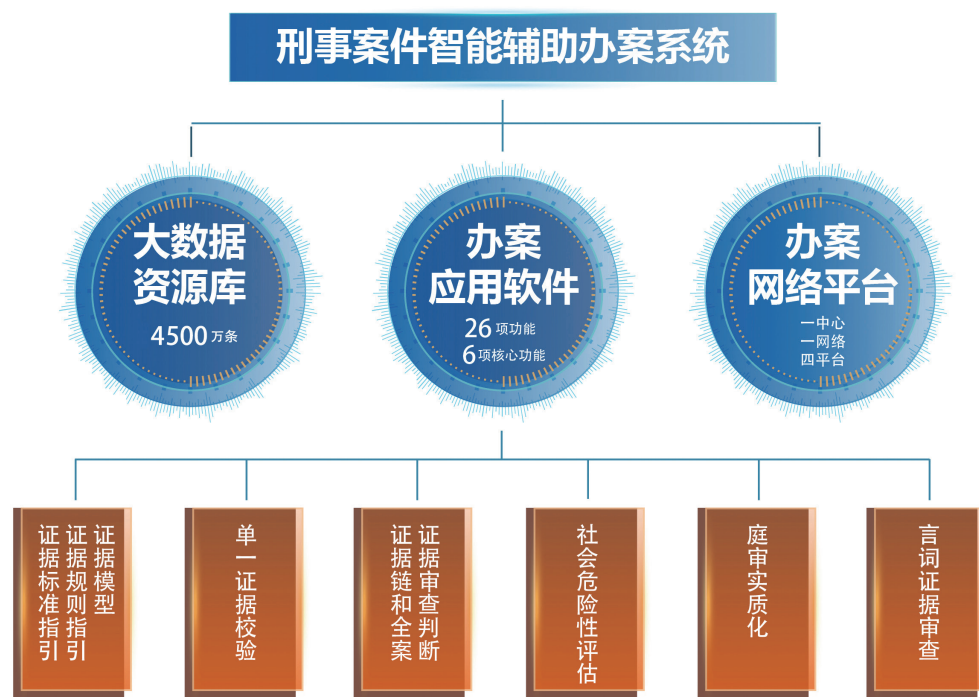


六、深化互联网司法协同治理机制

中国法院充分利用互联网去中心化、交互式、快捷性优势，在部分重点领域加快建设跨部门、多层次、无缝隙、全方位在线司法协作体系，推动畅通司法信息交流渠道、优化在线办案机制和纠纷一体化解决模式，打造网络空间多部门联动、协同治理新格局。

探索刑事案件在线协作办理机制。为推进以审判为中心的刑事诉讼制度改革，防范冤假错案，中国法院探索运用大数据手段规范刑事案件办理，推进公检法司协同办案机制。**上海法院**积极开发刑事案件审判辅助系统，制定统一适用的证据标准、证据规则指引，运用图文识别、自然语言理解、证据识别展示、案件要素自动提取等技术，确保刑事案件办理过程从侦查到起诉全程可视、全程留痕、全程监督。截至2019年6月30日，上海市常见刑事罪名案件办理已实现从立案、侦查、报捕、起诉、审判均可在刑事办案系统内运行，公安机关累计登记案件24873件，检察院批准逮捕8811件，审查起诉7442件，法院立案4812件，审结3438件。**贵州省高级人民法院**积极推动跨部门大数据办案平台建设，针对实践中多发的故意杀人、故意伤害、抢劫、盗窃、毒品等五类案件，联合公安、检察和司法机关，搭建数据信息互联共享平台。**湖北省高级人民法院**会同省人民检察院、省监狱管理局，共同建立全省“减刑假释办案工作平台”，实现业务协同办理、流程全面覆盖、数据即时传输、信息互通共享，全省法院、检察院、监狱三方远程在线庭审，实现减刑、假释案件全流程线上办理。2018

年3月至2019年6月30日,湖北法院在线流转案件卷宗材料95924份,办理减刑、假释类案件8335件,审结8186件。



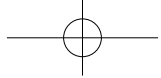
推进道路交通纠纷一体化解决机制。随着机动车数量持续增加,中国道路交通纠纷日益增多,传统纠纷解决模式涉及部门机构繁多,存在处置时间长、流程繁琐等问题。2013年,浙江省杭州市余杭区人民法院率先开展道路交通事故纠纷“网上数据一体化处理”综合改革试点,通过数据共享,实现法院与公安交警、司法行政、人力社保、鉴定机构、保险公司等多机构联动,引入调解资源,案件处理高效透明、快处快赔。2017年11月,最高人民法院与公安部、司法部、中国银保监会联合决定在北京等14个省市区开展试点,推行道路交通事故纠纷网上数据一体化处理,实现交通事故发生后定损、定责、鉴定、调解、

诉讼、理赔一站式服务。截至 2019 年 10 月 31 日，全国道路交通事故损害赔偿一体化平台已完成调解 150984 件，成功调解各类纠纷 125616 件，调解成功率为 83.2%。



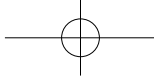
道路交通纠纷一体化解决机制示意图

推动破产审判信息化建设。为充分服务和保障供给侧结构性改革，中国法院大力加强破产工作市场化、法治化、信息化和专业化建设。针对破产案件涉及债权人众多、法律关系和社会关系复杂的客观情况，2016 年 8 月，最高人民法院开通全国企业破产重整案件信息平台，法官、破产管理人、律师共享工作平台，在线办理破产案件，分级披露发布信息，债权人、债务人企业、市场投资者、其他利害关系人均可在线参与破产进程。截至 2019 年 10 月 31 日，通过全国企业破产重整案件信息网公开破产案件 53641 件，网上召开债权人会议 312 次，涉及债权人 504013 人次、破产债权 9030 亿元，处置破产财产 2978 亿元，有



效促进资本、技术、资产等要素的自由流动和再配置。深圳市中级人民法院 2017 年 11 月在线平台公开拍卖翡翠航空公司破产财产，成功吸引外国资本参与竞拍，3 架波音 747 飞机溢价 49% 处置，最大限度保障债权人权益。2019 年 3 月，该院通过在线平台协助香港破产管理人适用内地破产财产网拍模式，在线处置 5 个香港特殊车牌号，首次实现跨境协作处置破产财产。

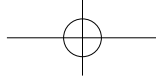
助力社会信用体系建设。中国法院大力完善失信被执行人信用监督、警示和奖惩机制，建立失信被执行人名单制度和司法信用报告制度，充分保障债权人、债务人合法权益，推动形成“失信者寸步难行，守信者畅行无阻”的社会信用评价体系。2016 年以来，最高人民法院与国家发改委等 60 家单位和机构合作，对失信被执行人担任公职、出行、购房、投资、招投标等进行限制，联合构建信用惩戒网络，形成多部门、多行业、多手段共同发力的信用惩戒体系。近 40% 失信被执行人在信用惩戒压力下自动履行义务。截至 2019 年 10 月 31 日，全国法院正处于发布中的失信被执行人达 561 万人次。广州互联网法院推出互联网司法信用报告，对于守法守信的当事人，征得其同意后，向市场监管、金融和征信机构推送当事人司法信用优良评价信息；对于违法失信的当事人，将相关评价信息作为个案执行中采取限制消费、网络曝光、纳入失信被执行人名单等执行措施的参考，推动网络空间诚信建设。



七、构建互联网司法裁判规则体系

互联网纠纷具有类型新、领域广、技术性强、复杂程度高等特点，中国法院大力推进互联网司法，利用管辖集中化、案件类型化、审理专业化的优势，审理了一批具有社会影响力的互联网案件，不断明确网络空间交易规则、行为规范和权利边界，完善互联网司法裁判规则体系，推进网络空间治理法治化。

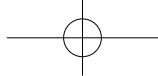
有效确立网络交易行为规则。互联网时代在线商业活动频繁，新商业模式不断涌现，传统交易活动在网络环境中呈现出新样态、新特点。中国法院通过典型案例不断确立各类网络交易活动行为规则，引导网络商业活动规范化，维护良好的市场秩序。广州互联网法院在俞彬华诉华多公司等网络服务合同纠纷案中，判定除非有证据证明网络主播应当履行明确、具体的合同义务，否则用户在网络直播中的打赏行为通常可认定为赠与，完善了对网络活动中赠与行为的认定。上海金融法院通过审理徐欣诉招商银行储蓄合同纠纷案，判定存在网络盗刷的情况下，发卡行无证据证明持卡人自身存在违约行为的，发卡行就被盗刷的款项对持卡人承担全部支付责任，明确了网络盗刷后风险及责任的分担。福建省厦门市思明区人民法院通过审理张胜源诉叶通网络店铺买卖合同案，认定被告在出售网店后，通过平台生物识别安全机制“找回密码”，擅自修改店铺账户绑定的手机号、登录方式收回网店，转移账号内资金，应当承担违约责任，双倍返还转让费用。四川省成都市温江区人民法院通过审理彭湃与李华龙网络购物合同纠纷案，认定通过个人闲置物品二手交易平台，向不特定消费者出售普通商品并



获利的行为，受消费者权益保护法调整，构成欺诈的，应当予以消费者三倍赔偿。

准确判定网络平台责任。互联网时代网络平台日益成为重要的市场主体，平台权利义务边界亟待明确。中国法院通过司法裁判，清晰界定网络平台责任，推动网络平台向用户提供更加公平、透明、可预期的网络服务和环境。**北京互联网法院**通过审理中国音著协诉斗鱼公司等侵犯网络传播权案，明确以直播为主营业务的网络平台公司，在享有其签约主播直播成果的知识产权和商业利益的同时，还应当为签约主播未经授权播放他人音乐的行为，承担相应侵权赔偿责任。**杭州互联网法院**通过审理刀豆科技诉长沙百赞、腾讯公司等侵犯网络传播权案，明确由于微信仅向小程序开发者免费提供网页架构与数据接入等基础性网络服务，未直接面向小程序用户提供数据存储或搜索链接服务，实际上对开发者提供的具体服务和数据没有管理权限。同时，如对小程序内的特定侵权行为直接采取整体下架的方式，超出必要限度，所以不适用“通知—删除”规则。**上海市长宁区人民法院**通过审理福州九农诉寻梦公司科技网络服务合同纠纷案，明确电商平台消费者赔付金制度与传统违约金制度的区别，电商平台消费者赔付金制度应当被视为是电商平台与商家的自治行为。法院判定商家利用平台售假行为构成违约，平台有权将赔付金直接扣付给消费者。**重庆市第五中级人民法院**通过审理重庆交运公司诉郭宁车辆租赁合同纠纷案，认定网络租车经营者在没有获得授权委托书或其他授权凭证的情况下，仅凭姓名、身份证号等身份信息认定对方为交易对象，未尽审慎核实义务，无权要求履行合同。

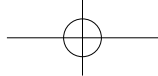
加大网络侵害人格权行为规制力度。互联网时代人格权具有集合性、扩展性特征，以及侵犯人格权方式和后果线上线下并行的特点，



中国法院的互联网司法

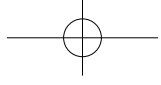
中国法院充分发挥审判职能作用，加大对公民网络肖像权、名誉权等人格权保护力度。北京互联网法院在黄淑芬诉岳岫山、微梦创科公司网络名誉侵权案中，判定构成侵犯网络名誉权应当适用过错原则，明确行为人身份变化可能引发不同程度的注意义务要求，细化了侵犯网络名誉权的构成要件。广州互联网法院在美明宇家政公司诉张思瑶、汉涛公司名誉权纠纷案中，判定消费者若未构成诽谤、诋毁，仅在网络平台对自己接受的服务进行主观描述并给予差评的，无需承担侵权责任。北京市第二中级人民法院在张艳霞诉中国互联网新闻中心肖像权纠纷案中，判定除非有使用必要，将公民肖像用于负面新闻报道构成不当使用行为，应当承担侵犯肖像权的法律责任。上海市第二中级人民法院在法率公司诉奇虎公司名誉权纠纷案中，判定手机用户在安全软件平台对呼入号码进行评价性标注，属于公众正当社会评价行为，安全软件平台在手机用户接听界面展示公众负面评价及数量的，不构成名誉权侵权或帮助侵权。

遏制互联网垄断及不正当竞争行为。相较于传统行业，互联网行业滥用市场支配地位和不正当竞争行为更为普遍，中国法院进一步细化明确垄断和不正当行为的认定标准和规则，保障各类市场主体公平参与竞争。北京知识产权法院在搜狗公司等诉奇虎公司等不正当竞争纠纷案中明确，互联网产品或服务提供者不得干扰其他互联网产品或服务的正常运行，不得在网络用户终端排斥其他产品和服务。上海市知识产权法院在爱奇艺诉搜狗等不正当竞争纠纷案中，认定输入法软件提供者在提供“输入候选”词和“搜索候选”词的功能设置，并未破坏市场选择功能或实质性妨碍视频网站的经营，不构成扰乱市场竞争秩序。浙江省杭州市余杭区人民法院在许先本与童建刚、玉环县金鑫塑胶有限公司不正当竞争案中，认定利用电商平台投诉机制，恶意



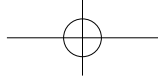
投诉其他经营者商品，使得其他经营者商品被平台删除，丧失销售机会的行为，构成不正当竞争，有效遏制了恶意投诉行为，为电子商务经济发展营造良好的环境。广东省深圳市中级人民法院在深圳微源码诉微信公众号垄断案中，认定利用平台公众号开展市场推广有别于使用社交功能的普通用户，相关商品市场应为互联网平台在线推广宣传服务市场，进一步明确了互联网平台及其所提供服务“相关市场”的认定标准，推动完善互联网行业中滥用市场支配地位的认定规则。

维护个人数据信息安全。人工智能时代，数据信息安全与个人生活紧密相连，同时也成为重要商业资源。中国法院通过司法裁判明确用户个人数据信息商业使用规则和边界，督促互联网企业收集使用数据时合法合规，加强对个人信息安全的保护。杭州互联网法院在徐永诉芝麻信用隐私权纠纷案中，判定对个人征信数据的商业使用行为侵犯隐私权，但经用户同意，收集政府、法院等国家机关依法在互联网公开的信息并反馈用户的除外，明确滥用个人征信数据的法律责任。北京市第一中级人民法院在庞理鹏诉东方航空、趣拿公司侵犯个人隐私权案中，明确航空公司和网络售票平台应当对因在线购票泄露用户个人信息的行为承担过错责任。江苏省南京市中级人民法院在朱烨诉百度公司隐私权纠纷案中，认定虽然网络浏览记录具有隐私属性，但网络精准广告中使用 cookie 技术收集、利用的匿名网络偏好信息，不能与网络用户个人身份对应识别，不符合个人隐私和个人信息的“可识别性”要求，因而不构成侵犯隐私权。湖北省宜昌当阳市人民法院在李金波、裴家好、李国乐侵犯公民个人信息罪案中认定，利用虚假贷款网站非法获取、出售可能影响财产安全的公民个人信息，情节严重，构成侵犯公民个人信息罪；明知并帮助他人设立虚假贷款网站、提供广告推广的，属共同犯罪，依法予以刑事制裁。



