China’s innovative Internet Courts and their use of blockchain backed evidence

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Since 2017, the Supreme People’s Court of China (SPC) has established three internet courts in Hangzhou, Beijing and Guangzhou which are major hubs for e-commerce, the internet industry and the headquarters of giant internet companies like Alibaba and Baidu. With an internet penetration of 54% and approximately 800 million internet users, the introduction of such courts helps to reduce the rising number of online disputes between citizens in a time and cost efficient way thanks to the admissibility of blockchain backed online data as evidence. China’s leading role in internet litigation comes at no surprise since regular courts favor documentary evidence over live testimony and already so much is done online.

This post sheds light on this new model and how it has potential to influence other jurisdictions.

China’s political strategy towards innovation and internet

Like many other countries, China views the Internet as key to its future growth and development opportunities. The Chinese government maintains the world’s most sophisticated internet censorship apparatus called the Great Firewall. After the 2017 cybersecurity law, the level of internet freedom in the country declined as a result of strengthened repressive restrictions on online activities and onerous financial burdens on technology companies, independent media, and bloggers. President Xi Jinping announced plans at the 19th Communist Party Congress in October 2017 to transform China into a “cyber superpower”. China’s Internet Plus strategy, which is part of this initiative, encompasses innovations such as internet courts, in order to actively promote the healthy development of e-commerce, industrial networks, and Internet banking, as well as facilitate the growth of new industries and the expansion of its companies’ international Internet footprint. Although China has recently clamped down on cryptocurrencies, it hailed blockchain development in its five-year plan to 2021.

The new model of specialized courts for internet-related disputes or Internet Courts

According to the Provisions published by the SPC (Provisions on Several Issues Concerning the Trial of Cases by the International Courts) the Internet Courts focus on disputes involving: the online sale of goods and services, lending, copyright and neighboring rights ownership and infringement, domains, infringement on personal rights or property rights via the Internet, product liability claims, and Internet public interest litigation brought by prosecutors. The litigation process is conducted solely online, including the service of legal documents, the presentation of evidence, and the actual trial itself which, to comply with principles of trial in person and direct speech principle, rely on the online video system.

A major advantage of such courts is that it addresses the increasing workload and burden on the judiciary. The average duration of these online trials in Hangzhou in 2017/18 was 28 minutes, and the average processing period from filing to trial and conclusion was 38 days. However, the Hangzhou Internet Court has also been criticized for its lack of impartiality, since it is technically supported by Alibaba and its subsidiaries which are related to most disputes in the region. Other courts have not faced such criticism.

Blockchain mechanisms as a new method to authenticate evidence

Blockchain-related innovations are increasingly becoming relevant to legally authenticate evidence. Since a blockchain generates immutable, time-stamped data which can then be used as an auditable trail, it seems likely that the legal sphere will get heavily influenced in the near future by the security of the blockchain (which is set before any transactions or documentation takes place). China is ahead of the game in this respect. At the 2019 Forum on China Intellectual Property Protection, the president of the Beijing Internet Court (established in September 2018, and has since processed 14,904 cases) reportedly said that the court employs technologies such as artificial intelligence (AI) and blockchain to render judgement.

Since most of the evidence in the cases heard by Internet Courts is electronic data and is stored on the Internet, the SPC outlined in its Provisions that the Internet court can rely on evidence provided by the parties that can be

authenticated by electronic signatures, time stamps, hash value verification, blockchain and other tamper-proof verification methods. Before the implementation of the Provisions, the Internet Court in Hangzhou for the first time in China admitted evidence that was authenticated by blockchain technology in an online copyright infringement case, which confirmed that data uploaded to a blockchain platform reflected its source, generation and path of delivery, and were therefore reliable evidence. Since, China's Supreme Court ruled that evidence authenticated with blockchain technology is binding in legal disputes.

Internet courts rely on blockchain to deal with a range of cases such as disputes over liability for Internet tort and other types of Internet-related disputes in the areas of intellectual property rights and administrative litigation. An Internet judge in China's Hangzhou province relied on blockchain to defend Intellectual Property rights because such technology is paramount to safeguard authors' ownership over their work. In August 2018, the same court handed down a judgment on China's first case of unfair competitionin big data products. As Wang Jiangqiao, a judge at the Internet Court, sums up "since blockchain guarantees that data can not be tampered, all digital footprints stored in the judicial blockchain system have legal effect."

Can this model be exported to Western jurisdictions?

With the increasing reliance on internet for both private and business matters, the number of disputes is likely to increase in the near future. Internet Courts like the ones in China could provide a model to improve efficiency, significantly reduce costs and address infringements that may have been too cost-effective to pursue otherwise, while removing at the same time human interference as much as possible, which will make the information stored on blockchain more credible as noted by Qin Pengfei, a paralegal with Shanghai Dabang Law firm. Already the US State of Vermont has passed legislation to allow courts to use data on blockchain as evidence. In 2018, the U.K. Law Commission has announced its plans to review legal frameworks involving smart contracts so that it doesn't lag behind as blockchain legal applications develop. However, no other country has yet actively followed suit with China's model of Internet Courts. One reason copyright lawyer Liu Hongze argues is the fact that the acceptance of evidence stored on the blockchain may have little impact now on non-internet-related civil or criminal lawsuits. Indeed, blockchain data being legal evidence is relatively new and courts' acceptance of it will depend on individual courts and situations.

Nevertheless, what is certain is that China’s Internet Courts have a strong potential to launch the reliance of blockchain in the legal sphere, and western countries should watch such developments carefully not to fall behind. The recent backlash on Facebook with the judgment of the Bundeskartellamt demonstrates the need to respond to an ever increasing backlog of internet related disputes which interwind privacy, competition, data, cybersecurity and technology. Specialized courts such as Internet Courts might well be the answer.