

# 71

## Century Internet Communication Technology Co., Ltd. v. Wang Meng

*Citation: the Beijing No.1 Intermediate People's Court's Civil Judgment No. Yizhongzhizhongzi 185/1999*

*Date of judgment: December 17, 1999*

### **Procedural history**

Wang Meng, a writer, sued the Century Internet Communication Technology Co., Ltd. (the Century Internet Company) for infringement of his copyright in the Beijing Haidian District People's Court. The first-instance court ruled that the act of the Century Internet Company constituted an infringement of Wang Meng's copyright. The Century Internet Company appealed to the Beijing No.1 Intermediate People's Court.

### **Issue**

1. Did the act of communicating a work on the Internet without authorization from the copyright owner constitute an infringement of the right to use the work?
2. Should an internet service provider be liability for acts by some members of its network group to make use of its internet service provision to infringe the copyright?

### **Facts**

Wang Meng created a literary work entitled Thick Congee in 1989. In April 1998, the Century Internet Company stored the work Thick Congee which some members of the network group of its official website downloaded from another website in its corporate computer system, and uploaded it from its computer server to the Internet. Whenever an internet user enters its corporate website,

he could browse or download the work simply by clicking the relevant column.

The Beijing Haidian District People's Court held that the modes to use works as enumerated in Article 10 (5) of the Chinese Copyright Law did not cover all the modes to use works. As one of the modes to use works, communicating works on the internet was somewhat different from the conventional modes to use works, such as publication, distribution, public performance and broadcasting. Nevertheless, the difference would not affect the right of the copyright owners to control the communication of their works. Therefore, people, other than copyright owners, should respect the copyright owners' exclusive right to use their works, and obtain authorization from them when they communicate their works on the Internet. The Century Internet Company, an Internet content provider, stored a work in its computer system and uploaded it onto the Internet without authorization of the copyright owner, had infringed his right to use the work and the right to receive remuneration therefor.

The Century Internet Company argued in its appeal that the modes to use works as enumerated in Article 10 (5) of the Chinese Copyright Law were the conventional ones to use works, which did not cover the use of works on the Internet. It contended that it was an expanded explanation of the law as the first-instance court in its ruling extended the exclusive right of copyright owners of literary works to have covered the communication of works on the Internet. As an internet content provider, the Century Internet Company had met the obligation to pay its attention, but the judgment made by the first-instance court, failing to distinguish uploading from downloading or the direct responsibility from the indirect one, imposed on it the legal liability it should not be.

### **Rule of Law**

Article 10 of the Chinese Copyright Law as of 1990 *The term "copyright" shall include the following moral rights and property rights: ..... (5) the right of exploiting and being remunerated, i. e., the right to exploit one's works by means of reproduction, performance, broadcasting, exhibition, distribution, cinematization, televising, video production, adaptation, translation, annotation, compilation, etc. and the right to authorize others to exploit one's work by the above-mentioned means and to receive remuneration therefor.*

### **Reasoning**

Article 10 (5) of the Chinese Copyright Law has specified the modes to use works by way of legislative generalization and enumeration. Along with the developments of science and technology, new modes to use works have emerged incessantly. One of them is to use works on the Internet. This was something unpredicted when the Copyright Law was formulated. Although use of works on the Internet was not been clearly defined in the Copyright Law in force at the time, it does not mean that use of another party's work on the Internet is not subject to regulation. The core of the Copyright Law lay in the protection of the copyright owners' exclusive right to use works. If a copyright owner did not have the right to control the use of his works on the Internet, his copyright would be meaningless under the Internet environment. Therefore, to use others' works on the Internet was also one of the modes to use works, and anyone who used a work this way should be authorized by the copyright owner.

As an Internet content provider, the Century Internet Company was fully capable of deciding on its own whether or not to upload a work on the Internet. Therefore, the Century Internet Company should pay attention to whether the contents it made available to the public on its website would infringe others' copyright; it should obtain authorization from copyright owners before using their works. Although Wang Meng's work was in a digital form downloaded by the Century Internet Company from another website, it did not constitute a new work, and the copyright owner of the original work still enjoyed the copyright. For this reason, the act of the Century Internet Company to use a work on its website without authorization from the copyright owner constituted copyright infringement.

### **Holding**

The Century Internet Company's act to communicate a work on the internet without authorization from the copyright owner constituted an illegal use of the work, and infringed the copyright of the copyright owner.

### **Additional remarks**

1. The Century Internet Company noted that its acts might prove faultless as there was a notice on the homepage of its website that "All the contents on this website come from the Internet. If any-

thing appropriate, please write to inform us”. The second-instance court held that one should, as required by the law, be authorized by the copyright owner when he or it uses a work. As far as the work in suit was concerned, it was no doubt that the Century Internet Company could have obtained authorization from the copyright owner before using the work, but it failed to do what the law requires it to do. Therefore, said notice could not be used to legally justify non-constitution of an infringement by its act, or exempted it from the legal liability.

2. When the Copyright Law was revised in 2001, the provision was added to Article 10 that: “the right to communicate information on networks, that is, the right to communicate to the public a work, by wire or wireless means in such a way that members of the public may access these works from a place and at a time individually chosen by them”.