保障数字经济健康发展。为保障促进大数据、云计算、人工智能、区块链、物联网等新兴技术产业快速健康发展，中国法院通过依法裁判有效治理网络黑灰产业，支持行政部门包容审慎履行监管职责，明确行业发展的法律边界。北京互联网法院在常文韬诉许玲等合同纠纷案中，判定双方签订的、以非法技术手段提高点击量，制造虚假流量误导网络游戏玩家的网络游戏服务合同无效，有力打击网络灰色产业。广州互联网法院在聚贤科技诉广州市市场监管局行政处罚、广州市市政府行政复议案中，支持行政监管部门依法查处以新型网络营销为名发展上下线、进行网络传销的行为，有效净化互联网市场环境。广东省广州市中级人民法院在广东省消费者委员会诉悦骑公司小鸣单车公益诉讼案中，通过判令被告停止拖延并退还消费者押金、公开披露押金信息、公开道歉，明确共享单车使用押金的权利归属关系，遏制互联网业态中的“圈钱”行为，推动共享经济健康发展。深圳市中级人民法院在谷米科技诉元光科技等不正当竞争纠纷案中，判定经营者收集、分析、编辑、整合具有商业价值的大数据资源的行为，受反不正当竞争法保护，他人未经许可利用网络爬虫技术盗用大数据资源，并用于经营同类应用程序，构成不正当竞争，推动确立了大数据行业的公平竞争规则。

完善网络空间知识产权保护规则。中国法院着力通过司法裁判明确网络环境下新类型知识产权的权利属性、保护范围和追责机制，加大司法保护和救济力度，完善知识产权领域治理规则，有效保护和鼓励互联网创新。北京互联网法院通过审理“音著作协会诉斗鱼公司网络传播侵权案”，明确网络直播公司如享有其签约主播直播成果的知识产权和商业利益，应当就主播未经授权播放他人音乐的行为承担侵权赔偿责任。杭州互联网法院通过审理艾贝戴公司等诉聚凡公司等“小猪佩奇”著作权侵权案，判定被授权商超出授权范围、期限、方式生产



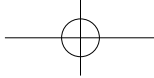
并销售玩具的行为，侵害了权利人著作权，依法支持了著作权人跨国维权诉求，实现国内外知识产权人的平等保护。广州知识产权法院在腾讯公司诉字节跳动公司等侵犯游戏著作权案中，对未获得授权的游戏直播行为下达了诉讼禁令，裁定未经许可的游戏直播行为侵害了权利人合法权益并构成不正当竞争，应立即停止相关未经许可的游戏直播行为。湖北省武汉市中级人民法院通过审理鱼趣公司诉脉森公司等侵害著作权及不正当竞争纠纷案，判定直播平台明知而擅自使用他人培养并独家签约的知名主播资源的行为构成不正当竞争，同时认定玩家对游戏动态画面的形成具有一定贡献，但仍为游戏预设画面的展现，不享有著作权。

坚决打击网络刑事犯罪。互联网时代，网络犯罪出现手段技术化、领域专业化、主体组织化、获利机制产业化等新样态。中国法院根据网络犯罪新特点，立足刑事审判职能，加大打击惩处力度，严厉打击开设网络赌场、实施网络诈骗、非法盗取数字财产、侵犯公民个人信息等各类犯罪，确保网络空间秩序安定有序。上海市浦东新区法院通过审理“流量劫持案”，认定通过利用各种恶意软件修改路由器、浏览器设置、锁定主页或弹出新窗口等技术手段，强制网络用户访问指定网站等“流量劫持”行为，后果严重的，构成破坏计算机信息系统罪。江苏省宿迁市中级人民法院通过审理“诈骗信息发布案”，认定以非法获利为目的，通过信息网络发送刷单诈骗信息，其行为本质上属于诈骗犯罪预备，情节严重的，构成非法利用信息网络罪。辽宁省沈阳市铁西区人民法院通过审理“微信红包赌场案”，判定犯罪团伙通过在微信群里组织被害人，以抢微信红包比金额大小的方式进行赌博，并从中渔利的，构成开设赌场罪。山东省泰安市中级人民法院通过审理“月光宝箱案”，判定犯罪团伙利用黑客技术聚合涉黄直播平台，以发展下线代理的方式传播和买卖淫秽视频，达到入罪标准的，构成传播淫秽物

品牟利罪。浙江省台州市温岭区人民法院审理的“蒋琪诽谤案”，判定故意捏造事实损害他人名誉，在网络上散布，情节严重的行为，构成诽谤罪，有力遏制了校园网络霸凌行为。福建省莆田市荔城区人民法院通过审理“网络诈骗案”，判定犯罪人冒用他人身份信息，利用网上募捐平台，发布虚假募捐消息，骗取网友巨额捐款的行为，构成诈骗罪，严厉打击利用公众爱心善心进行骗捐的行为，维护了社会公序良俗。



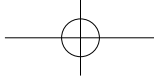
互联网司法裁判规则体系示意图



结束语

中国互联网司法是时代发展和司法实践的结晶，必将伴随着社会发展、科技创新和法治建设与时俱进，日臻完善。互联网时代，通过信息技术革新和司法体制改革的共同推动，中国司法有效实现了诉讼流程重构、诉讼规则完善和司法模式变革，人民群众获得了更加公平公正、公开透明、高效便捷、普惠均等的司法服务，中国法院司法能力、质量、效率和公信力得到全面提升。

中国法院将继续秉持开放共享、审慎包容、可持续发展的理念，以信息化智能化培育司法体制革新和司法体系建设新动能，服务社会公众多元司法需求，服务国家数字经济社会繁荣发展，建设更加公正、高效、权威的中国特色社会主义司法制度，推进全球互联网治理体系变革和治理规则完善，为实现互联互通、共享共治的网络空间命运共同体贡献中国智慧。



附录：中国互联网司法典型案例

案例一：

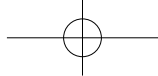
福州九农贸易有限公司诉上海寻梦信息技术有限公司网络服务合同纠纷

【典型意义】

基于网络平台发生的购物活动，具有买卖迅速、交易量大、跨地域广、主体分散等特点，行政部门监督难度不断加大，网络平台自治规则的作用不断增强。本案明确平台与商家在入驻协议中约定“消费者赔付金”，属于平台自治行为，且协议内容不违反法律、行政法规的强制性规定。当商家在平台上发生售假行为构成违约时，平台有权按照约定的“消费者赔付金”规则，直接扣付相关钱款给消费者，肯定了互联网平台自治规则的效力。

【基本案情】

2016年7月4日，福州九农贸易有限公司（以下简称九农公司）与上海寻梦信息技术有限公司（以下简称寻梦公司）在其电商平台上签署协议约定：商家售假需按涉假商品历史销售额的十倍承担违约金，平台有权直接冻结并自商家账户扣款；商家在接到平台通知后不能证明疑似假货商品为正品的，平台将以商家账户内的保证金对消费者进行赔付。因九农公司在寻梦公司平台出售假货，寻梦公司遂冻结其账



户并将扣款全额赔付给涉假订单对应消费者。九农公司认为其并无售假行为，寻梦公司单方制定十倍违约金等苛刻的处罚规则并冻结账户，侵犯其合法权益，故诉至法院要求被告寻梦公司退款并赔偿损失。

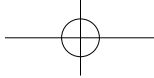
【法院裁判】

法院在本案中认定，商家在入驻电商平台时有充分选择的自由，平台公司在合同签订时充分履行了提示义务，故原告九农公司入驻被告寻梦公司运营的平台时，网签合同的条款有效。原告九农公司的销售行为属于平台规则规定的售假行为，违反了双方合同约定，无权要求被告寻梦公司退款并赔偿损失。被告寻梦公司电商平台设置的消费者赔付金制度与传统违约金制度在受益主体、权利来源、责任承担对象及适用标准等方面均有区别，其目的并非盈利，而是为了维护诚实守信的网络交易环境、保护消费者合法权益，符合公序良俗原则，故应对其效力予以肯定。

上海市长宁区人民法院于2018年5月31日判决驳回原告全部诉讼请求。一审宣判后原告提起上诉，但未按时交纳上诉费，二审法院裁定按撤诉处理，本案判决已发生法律效力。

【文书二维码】





案例二：

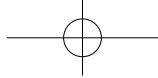
俞彬华与广州华多网络科技有限公司、王子戎、哈尔滨兴戎文化传媒有限公司、刘奇琪网络服务合同纠纷

【典型意义】

近年来网络直播行业发展迅猛，成为一种新兴的互联网经济形态，相关纠纷也日益多发。本案清晰界定了网络直播中用户、直播发布者与直播平台之间法律关系，明确了“直播打赏”行为的法律性质。本案通过对网络直播相关法律关系和法律行为的界定，明确了各方主体的权利义务，有助于规范网络直播行为，促进网络直播行业健康发展。

【基本案情】

刘奇琪是哈尔滨兴戎文化传媒有限公司（以下简称兴戎公司）旗下主播，其在广州华多网络科技有限公司（以下简称华多公司）运营的YY直播平台开展直播，该直播间系用兴戎公司的法定代表人王子戎的YY账号开通。2017年2月至2017年4月期间，俞彬华在刘奇琪的直播间消费共计59291.28元（包括礼物和开通“公爵”“守护”）。2017年3月17日，俞彬华成为当天打赏礼物最多的人，被刘奇琪设置为该直播间的频道总管理（VP）。2017年4月7日，刘奇琪取消了俞彬华的VP权限，原因是刘奇琪不认可俞彬华私下通过微信转账、赠送礼物的行为。俞彬华诉至法院，提出撤销在直播间消费礼物的合同及华多公司、王子戎、兴戎公司、刘奇琪连带返还消费款项49291.28元等十项诉讼请求。



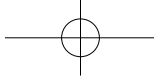
【法院裁判】

法院在本案中认定，直播平台为用户提供平台服务，通过用户购买和使用虚拟货币收取服务费，两者形成网络服务合同法律关系。用户对直播发布者的“打赏”，一般成立赠与合同，除非有证据证明直播发布者接受“打赏”前后须履行具体、明确的合同义务。本案中原告俞彬华对被告刘奇琪的“打赏”，并未约定要求对方履行特定义务，没有提出“打赏”的对价，因此并非服务合同关系，应当认定为赠与合同。

广州互联网法院于2019年1月7日判决驳回原告全部诉讼请求。本案一审宣判并送达后，原、被告均未提出上诉，该判决已发生法律效力。

【文书二维码】





案例三：

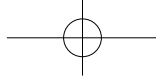
中国音乐著作权协会诉武汉斗鱼网络科技有限公司侵害音乐作品信息网络传播权纠纷案

【典型意义】

在用户需求和技术创新的驱动下，短视频、网络直播等传播形式丰富、创作门槛低的互联网内容平台快速发展，知识产权纠纷频发，保护难度大。本案中明确以直播为主营业务的网络平台公司，在享有其签约主播直播成果的知识产权和商业利益的同时，还应当为签约主播未经授权播放他人音乐的行为，承担相应侵权赔偿责任。本案有利于规范内容付费商业模式中各方主体之间的关系，合理界定互联网内容平台的责任义务。

【基本案情】

2018年2月14日，武汉斗鱼网络科技有限公司（以下简称斗鱼公司）签约主播冯提莫在斗鱼公司经营的直播平台进行在线直播，直播平台用户可以购买虚拟币和礼物进行打赏。直播期间冯提莫播放了歌曲《恋人心》，时长约1分10秒。直播结束后，主播将直播过程制作成视频并保存在直播平台上，观众可以回放观看和分享。中国音像著作权协会（以下简称音著协）经歌曲《恋人心》的词曲作者授权，可对歌曲《恋人心》行使著作权，认为斗鱼公司及其主播的上述行为侵害了其对该歌曲享有的信息网络传播权，请求法院判令被告赔偿著作权使用费3万元及律师费、公证费等合理开支12600元。



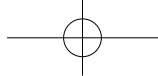
【法院裁判】

法院在本案中认定，网络直播平台与签约主播约定，直播产生的音视频作品的知识产权归平台所有，同时平台从用户在线观看直播、回放直播视频时对网络主播的虚拟打赏中盈利。所以，斗鱼公司既是直播平台服务的提供者，也是直播平台上音视频作品的权利人和收益者，对其平台上的侵害著作权行为不应当仅限于承担“通知—删除”义务。斗鱼公司应当对直播及视频内容的合法性负有更高的注意义务；对平台上直播及视频的制作和传播中发生的侵权行为，除履行“通知—删除”义务外，还应当承担相应的赔偿责任。

北京互联网法院判决被告斗鱼公司赔偿原告音著协经济损失 2000 元和合理开支 3200 元。一审判决后，斗鱼公司提起上诉。北京知识产权法院二审判决驳回上诉，维持原判。

【文书二维码】





案例四：

杭州华泰一媒文化传媒有限公司与深圳市道同科技发展有限公司侵害作品信息网络传播权纠纷案

【典型意义】

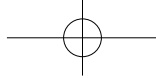
互联网时代下，电子证据大量涌现，以区块链为代表的新兴信息技术，为电子证据的取证存证带来了全新的变革，同时也亟待明确电子证据效力认定规则。本案系全国首次对区块链电子存证的法律效力进行认定的案件，为该种新型电子证据的认定提供了审查思路，明确认定区块链存证的相关规则，有助于推动区块链技术与司法深度融合，对完善信息化时代下的网络诉讼规则具有重要意义。

【基本案情】

杭州华泰一媒文化传媒有限公司（以下简称华泰公司）认为深圳市道同科技发展有限公司（以下简称道同公司）未经许可在网站中发表其享有著作权的作品的行为侵犯其信息网络传播权，并通过第三方存证平台对侵权事实予以取证，并将相关数据计算成哈希值上传至比特币区块链和 Factom 区块链中形成区块链存证，基于此请求道同公司承担侵权责任。

【法院裁判】

法院在本案中认定，区块链技术基于其分布式存储、防篡改机制和可追溯性，在电子证据的固定、保存和提取方面具有优势，但仍应按照一定的标准和程序认定存储于区块链上电子证据的真实性。本案

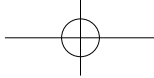


中华泰公司存储于区块链的电子证据数据来源清晰，生成及传递路径明确，且能与网页截图、源码信息、调用日志相互印证，故其生成的电子数据具有可靠性。

杭州互联网法院于2018年6月27日判决被告赔偿原告经济损失4000元。本案一审宣判并送达后，原、被告均未提出上诉，该判决已生效。

【文书二维码】





案例五：

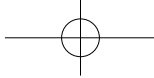
深圳微源码软件开发有限公司与腾讯科技（深圳）有限公司、深圳市腾讯计算机系统有限公司滥用市场支配地位纠纷

【典型意义】

当前大型互联网平台成为网络经济活动重要的市场主体，对互联网平台提起的反垄断诉讼日渐增多，涉及滥用市场支配地位行为的相关市场认定规则亟待明确。本案明确了综合性互联网平台“相关商品市场”的界定标准。对于提供多种类型服务综合性互联网平台，“相关商品市场”的认定需充分考虑涉案行为具体指向的产品或服务，区分互联网平台基础性服务的“相关商品市场”与增值服务的“相关商品市场”，根据产品或服务的性质、特点，运用需求替代分析方法合理界定。

【基本案情】

2015年10月以来，深圳微源码软件开发有限公司（以下简称微源码公司）在腾讯科技（深圳）有限公司、深圳市腾讯计算机系统有限公司（以下简称腾讯公司）运营的微信平台上注册“数据精灵分销平台”等26个微信公众号。之后，腾讯公司因涉案公众号推广的外挂软件明显超越微信所允许的功能范畴，违反微信服务协议及运营规范等多项规定，封禁了微源码公司运营的公众号。故微源码公司诉至法院，请求法院判令腾讯公司停止滥用市场支配地位行为，提出包括解封其注册的公众号并赔偿损失等九项诉讼请求。



