

Guiding Case No.223

Zhang Xlong v. Beijing Xdie Culture Communication Co., Ltd., Cheng X and Ma X
(Case concerning a Dispute over the Infringement of an Information Network
Transmission Right of a Work)

(Adopted through discussion by the Judicial Committee of the Supreme People's
Court and issued on December 15, 2023)

Keywords: civil lawsuit/infringement of an information network transmission
right of a work/jurisdiction/place where the infringement is committed

Key Points of the Judgment

The place where the result of the infringement of an information network transmission right of a work occurs is uncertain and shall not be used as the basis for determining the jurisdiction. In determining the jurisdiction over cases of civil disputes over infringement of an information network transmission right of works, Article 15 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Civil Dispute Cases of Infringement of an Information Network Transmission Right shall apply; that is, the people's court at the place where the infringement is committed or domicile of the defendant shall have jurisdiction.

Basic Facts

The plaintiff, Zhang Xlong, filed a lawsuit with the Qinhuangdao Intermediate People's Court, Hebei Province where he/she was domiciled on the grounds that the defendants, Beijing Xdie Culture Communication Co., Ltd., Cheng X, and Ma X published and used his/her copyrighted photo art works on the relevant websites without authorization and infringed the information network transmission right of his/her works. The defendant, Ma X, raised an objection to the jurisdiction of the case on the grounds that the jurisdiction should be determined in accordance with Article 15 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial

of Civil Dispute Cases of Infringement of an Information Network Transmission Right (the "Provisions on Information Network Transmission Right"), and Qinhuangdao City was the domicile of the plaintiff, but not the place where the infringement was committed or the domicile of the defendant, claiming that the case should be transferred to the Beijing Internet Court at the place where the infringement was committed and domicile of the defendant for trial.

Decision

On June 2, 2021, the Qinhuangdao Intermediate People's Court, Hebei Province made the civil ruling ([2021] Ji 03 Zhi Min Chu No.27), deciding to reject the objection to jurisdiction raised by Ma X. Ma X refused to accept the ruling of first instance and filed an appeal. On August 24, 2021, the Hebei High People's Court made the civil ruling ([2021] Ji Min Xia Zhong No.66), deciding to revoke the ruling of first instance, and transfer the case to the Beijing Internet Court for trial. After examination, the Beijing Internet Court and the Beijing High People's Court found that it was improper for the Hebei High People's Court to transfer the case to the Beijing Internet Court for trial, and then reported the case to the Supreme People's Court for designation of jurisdiction. On August 22, 2022, the Supreme People's Court made the civil ruling ([2022] Zui Gao Fa Min Xia No.42), determining that the case shall be tried by the Beijing Internet Court.

Reasons for the Decision

The Supreme People's Court held that Article 25 of the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China provides that: "places where an infringement is committed through an information network include the location of information equipment including the computer used to commit the alleged infringement, while places where the infringement consequence takes place include the domicile of the infringed person." The "infringement committed through an information network" mentioned in such provision targets the infringement of general civil rights committed through an information network. However, the "information network transmission right" is the legal right enjoyed by the

copyright owner stipulated in Paragraph 1 of Article 10 of the Copyright Law of the People's Republic of China, namely "the right to make a work available to the public by wired or wireless means so that the public can access the work at a place and time of their choice". Based on the nature and characteristics of the information network transmission right, once the infringement of the information network transmission right occurs, it will lead to the result that "the public can access the work at a place and time of their choice", and the geographical scope involved in the infringement is uncertain. Therefore, Article 15 of the Provisions on Information Network Transmission Right stipulates that: "civil disputes over the infringement of an information network transmission right shall be under the jurisdiction of the people's court at the place where the infringement is committed or where the defendant is domiciled. The place where the infringement is committed includes the location of the equipment such as network server and computer terminal used to commit the alleged infringement. Where it is difficult to determine both the place where the infringement is committed and the domicile of the defendant or they are outside China, the location of the equipment such as computer terminal where the infringing content is discovered by the plaintiff may be regarded as the place where the infringement is committed." Therefore, Article 15 of the Provisions on Information Network Transmission Right is a special provision on the jurisdiction over civil cases concerning disputes over the infringement of an information network transmission right, which is a specific civil right. In determining the jurisdiction over cases concerning civil disputes over the infringement of an information network transmission right, Article 15 of the Provisions on Information Network Transmission Right shall be taken as the basis.

In the case, Qinhuangdao City was the domicile of the plaintiff, but not the place where the infringement was committed or the domicile of the defendant stipulated in Article 15 of the Provisions on Information Network Transmission Right. The case was not involved in the exception stipulated in Article 15 of the Provisions on Information Network Transmission Right that "it is difficult to determine both the place where the infringement is committed and the domicile of the defendant or they are outside China". Therefore, the Qinhuangdao Intermediate People's Court, Hebei Province had no jurisdiction over the case,

and it was proper for the Hebei High People's Court to transfer the case to the Beijing Internet Court.

Pertinent Legal Provisions

Article 29 of the Civil Procedure Law of the People's Republic of China

Articles 24 and 25 of the Interpretations of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China

Article 15 of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Civil Dispute Cases of Infringement of an Information Network Transmission Right