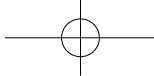
【法院裁判】

法院在本案中认定，原告微源码公司并非使用微信即时通信及社交服务的普通用户，而是在平台上以自媒体形式营销推广软件产品的商业主体，其需求为在线推广宣传，故本案“相关商品市场”应为互联网平台在线推广宣传服务市场。原告微源码公司对“相关商品市场”认知错误，亦未能提供证据证明被告腾讯公司具有滥用其微信即时通信及社交服务市场支配地位的行为。作为微信平台运营方，被告腾讯公司依据双方事先达成合意的服务协议及运营规范，对原告微源码公司违规行为进行必要管理并无不当，不构成滥用市场支配地位。

深圳市中级人民法院于2018年8月23日判决驳回原告全部诉讼请求。本案一审宣判并送达后，原、被告均未提出上诉，该判决已发生法律效力。

【文书二维码】





案例六：

许先本与童建刚、玉环县金鑫塑胶有限公司不正当竞争纠纷案

【典型意义】

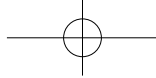
随着互联网经济的兴起，利用互联网平台按照“通知—删除”规则快速处理侵权投诉机制，侵犯他人合法权益的行为日益增多。本案明确了利用电商平台投诉机制，恶意投诉其他经营者商品，使得其他经营者商品被平台删除，丧失销售机会的行为，构成不正当竞争，有效遏制了恶意投诉行为，维护了良好市场竞争秩序。

【基本案情】

2016年3月28日，童建刚以许先本淘宝店铺销售的防爆压力锅侵犯其外观设计专利权为由，向淘宝公司发起侵权投诉，并在线提交了外观设计专利证书及外观设计专利权评价报告等。2016年4月7日，淘宝公司认定童建刚投诉成立，删除了被投诉的商品链接。经查，童建刚对其投诉时提供的《外观设计专利权评价报告》的关键内容进行了篡改，将“初步结论：全部外观设计不符合授予专利权条件”恶意修改成“初步结论：全部外观设计未发现存在不符合授予专利权条件的缺陷”；同时将“外观设计不符合专利法第二十三条二款的规定”删除。许先本诉至法院，请求判令被告公开赔礼道歉，并赔偿损失50万元等。

【法院裁判】

法院在本案中认定，被告童建刚明知申请的外观设计专利未获得

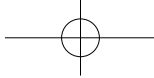


专利许可，篡改专利权评价报告的结论，并使用变造的证据向电商平台恶意投诉原告许先本经营的同类商品，导致涉案商品链接被平台删除，其行为违背公认的商业道德准则，使原告许先本无法开展正常经营活动并造成了损失，构成不正当竞争。

浙江省杭州市余杭区人民法院经审理认定被告童建刚的恶意投诉行为构成不正当竞争，判决被告童建刚赔偿原告许先本经济损失（含合理费用）2万元。一审判决已生效。

【文书二维码】





案例七：

深圳市谷米科技有限公司与武汉元光科技有限公司、邵凌霜等不正当竞争纠纷

【典型意义】

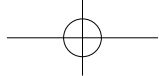
大数据作为一种信息时代的重要资源，蕴含着巨大的经济和社会价值，在当前大数据行业蓬勃发展的同时，相关行业规范和行为准则亟待树立。本案明确他人未经许可利用网络爬虫技术盗用大数据资源，用于经营同类应用程序的，构成不正当竞争。本案判决有利于确立大数据行业行为规范，促进经营者遵循商业道德，开展公平、良性竞争。

【基本案情】

自2015年11月起至2016年5月，武汉元光科技有限公司（以下简称元光公司）为了提高其开发的智能公交应用程序“车来了”的市场份额及信息查询的准确度，由时任该公司法定代表人并任总裁的邵凌霜授意公司技术总监陈昂，指使公司员工刘江红、刘坤朋、张翔等人利用网络爬虫技术大量获取竞争对手深圳市谷米科技有限公司（以下简称谷米公司）经营的同类公交应用程序“酷米客”的实时公交信息数据，无偿使用于其“车来了”应用程序，并向公众提供查询服务。谷米公司以元光公司及相关责任人的上述行为违背了商业道德和诚实信用原则，构成不正当竞争为由诉至法院。

【法院裁判】

法院在本案中认定，原告谷米公司权利人经过收集、分析、编辑、

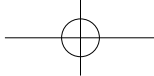


整合所合法拥有的、具有商业价值的大数据资源，应当受到相关法律保护。原告谷米公司出于商业模式或其他需要向公众免费提供数据查询，被告元光公司未经权利人许可，以网络爬虫技术入侵后台盗用数据，并将盗取数据用于经营同类业务的，具有破坏他人市场竞争优势、谋取竞争优势的主观故意，属于严重破坏市场秩序的行为，构成不正当竞争。

深圳市中级人民法院于 2018 年 5 月 23 日作出民事判决，判令被告元光公司向原告谷米公司赔偿经济损失及合理维权费用 50 万元。本案一审宣判并送达后，原、被告均未提出上诉，该判决已发生法律效力。

【文书二维码】





案例八：

庞理鹏诉中国东方航空股份有限公司、北京趣拿信息技术有限公司隐私权纠纷

【典型意义】

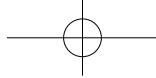
互联网时代下，各类数据信息高速流通、海量传播、高度共享，在给人们带来便利的同时，也对个人信息安全带来前所未有的挑战。本案确立了可通过隐私权对个人信息安全予以保护的规则，明确了认定个人信息泄露应适用民事证据高度盖然性证明标准，在现行法律体系下对保护个人信息安全提供了有益探索和规则指导，对规范网络平台行为，维护个人信息安全具有重要意义。

【基本案情】

庞理鹏委托其助理鲁超通过北京趣拿信息技术有限公司（以下简称趣拿公司）运营的去哪儿网购买中国东方航空股份有限公司（以下简称东航公司）机票，其后收到诈骗短信，短信内容中显示有庞理鹏航班的起飞时间、降落时间、机场名称、航班号。庞理鹏认为，自己的手机号及确切的航班信息只有趣拿公司和东航公司掌握，因而其断定是二公司泄露了其个人信息，于是诉至法院，要求二公司赔偿精神损害抚慰金 1000 元。

【法院裁判】

法院在本案中认定，原告庞理鹏的非隐私信息与隐私信息结合之后已形成不可分的权利整体，应当按照隐私权的保护规则一体救济。

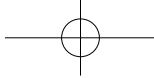


被告东航公司和趣拿公司掌握了原告庞理鹏身份证号、手机号和航程信息，其后，相关信息又在合理时间内发生泄露，根据高度盖然性的证明标准，足以认定信息泄露系被告导致，故二被告构成对原告隐私权的侵犯，应当承担侵权责任。

北京市海淀区人民法院于2016年1月20日作出一审判决，驳回庞理鹏的全部诉讼请求。北京市第一中级人民法院于2017年3月27日终审判决，撤销一审判决；趣拿公司向庞理鹏赔礼道歉；东航公司向庞理鹏赔礼道歉；驳回庞理鹏的其他诉讼请求。

【文书二维码】





案例九：

上海法率信息技术有限公司诉北京奇虎科技有限公司名誉权纠纷案

【典型意义】

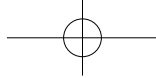
随着互联网终端的应用普及，因个人信息泄露或商家过度推广导致垃圾短信、骚扰电话事件频发，公众对保护个人信息安全和生活安宁的要求日渐强烈。本案明确手机安全软件向用户客观展示不特定多数人对来电号码的评价、标注，不构成名誉权侵权或帮助侵权，对有效治理通讯骚扰、维护个人信息安全和生活安宁具有积极意义。

【基本案情】

上海法率信息技术有限公司（以下简称法率公司）于2014年3月成立，主要依靠庞大的呼叫系统开展法律咨询业务。360手机卫士系北京奇虎科技有限公司（以下简称奇虎公司）旗下运营的免费软件，其中的云标记功能可以对陌生来电进行标记分类。之后，法率公司发现其咨询号码被360手机卫士标记为骚扰电话，遂诉至法院，请求判令奇虎公司停止侵权、公开道歉并赔偿损失。

【法院裁判】

法院在本案中查明，被告奇虎公司开发的手机安全软件允许用户通过软件的云标记功能对陌生来电进行分类标记，当标记达到一定数量后，在接听界面向其他用户展示，协助用户拦截骚扰电话。法院认定，网络评价已成为公众日常表达的一部分，人们的行动和决策常常

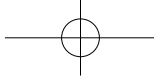


借助于公众评价，其中表达为负面性词汇的评价，除非严重不实并造成损害或者出于欺诈，否则不构成名誉侵权；被告奇虎公司出于满足用户需求目的，如实予以展示用户对原告法率公司来电的评价标注行为，亦不构成帮助侵权。

上海市杨浦区人民法院一审判决驳回法率公司的全部诉讼请求。法率公司不服，向上海市第二中级人民法院提起上诉。上海市第二中级人民法院经审理后，终审判决驳回上诉，维持原判。

【文书二维码】





案例十：

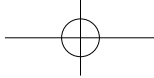
谭张羽、张源等非法利用信息网络案

【典型意义】

近年来，网络犯罪呈现出主体多元化、手段隐蔽性高、分工链条精细、作案地域分散等特点，尤其是网络诈骗犯罪经常上下游之间通过网络联络实施犯罪。本案明确行为人明知上家的“刷单广告”是从事诈骗的行为，仍以非法获利为目的，为其犯罪提供广告推广帮助，情节严重的，构成非法利用信息网络罪。本案判决细化了新类型网络犯罪的认定标准，有力打击了非法利用网络信息的犯罪活动。

【基本案情】

2016年12月，为获取非法利益，被告人谭张羽、张源共同商定，利用注册的公司开展在网络上从事为他人发送“刷单获取佣金”的诈骗信息业务。谭张羽、张源雇佣被告人秦秋发等负责发送诈骗信息。张源主要负责购买“阿里旺旺”账号、软件、租赁电脑服务器等；秦秋发主要负责招揽、联系有发送诈骗信息需求的上家、接收上家支付的费用及带领其他人发送诈骗信息。三被告在明知不存在刷单事实，系上家用于诈骗的情况下，仍然帮助发布诈骗信息，每一人添加上述信息里的QQ号，谭张羽、张源从上家处获取30至70元报酬。被害人王某甲、洪某在添加谭张羽、张源等人组织发送的诈骗信息中的QQ号后，分别被骗31000元和30049元。



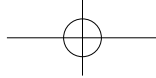
【法院裁判】

法院在本案中认定，被告人谭张羽、张源、秦秋发以非法获利为目的，通过信息网络发送刷单诈骗信息，其行为本质上属于诈骗犯罪预备，构成非法利用信息网络罪。虽然本案中尚无证据证实已有诈骗行为人归案并受到刑事追究，但已有多位受害者出现，不影响非法利用信息网络罪的成立。谭张羽、张源、秦秋发共同实施故意犯罪，系共同犯罪。在共同犯罪中，谭张羽、张源起主要作用，均系主犯；秦秋发起次要作用，属从犯，依法予以从轻处罚。

江苏省沭阳县人民法院一审判决、宿迁市中级人民法院二审判决，以非法利用信息网络罪判处被告人张源有期徒刑二年一个月，并处罚金人民币 10 万元；被告人谭张羽有期徒刑一年十个月，并处罚金人民币 8 万元；被告人秦秋发有期徒刑一年四个月，并处罚金人民币 3 万元。

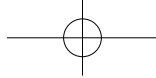
【文书二维码】





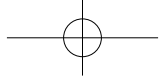
Preface

Nowadays, the cutting-edge information technology has evolved in leaps and bounds, and the Internet has become a leading force for innovation-driven development. The Internet has profoundly changed the lifestyle and working patterns, and propelled the world's economy and society forward. The year 2019 marks the 70th anniversary of the founding of the People's Republic of China, and the 50th anniversary of the birth of the Internet. Since its full access to the Internet in 1994, China has always taken the development of Information Technology as a historic opportunity to speed up the Internet Power Strategy, to deepen the reform and opening-up, and to accelerate the process of modernization. In the meantime, significant progress has been achieved in the information technology and Internet industry. As of June 30, 2019, China had 854 million netizens ballooned from 620,000 in 1997, and the number of mobile Internet users reached 847 million, both ranking first in the world. Instant messaging ranked first in online activities with 824 million users, followed by online video users at 759 million. Meanwhile, online shoppers and online users of electronic government service increased



to 639 million and 509 million, respectively. The data traffic consumption of mobile phones and devices reached 55.39 billion GB.

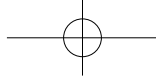
Both national governance and administration of justice face the challenges and opportunities brought by the development and innovation of Information Technology and the Internet industry. Across the board spread of the Internet, problems such as unbalanced development, inadequate rules and inequitable order have become more evident. Citizens, corporations, and social organizations now expect greater access to justice and to guarantee the socio-economic development in the digital age, which urges the courts to harness the technology to keep pace with the rapidly changing demands of society. Since 2013, Chinese courts have been following the people-centered principle, actively implementing national Internet Power Strategy, and Big Data Strategy and the Internet Plus initiative, and exploring a broad spectrum of new approaches, fields, and models of integrating Internet technologies into trial procedures and the judicial system. Until now, online frameworks for Diversified Dispute Resolution and litigation service have taken shape, judicial rules and policies on cyberspace governance have been established, the cyberspace has become well regulated and in order, the national governance system and governance capability have been modernized accordingly.



I. Overall Development of Internet Judiciary

Since the 18th National Congress of the Communist Party of China, the Supreme People's Court of China (SPC), benefiting from the scale advantages and the achievements of the Internet industry, has incorporated the Online Judiciary development into the overall strategic plan for deepening the judicial reform and implementing overall progress in different fields, and at different levels step by step. With the deepening of the reform, the application scenarios of information technologies in the judiciary have gradually expanded. The platforms become multi-functional, and the litigation mode transformed into an integrated and intelligent mode. The law-based cyberspace governance has been promoted constantly, achieving a historical shift from technical innovation to mechanism reformation and from procedural improvements to the distillation of substantive rules.

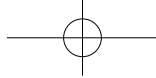
Application fields have extended from judicial openness to whole judicial activities. Chinese courts take judicial openness as the kick-off project for the application of Internet technologies in the judiciary. Since 2013, Chinese courts have been striving for and have accomplished the construction of four official websites, i.e. *China Judicial Process Information Online*, *China Judgment Online*, *China Trial Live Broadcast*, and *China Executive Information Online*, to promote judicial openness and transparency. To satisfy diverse needs for justice, Chinese courts continually



experiment with the Internet judicial practice, such as in Diversified Dispute Resolution, litigation service, trial, and enforcement etc. A litigation service system connecting online and offline litigation service system has been built. A model of One-Stop online dispute resolution service, including mediation, case-filing, fee-payment, hearings, and e-delivery, has been developed, which covers the whole online process in courts' judicial activities.

One-dimension platforms have transformed into multi-functional systems. The Internet technology infrastructure has dramatically improved since official websites and intranets started to be developed for the judiciary's activities. Now internal and external networks, mobile networks, and office automation platforms covering all courts across the country have gradually developed and functioned well. In 2016, *Smart Court Construction* became part of the National Development Strategy (NDS). Since then, the level of digitalization in the judiciary has advanced at a fantastic speed. By June 2019, the *Smart Court System* had taken shape, offering whole-process transparent and intelligent online services to the public in accordance with the law. The internal judicial work systems and external litigation service systems are interconnected. The service carriers have expanded from PCs only to all smart mobile devices. A shared big-data platform connects government agencies, industry organizations, legal firms, and Internet companies.

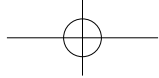
Litigation model has shifted from linear and isolated into integrated, open, and intelligent. With the assistance of Internet technologies, judicial activities have profoundly shifted from the classic pattern into an online-and-



中国法院的互联网司法

offline integration pattern. Compared with the past, all the participants of court proceedings can benefit from the convenience and flexibility provided by the all-weather, multi-scenes, and interactive litigation system. Chinese courts have endeavored to conduct the process of judicial activities online. The routine work used to be operated manually, and the judicial practice across the whole nation's court system was scattered. Now an open-access, sharing, and intelligent integrated model and approach have been set up for courts nationwide. By introducing new technologies like big data, cloud computing, blockchain and artificial intelligence, the application of modules such as voice recognition in hearings, digitalized evidence presentation, automatic document verification, and simultaneous generation of e-files, intelligence-assisted case handling, and case management are all included in the toolkits for the judiciary.

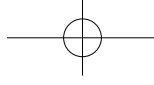
The main focus has shifted from the application innovation to law-based governance of the Internet. In the early stages, the focus of the Internet Judiciary was utilizing online litigation mechanisms, strengthening the application of technologies, and enhancing people's access to justice via keeping pace with trends of technologies. As the Internet industry deeply integrated with economic and social development, Chinese courts improve Internet judicial governance in an all-round manner by following the latest innovation in time. The official establishment of the Internet courts is the opening for a new era, which provides an opportunity for the judiciary to extract and to summarize the judicial rules from new Internet-related cases through its administration.



II. Strengthening the Judicial Specialization for the Internet

Echoing the development of the Internet era, courts nationwide have innovated the “*Internet plus judiciary*” mechanism according to local conditions. In April 2015, the **High People’s Court of Zhejiang Province** initiated online e-commerce tribunals in the courts within its jurisdiction, concentrating on handling cases on online monetary claims, copyright infringements, transaction disputes, and so forth. Based on the experiences from the pilot mentioned above, **Hangzhou Internet Court** was officially established on August 18th, 2017. **Beijing Internet Court** and **Guangzhou Internet Court** were successively established on September 9 and September 28, 2018. The three Internet courts have set up eight specialized divisions in total. All of the first assigned 84 judges are equipped with more than ten years of professional experience, and each concludes more than 700 cases per year.

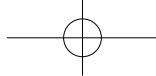
Internet courts, designed as primary courts with designated jurisdiction over Internet-related cases, have implemented the new trial mechanism following the approach of “*Online Disputes Tried Online*”. The centralized jurisdiction covers 11 types of internet-related cases, including contracts for financial loans, goods purchase, services, and online disputes about torts, such as copyright infringements. A series of experiences have been accumulated and become the benchmark in the fields of online case handling, online platform developments, litigation guidelines and rules, technology application,



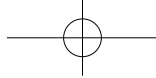
中国法院的互联网司法

Internet governance, etc. As of October 31, 2019, **Hangzhou Internet Court**, **Beijing Internet Court**, and **Guangzhou Internet Court** had accepted 118,764 Internet-related cases and concluded 88,401. The rate of online filing (the lawsuits filed via the Internet) was 96.8%, and 80,819 cases concluded were proceeded online throughout the whole process. Compared with the case handling before, on average, it took 45 minutes in an online hearing and 38 days to conclude a case, which respectively saved time by about 3/5 and 1/2. Up to 98% of the parties accepted first-instance judgments and ceased further appeals. It indicates that the judicial quality, efficiency, and effect of Internet courts in a widely recognized condition.

Subjected to local practices and conditions, several courts across China set up specialized divisions or units for Internet-related case, to explore an innovative and specialized judicature system for the Internet. More specialized judicature tribunals and units throughout national courts have been established, leading to a better judiciary with more expertise in the Internet-related cases. For example, Internet tribunals were set up in Changning Primary People's Court of Shanghai, Binhai New District People's Court of Tianjin, Shenzhen Futian Primary People's Court of Guangdong Province, Wuhan Jiangxia Primary People's Court of Hubei Province, Chengdu Pidu Primary People's Court of Sichuan Province etc. Some other courts formed specialized collegiate panels or units for Internet cases, such as Zhenjiang Economic and Technological Development Zone People's Court of Jiangsu Province, Ningbo Yuyao Primary People's Court of Zhejiang Province, Xiamen Siming Primary People's Court of Fujian



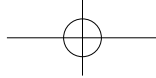
Province ect. Based on the distinctive features of Internet disputes and the Internet industry within their jurisdiction, the newly-established specialized tribunals and panels integrate online and offline resources, explore various approaches and strategies, and enrich the legal practices of the Internet judiciary. **Changning Primary People's Court of Shanghai** studied against the fact that in its jurisdiction, service-oriented Internet enterprise gathered, which leads to new types of Internet disputes emerging in the form of class lawsuits. The court also delivered 12 times legal risk's alerts to Internet intermediaries after concluded the test case, which helped the intermediaries mediated other disputes in the shadow of the law and amended their platform protocols successfully. **Shenzhen Futian Primary People's Court of Guangdong Province** set up Internet and Finance tribunal and “*Jujingzhi (Whale Intelligent Platform)*” to realize financial cases processed online; Since June 2017, cases accepted and concluded on the platform are 42,987 and 37,503, respectively. The adjudication units doubled the number of annual concluded cases while cutting down the time consumption per trial to a half. The Internet tribunal in **Chengdu Pidu Primary People's Court of Sichuan Province**, upon the judicial demands of local creative projects and industries, upgraded the measures for intellectual property protection, encouraging creative works and products to take advantage of authentic blockchain to preserve their copyrights in advance. **Qian'nan Huishui Primary People's Court of Guizhou Province** established a specialized tribunal to hear cases across Qian'nan related to big data protection, online transaction and online torts, making most use of centralization and specialization of judicial resources.



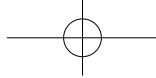
III. Promoting Access to and Benefits from Internet Judiciary for the People

In the information age, people's judicial demands are increasingly diversified, and the public expects a more impartial, efficient, convenient, accurate, and transparent operation mode of the judiciary. Empowered by Internet technology, Chinese courts have improved litigation services and dispute resolution continuously. Access to justice has been greatly improved by fully implementation of Online Filing and Cross-regional Filing Mechanisms, as well as One-Stop Diversified Dispute Resolution and One-Stop Litigation Service, which enables litigants to participate at their convenience with lower costs.

Constructing a One-Stop Diversified Dispute Resolution. Taking advantage of the openness, rapidness, and efficiency of the Internet, Chinese courts expand the dispute resolving channels, optimize dispute resolution methods, and establish a One-Stop Diversified Dispute Resolution step by step. This One-Stop system provides online access to court proceedings, converges complete tracks of dispute resolution, and successfully integrates online and offline services. The system provides parties with early assistance to balance the gains and costs of multiple dispute resolution, and supports their decision-making with accurately-matched solutions and well-connected resolution tracks, including mediation, arbitration, and litigation.



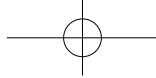
In October 2016, the SPC launched a unified online mediation platform covering mediation processes from acceptance, classification, resolution to feedback. The platform has multiple functions such as court-annexed mediation before and after filing, and application for court approval. By October 31, 2019, the SPC online mediation platform had assembled services of 2,679 courts, 21,379 professional mediation organizations, and 79,271 mediators, and resolved a total of 1,369,134 cases via mediation. Under the *Diversified Dispute Resolution connected with Fast Track Trial* mechanism launched by Beijing courts, 304,000 cases were referred to court-annexed mediation prior to commencement of litigation procedures in 2018. Out of those, 178,000 cases were successfully concluded, accounting for 39.0% of the closed civil cases of the first instance in the same period. **Chengdu Intermediate People's Court of Sichuan Province** has constructed a *HeheZhijie (Harmonization and Intelligent Resolution)* platform, which is interconnected to Chengdu Municipal Public Service *TianfuShiminyun (Clouds Platform for Chengdu Citizens)*. This integrated platform provides litigants with online judicial services for assessing disputes, filing the mediation application, choosing a mediator, consulting pro bono service, smart Q&A and so on, which enables the litigants to conduct self-service over the boundaries of location and time. **Guangzhou Internet Court's** DDR platform gathers 25 mediation organizations and 284 mediators from the Guangdong-Hong Kong-Macao Greater Bay Area, with 22 professional mediators from Hong Kong, Macao, and Taiwan. Recently one online infringement of portrait rights with participants from Beijing, Guangzhou, Hong Kong, Macao, and Singapore and other cross-border



中国法院的互联网司法

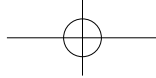
cases have been successfully concluded online.

Building a One-Stop Litigation Services. Relying on Internet technology, Chinese courts have promoted online filing, provided litigation services online and offline, standardized the procedures, and improved the quality of litigation service. Litigants and their representatives have access to 24-hour online self-service through the computer or mobile phone without leaving home or office, who can enjoy functions including online consultation, filing application, materials submission and fee payment, and remarkably saved time and costs for them. By December 31, 2018, 2,995 courts across the country had established official websites for litigation services, 1,623 courts had launched litigation service mobile applications, and 2,813 courts had set up 12368 hotline services. Beijing courts launched the Online Filing System to provide full-coverage online filing services for the parties and their representatives to resort to anytime and anywhere, which includes online reservation, Wechat reservation and other services. During the one-year pilot period, 100,361 cases were filed online, accounting for 14.2% of all cases filed at Beijing courts. In response to nearly 10,000 frequently-asked procedural questions accumulated over the years, Shanghai courts sorted out such issues following the procedural laws, has produced *FabaoZhicha*, a Q&A database containing 2,300 prepared answers. Multiple resources and links such as official websites, litigation service robots and WeChat official accounts are provided, to satisfy parties' diversified needs throughout the litigation. The litigation service platform of Nanjing courts in Jiangsu Province has established 5 channels to provide accurate, timely litigation



information and services designed for needs from litigants, lawyers, prosecutors, people's assessors, and the public. At the same time, based on the data analysis of mediation outcomes and relevant judgments, parties are guided to adopt the appropriate approach to resolve disputes.

Exploring a new mode of cross-regional filing service. Chinese courts actively promote online filing and explore the cross-regional case-filing service. Litigants and their representatives could choose to file a case in any court nearby. The recipient court, via the inter-court platform, is able to transfer the filing application to the court with jurisdiction, and the court in charge could process filing and acceptance of cases online. The cross-regional mode enables the litigation services to transcend limits of time and space, dramatically reduces the litigation costs, reshapes the case filing and acceptance mode, and creates a new method of cross-regional, cross-court, and cross-level services. In January 2015, **Quanzhou Intermediate People's Court of Fujian Province** took the lead in introducing the cross-regional mode and realized the acceptance of filing applications across the city. Such an approach was gradually promoted nationwide. In 2018, more than 120,000 cases were successfully filed cross-regionally all over the country. From January to June 2019, online filing and cross-regional filing services have fully implemented within Zhejiang province, with 100% of the courts providing such services. A total of 253,000 civil cases had been filed online, accounting for 59.7% out of the total. In August 2019, courts in Beijing-Shanghai-Guangzhou, the Yangtze River Delta, and the Beijing-Tianjin-Hebei region have implemented cross-regional and cross-level filing

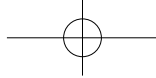


中国法院的互联网司法

services. Filings can be processed across courts from different regions and levels, which cut off the costs and expenses of litigants at most.

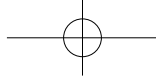
Promoting the use of “Mobile Court” application. Acknowledging the prevalence of mobile phones and WeChat application in the Internet era, Chinese courts have built and promoted the “Mobile Court” litigation service platform, a well-structured WeChat Mini Program. Upon the employment of facial recognition, remote audio and video system, e-signature and other technologies, litigants, and judges can easily use mobile phones to conduct online litigation activities such as filing, service, hearing, evidence exchange, mediation, and so forth. Back in October 2017, **Ningbo Yuyao Primary People’s Court of Zhejiang Province** initiated the “Mobile Court” platform. In January 2018, a similar platform was launched by the **Ningbo Intermediate People’s Court in Zhejiang Province**, which subsequently adopted on the provincial scale in October of the same year. In March 2019, the SPC distilled the success achieved by Zhejiang courts and decided to expand the “Mobile Court” pilot scheme into 12 provinces, including Beijing. As of October 31, 2019, the number of registered litigants in Mobile Courts amounted to 1.16 million and registered lawyers 73,200. These registered users had completed a total of 3.14 million litigation activities on this platform.

Improving online services for the legal profession. On December 30, 2015, the SPC officially established an online platform for lawyers, which aims to effectively protect lawyers’ right to practice and to maximize supports and conveniences for lawyers to perform their duties following



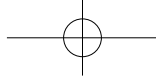
the law. Services provided on this online platform include but not limited to case filing, access to case files, case status inquiry, rescheduling due to time clashes, contact with judges, and e-service of legal documents. A pilot scheme was launched by Shanghai courts back to 2011. At the start, the Shanghai scheme provided only basic information of courts, and it has gradually expanded to 26 services of five fundamental categories, covering virtually all services that lawyers may demand from courts. By June 30, 2019, the Shanghai scheme had provided services to lawyers nationwide and received 4.41 million visits. Xiamen courts of Fujian province connect its lawyer service platform with the lawyer information and management system of the Municipal Bureau of Justice. The connected platform is open to more than 160 law firms in Xiamen. It enables lawyers to file cases, submit materials, check case status and access to case files online, and effectively strengthens communications among lawyers, judges, and the authority of judicial administration.

Comprehensively furthering the judicial openness. Since 2013, the SPC has invested in the construction of four open online platforms for publication of information regarding judicial process, court hearings, court decisions, and enforcement proceedings. With details on all court-related proceedings virtually available online, people's rights to know, to participate, and to supervise are well safeguarded. As of October 31, 2019, more than 1.1 billion case status information of no less than 22 million cases had disclosed on *China Judicial Process Information Online*. The court hearing of 5.5 million cases had been broadcasted live on China Court's Live Trial



中国法院的互联网司法

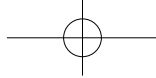
website, attracting more than 20 billion views. *China Judgment Online* has published 80 million court decisions and attracted over 37 billion visits from more than 210 countries and regions, which makes the website the world's largest judicial information database. *China Enforcement Information Online* presents consumption restriction orders in announcement against 6.13 million discredited judgment debtors, 10.06 million cases successfully enforced or legally terminated, and had earned more than 220million visits. As of October 31, 2019, a total of 3,585 courts had started to run official Weibo accounts, and the total number of followers amounted to 81.30 million. Among them, the SPC's official Weibo account is subscribed by over 17.50 million users and had published more than 20 thousand posts. Another of 1.51 million users subscribed to the SPC's official account on WeChat, where 14,000 pieces of information were posted. The scope, profundity, and dimension of judicial openness in Chinese courts have expanded continuously. The disclosure of judicial information is furthered in timely and substantive manner, which effectively promotes authority and accountability of the judiciary.



IV. Perfecting Online Litigation Procedures for Internet Judiciary

The rapid development of Internet technology has brought unprecedented opportunities and challenges to the law and the judicial system. Online litigation has become an inevitable trend of judicial development. Adhering to the latest developments and social needs, Chinese courts strive to promote the online litigation device and to perfect the rules of online litigation. By deeply applying new technologies such as big data, cloud computing, artificial intelligence, blockchain, and so forth, Chinese courts revolutionary reshape litigation processes and judicial operation in the Internet era.

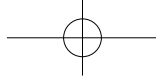
Exploring the whole-process online trial mechanism. Based on the pilot project of Internet Courts Reform, Chinese courts make great efforts to explore a new judicial mechanism of “online trial for online disputes”. As a result, all litigation procedures such as case filing and acceptance, court-referred mediation, proofing, evidence examination and challenge, hearing, judgment announcement, and enforcement could be conducted online. Compared with traditional approach, **Beijing Internet Court** recorded 100% online submission of litigants’ filing applications, 90.3% online payment of litigation fees and costs, and 98.7% online hearing. The average duration of court hearings was reduced to 52 minutes. 96.8% of judicial documents are serviced in electronic forms. **Hangzhou Internet Court**,



中国法院的互联网司法

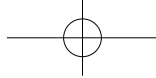
taking into consideration the “time difference” of litigation caused by the litigants’ being at work or on business trip or going abroad, explored the approach of “asynchronous trial” which allows the litigants and their representatives to log in at different times and places to participate in mediation, cross-examination and other litigation activities. A total of 2,495 cases were successfully concluded through this system, saving 6 hours in traveling for litigants each case on average. **Guangzhou Internet Court** has creatively launched an online test trial scheme for contract disputes of similar or class lawsuits. One case is selected from the same class as a test case to be scheduled for the hearing. In order to promote resolutions of similar disputes, parties of those cases are invited to audit the hearing online. Statics reveal a strong demonstration effect that, among parties audited the hearing, 37% has resorted to voluntary performance and proactive reconciliation.

Improving the rules of online litigation procedures. In September 2018, the SPC issued *Regulations on Several Issues Concerning the Trial of Cases by Internet Courts*, which established the original jurisdiction of and the appellate jurisdiction over the Internet courts, and clarified the procedural rules for online litigation such as identity authentication, case filing, responding, proofing, hearing, service, signature and archiving, advancing the development of the online litigation system. In light of judicial practices, Internet courts in Beijing, Hangzhou and Guangzhou have made efforts to refine the online litigation protocols. A series of procedural directions, litigation guidelines, trial instructions and documents alike have



been promulgated to regulate online filing and hearing, court disciplines and e-service, so as to ensure that online litigation is open, orderly, interactive and solemn, and procedural rights of the litigants fully protected.

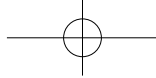
Innovating online preservation and authentication of e-evidence. Aiming at tackling the difficulties in the e-evidence collection, preservation and authentication, Chinese courts explored to apply the blockchain technology in combination with big data and cloud storage in the judicial process. Distinctive features of the blockchain such as traceability, post-audit, data-tampering prevention, and high security are utilized so that the credibility and authenticity of e-evidence has been improved significantly. As of October 31, 2019, courts in 22 provinces (municipalities) including Beijing, Shanghai, Tianjin, Jilin, Shandong, Shaanxi, Henan, Zhejiang, Guangdong, and Hubei had interconnected with national e-evidence platform underpinned by blockchain, which is widely linked to 27 sites including National Time Service Center, Diversified Dispute Resolution platforms, notary offices, and forensic sciences centers. 194 million pieces of e-evidence have been preserved on the platform, supporting for evidence authentication and examination in future hearings. The *TianpingLian (Libra Chain)* e-evidence platform built by **Beijing Internet Court** was incorporated into the first blockchain units filed at the Cyberspace Administration of China (CAC). The platform has access to 18 blockchain nodes, realizing data docking of 9 categories and 25 application nodes, including copyright and Internet finance. The number of online evidence collection has exceeded 4.72 million, and the record of cross-chain evidence



中国法院的互联网司法

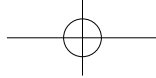
preservation has reached 10 million. **Hangzhou Internet Court** examined and admitted the electronic evidence provided by plaintiff in *Huatai v. Daotong*, which facts of infringement were preserved on the third-party platform in the form of blockchain. The court for the first time provided an approach for the review of electronic evidence stored by the blockchain. **Guangzhou Internet Court**, joint by more than 50 local institutions including judicial administration authorities, telecommunication operators, and Internet enterprises, built an intelligent credit ecosystem named *WangtongFalian(Law Network Chain)*. Since March 30, 2019, more than 5.45 million pieces of evidence have been preserved therein.

Improving the online document service mechanism. Chinese courts have widened the channels of e-service and optimized service methods to realize the transformation of litigation document services. In 2018, the SPC developed a unified online document service platform for courts nationwide. The platform is now being piloted in selected courts. Through this platform, litigation materials and documents can be served to litigants and legal representatives via e-mail, SMS, instant messaging applications, and alike. A column specialized for e-service has been launched on the website *China Judicial Process Information Online*. Litigation participants using their ID number and a unique signature code can log in to the platform to check document service information and sign for e-documents online. Courts around China have made great efforts in building specialized e-service platforms, expanding the application of e-service, and advancing the e-service to a more standard and intensified stage. As of October 31, 2019,



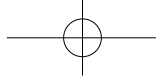
three Internet courts had served 96,857 documents through telephone, e-mail, WeChat, SMS, and official online accounts. By establishing a centralized provincial service center, Jiangxi courts unified the process, standards, and assessment mechanism of judicial documents service. All services are carried out under the unified litigation service hotline number 12368. By June 30, 2019, 77.4% out of 564,292 people served by Jiangxi courts were completed in electronic methods, including 47.7% recipients via WeChat application. The average time for service has decreased to 0.9 day, accounting for only 1/11 of the time by mail. **Jiaying Intermediate People's Court of Zhejiang Province** builds an intelligent service platform sustained by big data technology, which collects litigants address information with mobile phone numbers, active addresses of civil activities, addresses registered with governmental agencies and successful service records in courts included. The platform is able to intelligently filter addresses collected, automatically generate documents to be served, and trigger service processes.

Promoting the electronic mechanism of property investigation, seizure, and disposal. In 2014, the SPC established the “*Zong Dui Zong(General to General)*” system, a national inter-departmental network for assets investigation and seizure, which assembles credit information shared by 16 authorities such as the Ministry of Public Security, the Ministry of Transport, the Ministry of Civil Affairs, the People's Bank of China, the China Banking and Insurance Regulatory Commission and more than 3,900 financial institutions. “*Zong Dui Zong*” allows the court, in accordance with the law, access to records of the judgment debtor's real estate, deposits,



中国法院的互联网司法

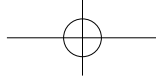
financial investments, ships, vehicles, securities, online assets, and alike nationwide. With full coverage of main property forms and records, this system fundamentally transforms the traditional, outdated offline enforcement mode and effectively clears the stumbling blocks such as low efficiency, limited coverage, and high human resource costs. To improve the efficiency, transparency, and credibility of property disposal, the SPC, in cooperation with significant Internet platforms, adopts big data methods to appraise the property and push ahead with the online auction scheme. Since the implementation of an online auction scheme nationwide on January 1, 2017, the take-up rate and price premium of property disposal have doubled, and the rate of failed auctions, the price reduction rate, as well as the auction cost, have decreased significantly. In the meanwhile, none complaint about the violation of disciplines and laws during auctions has been petitioned. From the launching of this online auction system to October 31, 2019, more than 3,300 courts have entirely moved their judicial auctions online. Over 1.59 million online judicial auctions have been conducted nationwide, with 436 thousand succeeding and turnover of 938.7 billion *yuan*. The take-up rate arrived at 66.8%, with an 89.8% price premium on average, saving 29.1 billion *yuan* in commission fees for parties concerned.



V. Improving the Intelligent Application Scenarios in the Judicial System

Chinese courts have seized the opportunity in the era of artificial intelligence to construct the system of “*Smart Court*”, comprehensively promoting the in-depth utilization of intelligent technologies in the judiciary. This innovation has provided with intelligent assistance and decision-making references for case trials, trial supervision, judicial administration, and social governance. The routine operation in the judiciary has been empowered by more smart assistance than merely networked, advancing the modernization of the judicial system and capacities.

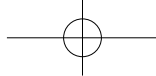
Establishing the simultaneous generation system of digital case files. The digitization of case files is the foundation and prerequisite of “*Smart Court*”. Since 2016, the SPC has been attaching great importance to promote the simultaneous generation and in-depth application of digitized files. As of October 31, 2019, 3,363 Chinese courts had built up the digitized files simultaneous generation system, applied in 67% cases. Paper-free has been realized throughout the whole process in judicial activities in some courts. Based on the application of digitized files simultaneous generation system, **Kunshan Primary People’s Court of Jiangsu Province** has implemented a paper-free case handling process, called “*Qiandeng Model*”. It has included the functions of pre-filing documents scanning and quick indexing



中国法院的互联网司法

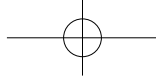
and cataloguing, and simultaneous files transfer along with the procedure proceeding, centralized property preservation, and service, one-click file archiving, the whole-process monitoring, and tracking. Consequently, case handling, litigation service, and case management have become more automated and smarter. Due to the paper-free case handling process, the cases concluded per person monthly amount to 41, which rises by 16.5% year-on-year, while the quantity of long-term pending cases has declined by 18.2%.

Promoting a comprehensive and smart assistant system for case handling. Chinese courts have been developing various smart assistant platforms for case handling and administrative works. Smart functions developed under circumstance, such as risk management in case-filing, the identification of case-complexity, text recognition of digitized files, voice-to-text transcription, smart case-element profiling, automatic monitor of misconducts in court hearings, accurate recommendation of related laws and similar cases for reference, automatic generation and correction of judicial documents, warnings of decision-making risk deviation have been applied at various levels, facilitating court decisions with higher quality and efficiency. The SPC has initiated the *Faxin(Global China Law)* Platform for legal information and resources such as laws and regulations, judicial documents, cases, and academic research and studies, providing judges with smart search and recommendation services. By October 31, 2019, the number of registered users of the *Faxin* Platform had reached 937 thousand with 16.49 million visits and 141 million page views. The **High People's Court of**



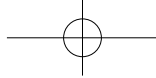
Beijing has established an intelligent case identification system. By applying the “algorithm and manual identification” mechanism, fast-track cases under 93 causes of action from 11 default and 9 optional case classifications can be identified. Since 2018, the case identification of 150 thousand cases has conducted by this system. The integrated smart court system of **Suzhou Intermediate People’s Court of Jiangsu Province** stands out with advanced applications of digitized case files, voice recognition, and intelligent services throughout the whole litigation process. The goal of paper-free has been achieved by such system integrating functions of simultaneous generation of digitized case files, documents transfer via smart drop boxes, voice-to-text transcription for the court hearing, voice-command navigation of e-evidence, and one-click generation of judgments of simple cases. The workload of judges’ administrative affairs has decreased by about 40%, while clerks’ has nearly reduced by 50%.

Enhancing the smart supervision and management of judicial operations. Chinese courts have been improving the case management system by developing various intelligent methods. These platforms function the identification of public-concerned cases, tracking of key cases and profiling of negative features, and mark misconduct measures, forming a smart, automatic, least interference but accurate management mechanism. The SPC founded the enforcement management platform to manage the enforcement units of courts nationwide. The platform provides a real-time monitoring of case-handling, judicial cooperation between courts, petitions and complaints, and online opinions based on data from the enforcement

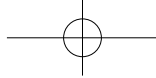


and trial systems of courts across the country. The **High People's Court of Hebei Province** has developed the supervision and management platform for critical cases, formulated unified supervision rules, and established a case-feature identification database. The platform has functions including automatic big-data analysis, case-feature tagging, real-time alerts, whole-process recording to ensure that the case management operates orderly, standardized, and in accordance with the law. **Taizhou Intermediate People's Court of Zhejiang Province** has developed the risk management system for judicial integrity of courts. Within the system, 60 risk indicators of 7 categories have been set, which can evaluate risks arising from trial, enforcement and administration activities, using a red, yellow, and blue alert labels. By April 2019, a total of 248 alerts had been triggered and effectively strengthened judicial integrity by reducing the risks of judicial misconduct.

Improving the management and application of judicial big data. Courts through China have attached great importance to the development of data-sharing and integrated application of big data in judicial activities. With the scientific, objective, and accurate analysis concerning the trial and enforcement trend based on the development, courts' decision making is offered with better reference, which enhances the accuracy and effectiveness of the judicial decision-making and judicial governance. In July 2014, the SPC officially launched the big data management and service platform of the people's court (*China Justice Big Data Service Platform*). It is capable of collecting real-time data of trials and enforcement, judicial administration, and researches from 3,507 courts across the country,



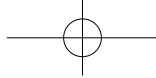
automatically updating every five minutes. By October 31, 2019, the platform had collected 193 million cases' data. More than 700 thematic analysis reports had been conducted, 38 of which had been released to the public. The center of judicial big data established by the **High People's Court of Fujian Province**, has advanced the judicial governance of courts across the province, by providing with tools of lawsuits trend analyses, case-handling quality and efficiency monitoring, connection-between-cases search, special-category-data analyses and so forth. Thus, the center has offered valuable references for strengthening collective management of case handling, optimizing resource allocation, and bringing solutions for outstanding problems. **Chongqing No.2 Intermediate People's Court** has constructed a highly integrated, intelligent, and visualized data management center with the function of real-time automatic data generation. All data is updated every 30 seconds. Information about case analyses, case-handling quality and efficiency monitoring, and trend analyses can be produced and delivered automatically to the presidents of courts and the heads of divisions for references.



VI. Improving Governance over the Internet through Collaboration and Coordination

Chinese courts have made use of the decentralized, interactive, and fast Internet to speed up the development of an inter-departmental, multi-tiered, smoothly-connected, and all-dimensional judicial collaboration in critical areas. The courts have made efforts to accelerate judicial information exchange, optimize the online case handling mechanism, and the integrated resolution model of disputes, which benefits the creations of a new interconnected and collaborative governance mode among different sectors in cyberspace.

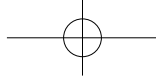
Exploring online cooperative mechanisms for dealing with criminal cases. In order to advance the trial-centered reform of criminal procedure and to prevent wrongful convictions, Chinese courts explore the application of big data to optimize the handling of criminal cases. Online cooperative mechanisms shared with other judicial authorities have been established. Shanghai courts have developed an inter-departmental supporting IT system for criminal trials, which unifies the evidence rules and ensured criminal procedural activities conducted by the police and the procuratorates to be visible, traceable, and monitorable. This system equips Shanghai courts with cutting-edge technologies such as image recognition, natural language processing, evidence identification and auto-display, and automatic



extraction of key case information. By June 30, 2019, it had grown into an integrated platform keeping records of all procedural activities under common criminal offenses to which relevant authorities have proportionate clearance in Shanghai. A total of 24,873 cases have been registered in this system by the police, 8,811 arrests approved and 7,442 prosecutions brought up by the procuratorate, 4,812 cases accepted and 3,483 cases concluded by the court. The **High People's Court of Guizhou Province** has also established a data-sharing platform with the public security department and the procuratorates, with five types of criminal offenses, namely the intentional homicide, intentional injury, robbery, theft and drug crimes processed on this platform. The **High People's Court of Hubei Province** has established a collaborate working platform for penalty reduction and parole with the People's Procuratorate of Hubei and the Bureau of Prisons Administration of Hubei. With functions such as real-time data transmission and information sharing, this system enables Hubei courts to conduct remote hearings and to process penalty reduction and parole cases entirely online. From March 2018 to June 30 2019, Hubei courts transmitted files of 95,924 cases via this online system, processed 8,335 cases of penalty reduction and parole, and concluded 8,186 cases.

Promoting an integrated mechanism to resolve traffic accident disputes.

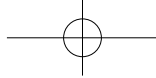
The number of traffic disputes has been rising owing to the increase in vehicle possessions. The dispute resolution mechanism, which involves multiple departments, was gradually perceived to be lengthy and tedious. In 2013, **Hangzhou Yuhang Primary People's Court of Zhejiang province**



中国法院的互联网司法

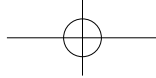
has initiated an online integrated data processing platform to deal with traffic accident disputes. Yuhang Court, via this platform, has access to all the data shared by related agencies such as the traffic police, judicial administration, and social security, appraisal institutions, and commercial insurance companies. By introducing mediation, Yuhang Court ensures that these cases are dealt with more effectively and transparently, and the compensation settled more quickly. In November 2017, the SPC with the Ministry of Public Security, the Ministry of Justice, and China Banking and Insurance Regulatory Commission experimented with an online resolution scheme of traffic disputes in Beijing and the other 13 different provinces. The One-Stop scheme assembles post-accident services, including damage assessment, liability ascertainment, appraisal, mediation, litigation, and compensation. By October 31, 2019, under this scheme 125,616 traffic disputes have been concluded nationwide, that is 83.2% of 150,984 cases reached a satisfied mediation.

Promoting the digitalization of bankruptcy proceedings. By introducing more market-oriented, law-based, digitalized, and specialized approaches into bankruptcy proceedings, Chinese courts have functioned more significantly in supply-side structural reform. In August 2016, the SPC set up a national information platform, *National Enterprise Bankruptcy Information Disclosure Platform*, for both liquidation and reorganization cases, given the circumstances that bankruptcy cases involve a large number of creditors, complicated legal relations and significant social impacts. Judges, bankruptcy administrators, and lawyers share this platform and are



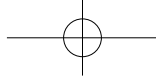
able to proceed with bankruptcy procedures online. Relevant information is disclosed timely and proportionately, while creditors, debtors, market investors and other stake holders can participate online. By October 31, 2019, 53,641 bankrupt cases had been disclosed on this website involving 504,013 creditors and defaulted debts worth 903 billion *yuan*. A total of 312 online meetings of creditors had been convened, and debtors' assets valued 297.8 billion *yuan* disposed of. Utilization of this new platform effectively optimizes the free distribution and reallocation of capital, technology, assets, and other essential factors for economy. **Shenzhen Intermediate People's Court of Guangdong Province** presided over the bankruptcy proceedings of *Jade Cargo International Airlines Co., Ltd* in November 2017, introduced online auction to dispose of assets. With foreign capital attracted and the competition intensified, three Boeing 747 airplanes were sold with a 49% price premium, effectively alleviating creditors' losses. In March 2019, the Court extended the online auction model to the cross-border context. Entrusted by a Hong Kong bankruptcy trustee, five Hong Kong vehicle licenses with distinctive registration marks were online auctioned by Shenzhen Court. It is the first case within China to dispose of bankruptcy assets upon cross-jurisdiction cooperation.

Assisting the construction of the national social credit system. Chinese courts have improved the mechanism of credit management, warning, and reward and punishment for discredited judgment debtors. The establishment of the discredited judgment debtor blacklist and the judicial credit reporting system sufficiently strengthen the protection for interests of both creditors



中国法院的互联网司法

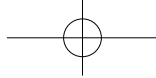
and debtors and contributes to the development of China's social credit system. Since 2016, the SPC in alliance with 60 authorities, including the National Development and Reform Commission, and entities set up the social credit management network underlain by multiple departments, sectors, and enforcing measures. Owing to this network, discredited judgment debtors would receive restrictions in the application for public office, traveling at high costs, purchasing houses, making an investment, and participating in tender and bid. Almost 40% discredited judgment debtors of all voluntarily fulfill their obligation specified by court judgments. By October 31, 2019, case information of 5.61 million discredited judgment debtors are in the process of disclosure. **Guangzhou Internet Court** created the report of judicial credit to promote social credit online. Subject to consent from litigants, positive judicial credit information of these litigants can be sent to market supervision authority, financial institutions, and credit agencies. As to the discredited litigants, related discredit records would be taken into account by the Court when imposing penalties such as consumption restrictions, online disclosure, enlisted as discredited judgment debtors.



VII. Forming Legal Rules Governing the Cyberspace

Internet-related disputes are characterized as newly emerged categories, wide ranges, cutting-edge technologies, and high complexity. To promote Internet judiciary, Chinese courts have explored the advantages of centralized jurisdiction, standardization of similar cases and specialization of trials, and tried a series of influential cases. Underlined by such, online transaction rules have been clarified, online activities held in order, and the scope of rights defined. Consequently, the legal system governing the Internet has been improved, and the rule of law in cyberspace has been furthered.

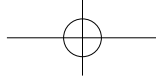
Legal rules governing online transactions have been established. The information age is characterized by widespread Internet business activities and emerging new business models, while conventional transactions have also evolved with new modes and features. Chinese judiciary has clarified the courts inclination regarding online transactions and managed to facilitate compliance in business activities and to maintain an orderly online market. In *Yu Binhua v. Guangzhou Huaduo Network Technology Co. Ltd.*, **Guangzhou Internet Court** opined that gratuities given to the streamers during live-streaming are gifts unless evidence demonstrates that the streamers are under clear and specific contractual obligations which provide otherwise. **Shanghai Financial Court** sorted out the rules



中国法院的互联网司法

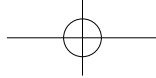
in terms of the burden of risks and responsibilities in online debit card fraud cases. In *XU v. China Merchants Bank*, this court decided that the bank, unless being able to prove the existence of defaults on the cardholder side, shall take full responsibilities of the losses induced by such fraud. **Xiamen Siming Primary People's Court of Fujian Province**, in *ZHANG v. Yetong Online Merchant*, issued a judgment against the defendant who sold the online shop and regained the control of it by taking the advantages of the platforms biometric security system to reset the password. The defendant modified the bound mobile number and changed the default log-in methods. The defendant was held liable for breach of the contract and ordered to repay the claimant twice the money illegally transferred. **Chengdu Wenjiang Primary People's Court of Sichuan Province**, in *PENG v. LI*, decided that transactions of brand-new goods with nonspecific counterparts on second-hand e-commerce platforms fall into the scope of consumer protection laws. Once the transaction constitutes fraud, the buyer is entitled to treble damages.

Legal responsibilities of online platforms have been clearly defined. Online platforms have become a market participant of ascending significance, and the scope of their rights and obligations need to be delimited. Through the following judgments, Chinese courts have clarified the duties imposed on online platforms and advanced the online ecosystem to the greater fairness, transparency, and predictability. **Beijing Internet Court** ruled in *Music Copyright Society v. Douyu* that a webcast platform company, when enjoys the intellectual property rights and business interests of the webcast works of the streamer who has contracted with the company,



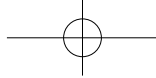
shall bear the corresponding tort compensation liability if the streamer plays the music of others without authorization. In *Daodou Technology v. Changsha Baizan & Tencent*, **Hangzhou Internet Court** held that Tencent WeChat mini-program only offers fundamental services of framing and data traffic to mini-program developers, but no service of data storage and search engine to users of mini-program. The fact is that Tencent has no control over specific service or data provided by the developer within the mini-program; thus, it would be disproportionate to follow the “notice and action rule” (aka. the safe harbor doctrine) and block the sued Mini Program as a whole. **Changning Primary People’s Court of Shanghai**, in deciding *Fuzhou Jiunong v. Xunmeng Technology*, distinguished the “consumer compensation” on e-commerce platforms from the liquidated damages in a conventional contractual context, the former should be considered a self-regulated behavior of the online community. The court so ordered that when online merchant sells counterfeits on the platform that constituting a breach of contract, the e-commerce platform is entitled to hold the sum of the compensation from the merchant’s accounts, and directly make payments to the compensated consumers. **Chongqing No.5 Intermediate People’s Court** in *Chongqing Transit v. GUO* ordered that online car rental providers, who verified the lessees only by name and national ID number when written statements or any other forms of authorization are absent, shall be deemed as failing to fulfill the duty of care and not entitled to enforce the contract.

Legal protection of personality rights in cyberspace has been reinforced. Violations of personality rights in the digital age have become

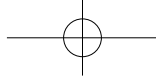


中国法院的互联网司法

more inter-related and of more new connotations. A diversity of methods and consequences of such breaches can be found both online and offline. Chinese courts have made efforts to consolidate the protection of personality rights, especially the right to portrait and right to the reputation of individuals. In *HUANG v. YUE & Micro Dream*, **Beijing Internet Court** examined the conditions of an online violation of the right to reputation. The Court clarified relevant rules in its conclusion that the existence of fault is one of the indispensable elements, and the duty of care varies according to the behavior's social impact and profession. In *Meimingyu Home Services v. ZHANG & Hantao Co. Ltd*, **Guangzhou Internet Court** opined that consumers shall not be held liable for publicizing negative feedbacks online against the services they received provided that those feedbacks did not constitute defamation or slander. In *ZHANG v. China Online News Center*, **Beijing No.2 Intermediate People's Court** decided that using one individual's portrait in negative news reports, unless proven to be necessary, constitutes unfair use and shall be held liable for the violation of one's right to portrait. In *Falv (ilaw66.com) v. Qihoo*, **Shanghai No.2 Intermediate People's Court** was requested to decide whether the security software for mobile phones which assembles and displays negative labels of incoming phone numbers constitutes a tort against the right to reputation of the calling party. The Court concluded that such labeling made by mobile phone users is legitimate comments, and the mobile phone security software which displays the contexts and quantities of such negative labels on users' mobile phones shall not be held liable in any form.



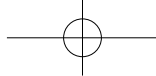
Internet-based monopolization and unfair competition have been constrained. Abuses of dominant position and unfair competition practices are more prevalent in online marketplaces. Chinese courts have refined the standards and doctrines in monopolization and unfair competition practices in order to ensure a well-regulated and balanced market competition between participants. In *Sogou v. Qihoo* **Beijing Intellectual Property Court** ruled that Internet products or service providers shall not obstruct the functioning of other products and services, nor shall they conduct any such obstruction on users' terminals. **Shanghai Intellectual Property Court**, in *iqiyi v. Sogou* ruled that the design of the defendant, an input methods (IME) developer, which simultaneously displays input options and search options, does not restrict consumers' choices in the marketplace or substantively obstruct the operation of the claimant's video website. Hence, none unfair competition practice existed in the present case. **Hangzhou Yuhang People's Court of Zhejiang Province**, in *XU v. TONG & Jin Xin Plastics*, ruled against using the complaint mechanism of an e-commerce platform to make a malicious complaint against other proprietors' goods so that links of those goods are deleted by the platform and lose sales opportunities constitutes unfair competition. In *Wei Ma Yuan v. Tencent*, the claimant sued against the WeChat Official Accounts Platform operated by the defendant for abuse of dominant position. When analyzing the relevant product market at issue, **Shenzhen Intermediate People's Court of Guangdong Province** distinguished general users of the social media function from users for the online advertisement services. It defined the online advertisement service market as relevant. This Court's efforts furthered the definition rules



中国法院的互联网司法

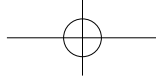
of relevant market for Internet platforms and the services they provided and guaranteed the integrity of competition analysis from its starting point.

Security of personal data has been firmly consolidated. With the prevalent adoption of artificial intelligence, data and security have become more closely linked to individual lives and possessed more commercial values than ever. In the following cases, Chinese courts strived to check the commercial use of personal data, facilitate the Internet enterprises' compliance therein, and strengthen the security of personal data. In *Xu Yong v. Zhima Credit*, **Hangzhou Internet Court** decided that using personal credit records for commercial purposes violated the right of privacy of data subjects. The liability can be exempted only if such usage is (1) consented by the data subject, or (2) based on public information disclosed by the Court or governmental agencies and fed back to that exact data subject. The liability of abusing credit records has been clarified therein. In *PANG Lipeng v. China Eastern Airlines & Qunar*, **Beijing No.1 Intermediate People's Court** held that the airlines and online ticket agencies at fault shall take liabilities for leakage of users' personal information. In *ZHU v. Baidu*, the claimant sued for alleged violation of the right of privacy in personal browsing histories. **Nanjing Intermediate People's Court of Jiangsu Province** recognized the private nature of personal browsing history, yet found that the information of anonymous site preference collected via cookies, which underlies the targeted advertising of the defendant, cannot be used to identify individual Internet users. The Court concluded that such a lack of personally identifiable information does not satisfy the legal



requirement of invasion of personal privacy, and thus the defendant shall not be held liable. Relevant criminal laws were further clarified by **Yichang Dangyang People's Court of Hubei Province**. This Court found the prosecuted guilty of criminal invasion of personal data for their acquisition and sales of individuals' personal data through fake loan websites, which are seriously illegal. The prosecuted that knowingly helped to set up and advertised for the above mentioned website was also condemned as an accomplice.

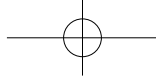
Legal protection for a healthy and thriving digital economy has been consolidated. In order to facilitate rapid and healthy growth of emerging industries such as big data, cloud computing, artificial intelligence, blockchain and Internet of Things, Chinese courts in delivering a series of judgments have strived to squeeze out those grey-area businesses, backup the executive branch in supervising the market in an inclusive and prudential manner, and delimit the industrial developments. In *CHANG v. XU*, **Beijing Internet Court** voided the contract between the parties which utilize illegal technical means to increase the click volume and to create fake Internet traffic in order to mislead online game players. This judgment signaled the Chinese courts' solid stance in suppressing grey-area Internet businesses. In *Realsoft infotech Co., Ltd vs. Guangzhou Market Supervision Authority and Guangzhou Municipal Government*, **Guangzhou Internet Court** upheld the administrative decision of sanctioning illegal online pyramid schemes disguised in the name of online marketing, and thus helped to cleanse the online business environment. In *Guangdong Consumers Association v.*



中国法院的互联网司法

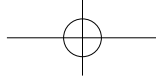
YueqiBiking, a public interest lawsuit, **Guangzhou Intermediate People's Court of Guangdong Province** was required to clarify the legal rules concerning the ownership of deposits made by users. The Court ordered the defendant to refrain from procrastination in refunding users' deposits, to disclose information of deposits, and to make a public apology. Such order deterred further attempts to hoarding deposits as financing methods and thus safeguards stable and healthy growth of the sharing economy. In *Goome v. Yuanguang*, **Shenzhen Intermediate People's Court of Guangdong Province** ruled that big data resources collected, analyzed, edited and integrated by business operators which have commercial value, shall be legally protected by the Anti Unfair Competition Law. The unauthorized use of such big data resources via web crawler technologies consequently constitutes unfair competition practice. Such a judgment furthered the establishment of fair competition rules concerning the big data industry.

Legal rule for protecting IP rights online has been strengthened. Court decisions in various Internet-related cases have laid down the rules defining emerging types of intellectual property rights, the legal protection threshold, and accountability mechanism. With the legal protection increased and the remedies sufficing, related standards have been clarified, and the innovation-friendly business environment has been sustained and fostered. In *Music Copyright Society vs. Douyu*, **Beijing Internet Court** defined that if the webcast platform, according to the contract with the streamer, owns the intellectual property and business benefits of the webcast works, then it should be responsible for the corresponding infringement if the



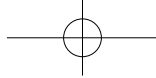
streamer plays the music of others without authorization. In *Astley Baker Davies et al. v. Jufan*, one of the Peppa Pig lawsuits in China, **Hangzhou Internet Court** found copyright infringement existed where former licensee continued to produce and sell “Peppa Pig” toys online beyond the authorized time, scope and methods. This judgment reinstated the Chinese court’s solid position in providing equal protection for right holders regardless of the nationality. In *Tencent v. ByteDance*, **Guangzhou Intellectual Property Court** granted an injunction order against unauthorized live-streaming of online games. It ruled that such unauthorized live streaming caused damages to the rights holder and constituted unfair competition practice, and shall be banned accordingly. In *Yu Qu v. Mai Miao*, a dispute between competing live streaming websites of online games, **Wuhan Intermediate People’s Court of Hubei Province** ruled against the defendant who knowingly poached a live streaming host bound by an exclusive contract with the claimant and declared the poaching constituted an unfair competition practice. In terms of the patentability of motion pictures in online games, the Court found the game player’s claim for copyright groundless for all the pictures are pre-designed by the developers, despite that player contributed to the final presentation of motion pictures to some extent.

Cybercrimes have been combated resolutely. With the development of Internet technologies, cybercrime has displayed such features as the wide use of high-tech, specialized sectors, intricate organization, and chained operation. Acknowledging these latest circumstances, Chinese courts have intensified the crackdown on crimes such as operating online

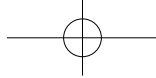


中国法院的互联网司法

casinos, Internet frauds, thefts of digital assets and infringements of personal information and have managed to guarantee the safety and order of the cyberspace. Confronting criminal charges against Internet traffic hijackings, **Pudong New Area People's Court of Shanghai** convicted the defendants of the crime of causing damage to computer information systems where the convicted were proven to use malware to forcibly reroute Internet users to specific webpages and cause severe consequences. The denounced technical methods include modifying Internet routers and Internet browser settings, locking the browser homepage, and popping up new windows. **Suqian Intermediate People's Court of Jiangsu Province** ruled that the defendants who clearly knew that the “click-farming advertising” of their customer was a fraudulent act, but still provided advertising promotion assistance in committing the crime for the purpose of obtaining illegal gains, shall be considered to constitute the crime of illegal use of information networks where the circumstances are serious. In Liaoning Province, defendants who organized people to gamble on the randomly allocated results of WeChat *Hongbao* (a sum of money distributed randomly to the WeChat group members) and profited from such was found guilty of the crime operating casinos by **Shenyang Tiexi Primary People's Court of Liaoning Province**. In the *Treasure Box* case, decided by **Tai'an Intermediate People's Court of Shandong Province**, where defendants developed a Media Aggregation Portal of obscene live streaming via hacking and recruited subordinates to disperse and sell these obscene products, the Court found the defendants guilty of the crime distributing obscene materials for profits. **Taizhou Wenling Primary People's Court of Zhejiang**



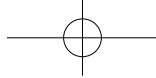
Province targeted at online campus bullying in a criminal defamation case. It ruled that subject to the severity of the circumstances, the criminal defamation occurs when one purposely fabricates, and online disseminates false information for sabotaging others' reputation. Another crime combated is online fundraising fraud. **Putian Licheng Primary People's Court of Fujian Province** in deciding such case, convicted defendants of the crime of fraud for illegally faking themselves with others' identities, soliciting donation online and defrauding Internet users of a huge amount of money. Such charity fraud that deceived goodwill of the public was contained so as to maintain a society of trust and honesty.



Conclusion

Internet Judiciary in China is the crystal of the times and the practice, which evolves with social progress, technological innovation and judicial reform. Chinese judiciary has, in the digital age, restructured the litigation processes, optimized the procedural rules, and improved the judicature models underpinned both innovations of information technology and reforms of the judicial system. All of the citizens and legal persons now have greater access to a more just, transparent, inclusive and efficient judicial system. The levels of judicial capacity, quality, efficiency and credibility of Chinese courts have been considerably improved.

Chinese courts will continue to be open, prudent, and inclusive, and hold the philosophy of sustainable development. To secure the diverse needs of the public and to serve the prosperity of the digital economy, Chinese courts will continue to explore the information and intelligent technologies to create new dynamics for systematic reform and court construction, and to tailor a more efficient, fair and credible judicial system to national objectives with Chinese characteristics. In the meantime, Chinese courts are willing to contribute to the global Internet governance system and rules with Chinese approaches and experiences, and to jointly promote global governance in cyberspace and strive to build a community of shared future in cyberspace.



Appendix

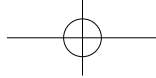
Influential Cases of Internet Judiciary in China

Case 1

Fuzhou Jiunong Trade Co., Ltd. v. Shanghai Xunmeng Information Technology Co., Ltd. Disputes over contracts for Internet services

[Significance]

Since online shopping have characteristics such as rapid trading, large trading volume, broad cross-regional scope, decentralized subjects, it is increasingly difficult for administrative departments to supervise e-commerce, and the self-regulated rules of platforms are playing an increasingly significant role. This case clarified that the registration agreement signed between the platform and the merchants stipulating the “consumer compensation” belongs to a self-regulated behavior of the online community, provided that the content of the agreement does not violate the compulsory provisions under the laws and administrative regulations. When a merchant sells counterfeits on the platform that constitutes a breach of contract, according to the agreed “consumer compensation” rules the e-commerce platform is entitled to hold the sum of the compensation from the merchant’s accounts and directly make payments to the compensated

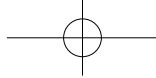


中国法院的互联网司法

consumers, which helps affirm the effectiveness of the self-regulated rules of the Internet platform.

[Case Summary]

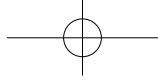
On July 4, 2016, Fuzhou Jiunong Trade Co., Ltd. (“Jiunong”) and Shanghai Xunmeng Information Technology Co., Ltd. (“Xunmeng”)’s e-commerce platform signed an agreement which stipulated that: The merchant shall pay liquidated damages ten times of the historical sales of the counterfeit goods, and the platform shall have the right to directly freeze the merchant’s account and deduct the payment therefrom. If the merchant cannot prove that the suspected counterfeit goods are genuine after receiving a notice from the platform, the platform will compensate the consumer with the deposit in the merchant’s account. As Jiunong sold counterfeit goods on Xunmeng’s platform, Xunmeng froze the Jiunong’s account and paid the full amount of the deducted money to the corresponding consumers of the counterfeit goods. Jiunong claimed that it did not sell any counterfeit goods, and Xunmeng’s unilateral request of the ten-times penalty, formulation of other harsh punishment rules, and freezing Jiunong’s account violated its legitimate rights and interests. Therefore, Jiunong brought this civil case before a court asking for a refund and compensation.



[Decision]

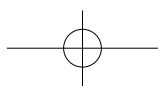
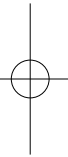
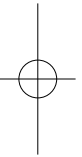
The court held that, the merchants had full freedom to choose when registering in the e-commerce platform, and the platform company had fully performed the obligation of reminder when signing the contract. Therefore, when the plaintiff Jiunong registered on the platform operated by the defendant Xunmeng , the terms of the contract signed online became valid. The plaintiff Jiunong's selling activities was a sale of counterfeits according to rules of the platform and was considered as a violation of the agreement between both parties. Therefore, it had no right to request the defendant Xunmeng to refund or compensate for its loss. The consumer compensation system set up by the defendant Xunmeng's e-commerce platform was different from the traditional liquidated damages system in terms of the beneficiary subject, source of rights, responsibility target, applicable standards, etc. The purpose of the consumer compensation system was not to make profit, but to maintain an honest and credible e-commerce environment, to protect the legitimate rights and interests of consumers, which complies with the principle of public order and good customs, and its effect should be affirmed.

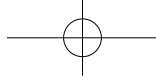
On May 31, 2018, Shanghai Changning District People's Court made a civil judgment, which rejected all relieves requested by the plaintiff. The plaintiff filed an appeal after the first instance judgment was pronounced, but failed to pay the appeal fee on time. The court of second instance ruled that the appeal should be considered as withdrawn, and the judgment of first instance had become effective.



中国法院的互联网司法

[QR Code]





Case 2

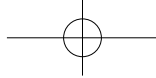
Yu Binhua v. Guangzhou Huaduo Network Technology Co., Ltd., Wang Zirong, Harbin Xingrong Culture Media Co., Ltd., and Liu Qiqi Disputes over Contracts for Internet Services

[Significance]

In recent years, the webcast industry has developed rapidly and become an emerged form of digital economy, and the number of related disputes also increased. This case clearly defines the legal relationship among the users, the live broadcast streamer and the live broadcast platform, and specifies the legal nature of “live broadcast gratuity”. By defining the legal nature of relations and behaviors related to webcast, this case clarifies the rights and obligations of parties involved, helps regulate webcast activities and promotes the healthy development of the live broadcast industry.

[Case Summary]

Liu Qiqi is a streamer of Harbin Xingrong Culture Media Co., Ltd. (“Xingrong”) who performed live broadcasts on the YY live-broadcasting platform operated by Guangzhou Huaduo Network Technology Co., Ltd. (“Huaduo”). Liu Qiqi’s live broadcast room is opened with the YY account of Wang Zikai, the legal representative of Xingyi Company. Between

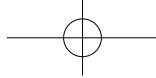


中国法院的互联网司法

February 2017 and April 2017, Yu Binhua spent a total of RMB 59,291.28 *yuan* (including gifts and enabling functions of “Duke” and “Guardian”) in Liu’s live broadcast room. On March 17, 2017, Yu Binhua was the top gift-giver that day and was set as VP of the room by Liu. On April 7, 2017, Liu canceled Yu Binhua’s VP permission, because Liu Qiqi objected to Yu Binhua’s activities including transferring money through WeChat or giving gifts to Liu privately. Yu Binhua filed a civil lawsuit before a court, requested to cancel the contract regarding offering gifts in the live broadcast room, and requested for ten prayers for relief including requesting Huaduo, Wang Zirong, Xingrong, and Liu Qiqi to jointly return a total of RMB 49,291.28 *Yuan*.

[Decision]

The court concludes that, the webcast platform provides platform services for users, and charges service fees through users’ purchase and use of virtual currency. The two form a legal relationship of Internet service contract. Generally, a gift contract is established when a user offers “gratuity” to the streamer, unless there is evidence to prove that the streamer must perform specific and clear contractual obligations before and after accepting the “gratuity”. In this case, the plaintiff Yu Binhua’s act of offering “gratuity” to the defendant Liu Qiqi did not involve any agreement requiring the defendant to fulfill specific obligations, nor did it put forward any consideration of the “gratuity”, and so it should be deemed as a gift contract rather than a service contract.

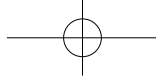


Chinese Courts and Internet Judiciary

On January 7, 2019, Guangzhou Internet Court made a civil judgment, which rejected all of the plaintiffs' claims. After the first instance judgment was pronounced and served, neither the plaintiff nor the defendant filed an appeal, and the judgment has become effective.

[QR Code]



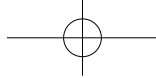


Case 3

Music Copyright Society of China v. Wuhan Douyu Network Technology Co., Ltd. Case of Dispute over Right to Disseminate Music Work on the Internet

[Significance]

Driven by user demand and technological innovation, Internet content platforms with abundant forms of communication and creative industries such as short video and stream have developed rapidly, which leads to a sharp growth of intellectual property disputes and increased difficulty in legal protection. This case clarified that a network company with the main business of webcast when enjoying the intellectual property rights and business interests of the webcast works of the streamer who has contracted with the company shall bear the corresponding tort compensation liability if the streamer plays the music of others without authorization. The case helps standardize the relationships among all parties in the content payment business model, and reasonably defines the responsibilities and obligations of the Internet content platform.

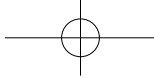


[Case Summary]

On February 14, 2018, Feng Timo, the streamer contracted with Douyu Network Technology Co., Ltd. (“Douyu”) conducted online live broadcasting on the platform operated by Douyu. Users of the live broadcasting platform can buy virtual currency and gifts as gratuity. During the broadcast, Feng Timo played the song “Lovers Heart”, which lasted about one minute and ten seconds. After the live broadcast, the streamer made the live broadcast process into a video and saved it on the live broadcast platform for the audience to replay and share. The plaintiff Music Copyright Society of China, as the organization authorized by the songwriter of “Lovers Heart” to exercise copyright to the song, stated that the above behaviors of Douyu and the streamer violated the right of Music Copyright Society of China to disseminate the song over internet, and requested the court to order the defendant to compensate the copyright fee of RMB 30,000 *Yuan* and the reasonable expenses of RMB 12,600 *Yuan* including attorney fees, notarial cost and other fees.

[Decision]

The court held that the webcast platform had agreed with the contracted streamer that the platform shall own the intellectual property rights of the audio and video works produced through live broadcast, and the platform makes profits from the virtual gratuity of the streamer given by the users who watch live programs online and play back live videos. Therefore, the



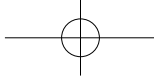
中国法院的互联网司法

live broadcast platform is not only its service provider but also the owner and beneficiary of audio and video works thereon. For the infringement of copyright, the obligation of the platform is not only limited in the “notice and action” obligations but also extended to higher attention paid to the content of the live broadcast and video. The platform bears the corresponding compensation liability for the infringement occurred in the production and dissemination of live broadcast programs and videos on the platform in addition to the “notification and deletion” obligations.

Beijing Internet Court ordered the defendant Douyu to compensate the plaintiff, Music Copyright Society of China, for the economic losses of RMB 2,000 Yuan and the reasonable expenses of RMB 3,200 *Yuan*. Douyu appealed to Beijing Intellectual Property Court, which made the final judgment that rejected the appeal and affirmed the original judgment.

[QR Code]





Case 4

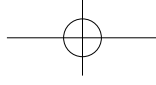
Hangzhou Huatai Media Culture Media Co., Ltd. v. Shenzhen Daotong Technology Development Co., Ltd. Case of Dispute over Right of Dissemination over Internet

[Significance]

In the Internet era, electronic evidence has been enormously presented. The newly emerged information technology, such as blockchain has brought a brand-new renovation to the collection and storage of electronic evidence. At the same time, it is urgent to clarify the rules examining the effectiveness of electronic evidence. This case is the first one in China to determine the legal effect of the electronic evidence stored by blockchain, providing a review method for examination and admission of this new type of electronic evidence, detailing the consideration factors and clarifying the adjudication criteria. This case could promote the in-depth integration of blockchain technology and judiciary process by clarifying the rules of preservation and storage of blockchain evidence, which is of considerable significance to the improvement of the internet-related litigation rules in the information age.

[Case Summary]

The plaintiff, Hangzhou Huatai Media Culture Media Co., Ltd (“Huatai”),



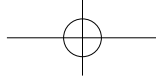
中国法院的互联网司法

alleged that the defendant's, Shenzhen Daotong Technology Development Co., Ltd("Daotong"), act of publishing the works of which Huatai had the copyright on the website without authorization infringed the plaintiff's right of dissemination over information networks. Huatai collected evidence of infringement through the third-party evidence-storage platform, uploaded the relevant data as a hash value to the bitcoin blockchain and Factom blockchain, based on which Huatai requested Daotong to bear the liability of infringement.

[Decision]

The court held in this case that blockchain technology, based on its characteristics of distributed storage, tamper-proof mechanism and traceability, has advantages in the fixation, preservation and extraction of electronic evidence, but the court shall still determine the authenticity of electronic evidence stored on the blockchain according to certain standards and procedures. In this case, the electronic evidence data stored in the blockchain has a clear source, its generation and transmission path is definite and clear, and it can be mutually verified with the screenshots of web pages, source code information and call logs. Therefore, the generated electronic data is reliable.

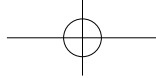
On June 27, 2018, Hangzhou Internet Court made a judgment, which ordered the defendant to pay RMB 4,000 *yuan* to the plaintiff as the compensation for the economic loss. After the first instance judgment of the



case was pronounced and served, neither the plaintiff nor the defendant filed an appeal, and the judgment has been effective.

[QR Code]





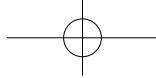
Case 5

Shenzhen Weiyuanma Software Development Co., Ltd. v. Tencent Technology (Shenzhen) Co., Ltd. and Shenzhen Tencent Computer System Co., Ltd. Case of Dispute over Abuse of Market Dominance

[Significance]

Nowadays, platforms on the Internet have played a critical role in the digital economy. The number of anti-monopoly claims brought against platforms recorded a sharp increase, and the norms and rules govern actions related to the abuse of market dominance should be further refined in such field.

This case clarified the criteria for the delineation of the “relevant product market” for comprehensive Internet platforms. For comprehensive Internet platforms that provide various types of services, to delineate “relevant product market”, it is necessary to fully consider the products or services to which the abusive activities are specifically directed, to distinguish “relevant product market” for basic services from that for the value-added services, and to adopt the demand substitution analysis method according to the nature and characteristics of the products or services.

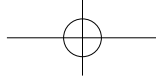


[Case Summary]

Since October 2015, Shenzhen Weiyuanma Software Development Co., Ltd. (“Weiyuanma”) has registered twenty-six WeChat official accounts such as “Data Wizard Distribution Platform” on the WeChat platform operated by Tencent Technology (Shenzhen) Co., Ltd and Shenzhen Tencent Computer System Co., Ltd. (“Tencent”). After that, Tencent banned the official accounts operated by Weiyuanma because the number of plug-in software promoted by the official accounts involved in this case obviously exceeded the scope of functions allowed by WeChat and violated WeChat’s service agreement, operation specifications and other regulations. Therefore, Weiyuanma brought a lawsuit to a court, requesting the court to order Tencent to stop abusing its market dominance and proposing nine prayers for relief, including unbanning its registered official accounts and compensating for its losses.

[Decision]

The court held in this case that, the plaintiff Weiyuanma is not a general user of the WeChat instant messaging and social networking services, but a commercial entity who markets and promotes software products in the form of self-media on the platform. It has the demand of online promotion and publicity. Therefore, the “relevant product market” in this case should be the online promotion and publicity service market of the Internet platform. The plaintiff Weiyuanma had a wrong understanding of the “relevant product



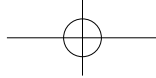
中国法院的互联网司法

market” and failed to provide evidence to prove that the defendant Tencent had any activities of abusing its market dominance in the WeChat instant messaging and social networking services. As the operator of the WeChat platform, the defendant Tencent’s necessary management of the plaintiff Weiyuanma’s behavior which violated the service agreement and operation specifications concluded and agreed by both parties in advance is proper and does not constitute an abuse of its market dominance.

On August 23, 2018, Shenzhen Intermediate People’s Court ruled against plaintiff. After the first instance judgment was pronounced and served, neither the plaintiff nor the defendant filed an appeal, and the judgment has become effective.

[QR Code]





Case 6

Xu Xianben v. Tong Jiangang and YuhuanJinxin Plastics Co., Ltd.

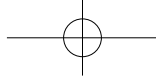
Case of Dispute over Unfair Competition

[Significance]

With the rise of the Internet economy, there are more and more activities taking advantage of the “notification-deletion” mechanism adopted by the Internet platforms for a quick handling of the infringement complaints, and infringing others’ legitimate rights and interests. This case clarified that it constituted unfair competition to make a malicious complaint against another undertaking’s goods through the complaint mechanism of an e-commerce platform and to make those goods deleted by the platform and lose the opportunities to be sold. It could effectively curb the filing of malicious complaints and maintain a good order of market competition.

[Case Summary]

On March 28, 2016, Tong Jiangang filed an infringement complaint to Taobao on the ground that the explosion-proof pressure cooker sold in Xu Xianben’s store on Taobao infringed his design patent, and submitted the Design Patent Certificate, the Design Patent Evaluation Report, etc. online.

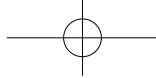


中国法院的互联网司法

On April 7, 2016, Taobao recognized that the complaint made by Tong Jiangang was valid and deleted the link of the products being complained about. It was later found that Tong Jiangang altered the key content in the Design Patent Evaluation Report which was submitted when filing the complaint. Specifically, he maliciously changed “Preliminary conclusion: The whole design does not meet the requirements for the grant of a patent right” to “Preliminary conclusion: No defect has been found in the whole design that does not meet the requirements for the grant of a patent right”, and deleted “the design does not comply with the provisions of Article 23.2 of the Patent Law”. Xu Xianben brought a civil case before a court and requested the court to order the defendant to make a public apology and to compensate him RMB 500,000 *Yuan*.

[Decision]

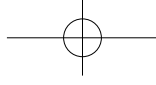
The court held that the defendant Tong Jiangang knew that the application for design patent he filed was not granted with a patent right. Still, he altered the conclusion in the Patent Evaluation Report and used forged evidence to maliciously complain about the products sold by Xu Xianben which are similar products of his. Eventually, the link of the complained products was deleted by the platform. His activity violated the universally accepted code of business ethics and caused damages to the plaintiff since the plaintiff Xu Xianben was unable to normally carry out its business operations and suffer from losses, and constituted unfair competition.



Hangzhou Yuhang District People's Court of Zhejiang Province ruled, after trial, that the malicious complaint made by the defendant Tong Jiangang constituted unfair competition and ordered the defendant Tong Jiangang to compensate the plaintiff Xu Xianben RMB 20,000 *Yuan* for the economic losses including reasonable expenses. The first instance judgment had then become effective.

[QR Code]





Case 7

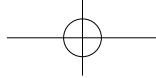
Shenzhen Goome Technology Co., Ltd. v. Wuhan Yuanguang Science & Technology Co., Ltd., Shao Lingshuang *et. al* Case of Dispute over Unfair Competition

[Significance]

As an important resource in the information age, big data contains enormous economic and social value. With the boom of industries related to the big data industry, it is also urgent to establish industry norms and governance standards. This case clarified that using web crawler technology to steal big data resources for a similar business constitutes an unfair competition. This rule aims to encourage the big data industry players to follow the business ethics and carry out fair and benign competition.

[Case Summary]

From November 2015 to May 2016, Wuhan Yuanguang Science & Technology Co., Ltd. (“Yuanguang”) to expand the market share and information query accuracy of the intelligent bus app “Chelaile”, Shao Lingshuang, the company’s legal representative and president then, authorized Chen Mao, the company’s technical director to instruct employees Liu Jianghong, Liu Kunpeng, Zhang Xiang and others to use web

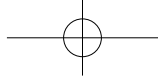


crawler technology to obtain a large number of real-time bus information data of “Kumike”, the like app run by **Shenzhen Goome Technology Co., Ltd.** (“Goome”), use it for its own app “Chelaile” and provide inquiry service to the public. Goome sued to the court for the break of business ethics and the principle of good faith by Yuanguang and relevant responsible persons which constituted unfair competition.

[Decision]

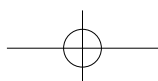
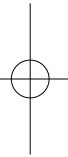
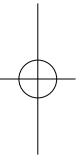
The court held that the commercially valued big data resources legally obtained by the right owner of the plaintiff Goome through collection, analysis, edition and compilation are protected by the relevant law. The plaintiff Goome provides free data query to the public for reasons of its business model or other needs, but the defendant Yuanguang uses web crawler technology to steal the data and use it to run its similar business. Yuanguang had the subjective intention of seeking its own competitive advantages by destroying others’ market competitive advantages, which seriously disrupted the market order, and thus constituted unfair competition.

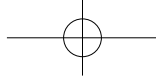
On May 23, 2018, Shenzhen Intermediate People’s Court made a civil judgment, which ordered the defendant Wuhan Yuanguang Technology Co., Ltd. to compensate the plaintiff Shenzhen Goome Technology Co., Ltd. for the economic losses and reasonable costs of RMB 500,000 *yuan*. After the first instance judgment was pronounced and served, neither the plaintiff nor the defendant appealed, and the judgment has become effective.



中国法院的互联网司法

[QR Code]





Case 8

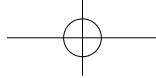
Pang Lipeng v. China Eastern Airlines Co., Ltd. and Beijing Qunar Information Technology Co., Ltd. Case of Dispute over Right of Privacy

[Significance]

In the Internet era, various types of data and information are transmitted at a high speed and in a huge amount of volume, and are highly shared. Not only does it bring convenience to people, it also brings unprecedented challenges to personal information security. This case set up the rule that personal information security may be protected through the right of privacy, specifies that the standard of proof used for the determination of personal information leakage should be the high probability for civil evidence, and was of great significance to the scrutiny of the platform behaviors and the maintenance of personal information security.

[Case Summary]

Pang Lipeng entrusted his assistant Lu Chao to book an air ticket of China Eastern Airlines Co., Ltd. (“China Eastern Airlines”) on the website (www.qunar.com) run by Beijing Qunar Information Technology Co., Ltd. (“Qunar”), and then received a fraud SMS, showing Pang Lipeng’s flight departure time, landing time, the name of the airport, and the flight number.



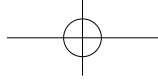
中国法院的互联网司法

Pang Lipeng believed that his mobile phone number and the exact flight information were only known to Qunar and China Eastern Airlines. He concluded that the two companies leaked his personal information and filed a lawsuit with a court to request a compensation of RMB 1,000 *yuan* as the mental damage solatium.

[Decision]

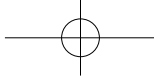
The court concluded that, the plaintiff Pang Lipeng's non-private information and his private information has been combined together and constituted an inseparable right as a whole. It should be protected in accordance with the protection rules for privacy. The defendants China Eastern Airlines and Qunar obtained the plaintiff Pang Lipeng's ID number, mobile phone number and voyage information, and the related information was leaked within a reasonable time. According to the standard of proof of high probability, it was enough to conclude that the information leakage was caused by the defendant. Therefore, both defendant shall be responsible for the infringement of the plaintiff's right of privacy.

On January 20, 2016, Beijing Haidian Primary People's Court made the first-instance judgment and denied all of Pang Lipeng's claims. On March 27, 2017, Beijing No. 1 Intermediate People's Court made the final civil judgment in which the court revoked the first instance judgment; Qunar shall apologize to Pang Lipeng; China Eastern Airlines shall apologize to Pang Lipeng; and Pang Lipeng's other requests for relief shall be rejected.



[QR Code]





Case 9

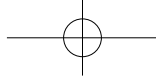
Shanghai Falv Information Technology Co., Ltd. v. Beijing Qihoo Technology Co., Ltd. Case of Dispute over Right to Reputation

[Significance]

With the popularization of Internet terminals, spam messages and nuisance calls appears more frequently due to the leakage of personal information or excessive promotion by merchants, and there is a growing public demand for the protection of personal information and the right to be undisturbed. This case clarified that labeling of calling numbers made by mobile phone users is legitimate comments, and the mobile phone security software which displays the contexts and quantities of such negative labels on users' mobile phones shall not be held liable in any form. It is of positive significance to the effective management of nuisance calls, protection of the right to privacy and the public's right to be undisturbed.

[Case Summary]

Established in March 2014, Shanghai Falv Information Technology Co., Ltd. ("Falv") mainly relies on its huge call system to carry out legal consulting business. 360 mobile phone guard is a free software operated by Beijing Qihoo Technology Co., Ltd ("Qihoo"), the cloud marking function of which

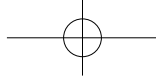


can be used to mark and classify strange calls. Later, Falv found that its consulting number was marked by 360 mobile phone guard as a nuisance call number. It then brought a case to a court and requested Qihoo to stop the infringement, make an apology publicly and compensate for its losses.

[Decision]

The court found in this case that the mobile phone security software developed by the defendant Qihoo allowed users to classify and mark strange incoming calls through the cloud marking function of the software. When the number of markings reached a certain amount, it would be displayed to other users on the receiving interface to assist users to intercept nuisance calls. The court held that network evaluation has become a part of the public's daily expression, and people's actions and decisions often rely on collective evaluations. An evaluation with negative words does not constitute an infringement on the right of reputation unless it is seriously untrue and causes harm or is made out of the purpose of fraud. The defendant Qihoo, in order to meet its users' needs, truthfully displayed users' evaluations of the calls from the plaintiff Falv, which did not constitute a violation of the right of reputation.

On January 25, 2017, Shanghai Yangpu District People's Court made a civil judgment, which rejected all of the claims of Falv. Falv was not satisfied with the result and appealed to Shanghai No. 2 Intermediate People's Court. On May 15, 2017, the Shanghai No. 2 Intermediate People's Court made a

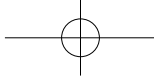


中国法院的互联网司法

final decision that rejected the appeal and upheld the original judgment.

[QR Code]





Case 10

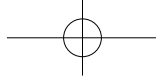
Illegal Use of Information Networks by Tan Zhangyu, Zhang Yuan, et al. Case on the Crime of Illegal Use of Information Network

[Significance]

Cyber crimes in recent years has been showing the characteristics of diversified subjects, highly hidden means, refined division of work in a cybercrime chain, scattered places where the crime is committed, etc. In particular, cyber fraud is often committed via online communication by and between the upstream and the downstream of a cybercrime chain. This case clarified that a person who had a clear knowledge that the “click-farming advertisement” of his client was a fraudulent act, but, with a purpose of obtaining illegal gains, still provided assistance to promote the advertisement for the crime committed, shall be considered as committed the crime of illegal use of information networks where the circumstances are severe. The specific rules set by the case could effectively crack down on criminal activities involving illegal use of information networks.

[Case Summary]

In December 2016, to obtain illegal gains, the defendants, Tan Zhangyu and Zhang Yuan planned to engage in sending fraud information about “gaining

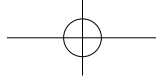


中国法院的互联网司法

commissions by click-farming” to others via the Internet. Tan Zhangyu and Zhang Yuan employed the defendant Qin Qiufa and other persons to send the fraud information. Zhang Yuan’s primary responsibility was to purchase “Alitalk” accounts and software, and to lease computer servers, etc. Qin Qiufa took charge of soliciting and contacting with customers who are in need of sending fraud information, receiving payments from the customers and guiding others to send fraud information. The three defendants provided assistance to publish the fraud information with the clear knowledge that the click-farming was not true and was used only for fraud. Tan Zhangyu and Zhang Yuan would obtain RMB 30 to 70 *Yuan* from their client when each person added QQ numbers in the above-mentioned information. The victims Wang and Hong were defrauded of RMB 31,000 *Yuan* and RMB 30,049 *Yuan* respectively after adding QQ numbers in the fraud information prepared and sent by Tan Zhangyu and Zhang Yuan.

[Decision]

The court held that the defendants Tan Zhangyu, Zhang Yuan, and Qin Qiufa sent fraud click-farming information via information networks with a purpose of obtaining illegal gains which was essentially an inchoate offense of fraud, and constituted the crime of illegal use of information networks. Although there was no evidence proving that the persons conducted the fraud act have been arrested and criminally prosecuted, many victims have appeared, without any prejudice to the constitution of the crime of illegal use of information networks. Tan Zhangyu, Zhang Yuan, and Qin Qiufa jointly



committed the intentional offense, which is a jointly committed crime. Tan Zhangyu and Zhang Yuan played a leading role in this jointly committed crime and they are the principals in this case. Qin Qiufa played a subordinate role in this jointly committed crime as an accessory criminal and shall be given lighter sentence.

Pursuant to the first-instance judgment of Shuyang Primary People's Court of Jiangsu Province and the second-instance judgment of Suqian Intermediate People's Court of Jiangsu Province, the defendant Zhang Yuan was sentenced to two-year and one month imprisonment for the crime of illegal use of information networks and fined RMB 100,000 *yuan* as penalty; the defendant Tan Zhangyu was sentenced to one year and ten months imprisonment for the crime of illegal use of information networks and fined RMB 80,000 *yuan* as penalty; and the defendant Qin Qiufa was sentenced to one year and four months imprisonment for the crime of illegal use of information network and fined RMB 30,000 *yuan* as penalty.

[QR Code]

