Beijing Internet Court

Civil Judgment

(2018) Jing 0491 Min Chu No. 239

Plaintiff: Beijing Film Law Firm, with its domicile at 209, Zone B, Laijin Cultural and Creative Industry Park, No. 1 Balizhuang Dongli, Chaoyang District, Beijing.

Person in charge: Li Wen, Director.

Agent ad litem: Xiong Lingxiao, lawyer of Beijing Film Law Firm.

Defendant: Beijing Baidu Netcom Science & Technology Co., Ltd., with its domicile at Floor 2, Baidu Building, 10 Shangdi 10th Street, Haidian District, Beijing.

Legal Representative: Victor Liang, manager.

Agent ad litem: Wang Kaixiong, lawyer of Beijing Hai Run Law Firm.

Agent ad litem: Tan Hongjuan, lawyer of Beijing Hai Run Law Firm.

After accepting the case by which the plaintiff Beijing Film Law Firm sues the defendant Beijing Baidu Netcom Science & Technology Co., Ltd. for violation of the right of authorship, right of integrity, and right of information communication on networks, the Court carried out a public trial as per the ordinary procedure in accordance with the laws. Agent ad litem Xiong Lingxiao of the plaintiff and agent ad litem Tan Hongjuan of the defendant appeared in court to participate in the legal action. The trial of case is now concluded.

The plaintiff prays to the Court to: 1. order the defendant to immediately desist from the infringement and delete the Analysis Report on Judicial Big Data of the Entertainment Industry—Film Volume • Beijing ("Article Involved") published by Dianjinss on Baijiahao; 2. order the defendant to make an apology and eliminate the ill influence by issuing an apology statement on Dianjinss' Baijiahao account; 3. order the defendant to compensate the plaintiff for its economic losses of RMB 10,000; and 4. order the defendant to compensate the plaintiff for its reasonable expenses of RMB 30 in defending its rights.

Facts and grounds: the plaintiff is the copyright owner of the Article Involved, which is a legal person's work first published on the law firm's WeChat official account on September

9, 2018. On September 10, 2018, Dianjinss published without permission the article accused of infringement on the Baijiahao platform operated by the defendant, thus infringing the plaintiff's right of information communication on networks. The defendant deleted the preface, retrieval overview, annual trend chart of the number of cases of the film industry and the "note" part at the end of the Article Involved, thus infringing the plaintiff's right of integrity. The defendant also deleted the signature in the Article Involved, thus violating the plaintiff's right of authorship. The infringement act of the defendant has caused economic losses to the plaintiff. The Article Involved includes both written works and graphic works, with a total of 4,511 characters and 15 graphs. Based on the remuneration standard of RMB 300 per 1000 characters (or a part thereof) stipulated in Article 5 of the *Measures for Remuneration Payment for Use of Written Works*, the remuneration for the written part shall be RMB 1,500. Based on the remuneration standard of RMB 200 per graph, the remuneration for the graphic part shall be RMB 3,000. Therefore, the total remuneration for the Article Involved shall be RMB 4,500. According to provisions on punitive damages, the plaintiff could require a compensation of 5 times that of the total remuneration but in this case only claims the economic losses of RMB 10,000 against the defendant. The reasonable expenses incurred by the plaintiff for the litigation of this case should also be borne by the defendant.

Then during the litigation process, the plaintiff gave up its first claim, changed the second claim to "request the Court to order the defendant to make an apology and eliminate the ill influence by issuing an apology statement on Baijiahao platform," and changed the fourth claim to "request the Court to order the defendant to compensate the plaintiff for its reasonable expenses of RMB 560 in defending its rights." The plaintiff once requested the Court to ascertain the plaintiff's copyright over the Article Involved but later dropped this claim. It also once claimed that the article accused of infringement was published by Dianjinss but later changed the claim, alleging it was published by the defendant.

The defendant argues that: 1. The Article Involved is not original and thus not protected by the Copyright Law. In this case, seen from the version submitted by the plaintiff, the Article Involved contains data and graphs. It should be a report obtained using a legal statistical data analysis software (i.e. Wolters Kluwer China Law & Reference, hereinafter referred to as "Wolters Kluwer Database"). The data were not obtained by the plaintiff through investigation, search or collection. The graphs were not drawn by the plaintiff but were automatically

generated by Wolters Kluwer Database. Therefore, the defendant holds that the Article Involved was not created by the plaintiff through its own intellectual labor and thus does not fall in the protection scope of the Copyright Law. 2. The plaintiff is not a proper subject in this case. All articles are created by natural persons. As the fictional subject, a legal person itself cannot carry out any creative activities. According to the Copyright Law, a legal person's work is a work created according to the will and under the sponsorship and responsibility of a legal person. In this case, the plaintiff did not prove that the Article Involved was created under its organization or by personnel appointed thereby, or that the creation, conception and tone of the Article Involved have reflected its independent will. The constitutive requirements stipulated in the Copyright Law for a legal person's work are not met as to the Article Involved. Therefore, the plaintiff cannot prove that the Article Involved is a legal person's work. 3. The plaintiff has no evidence to prove that Baijiahao platform published the article accused of infringement. The plaintiff did not produce its evidence through an authoritative organization, which did not meet the requirements of the *Regulations of the Supreme People's Court on Several Issues Concerning Case Trial by Internet Courts* for electronic data collection and storage. Thus its evidence does not have objective authenticity. Furthermore, what the plaintiff submitted is a receipt for storage rather than a notarial document. Since the plaintiff could choose any notarization institution to store the evidence, the receipt is not credible. The preface and annotation are not the main contents of the Article Involved, even if they were deleted, the Article Involved was not distorted and falsified to cause any misreading of its thoughts because the defendant did not edit or delete the contents of the Article Involved. Therefore, the defendant did not infringe the plaintiff's right of integrity. Besides, the defendant does not conduct substantive examination of contents on Baijiahao because it is an information storage platform. Thus the defendant did not commit the infringement. 4. There is no factual or legal basis for the plaintiff to claim that the defendant should apologize because as a legal person, the plaintiff could not be the object of apology. To sum up, the defendant prays to the Court to dismiss all claims of the plaintiff in accordance with the law.

After both parties submitted evidence in accordance with the law to support their claims, the Court organized the parties to exchange and cross-examine the evidence and has found out the following facts:

One, facts related to the plaintiff's claim that it enjoys the copyright of the Article Involved

(I) In order to prove that the Article Involved is original and a legal person's work and that the plaintiff is its author, the plaintiff submitted the following evidence to the Court:

1. The webpage screenshots of the Article Involved and the link of its first publishing. According to these webpage screenshots, under the title of "Film | Analysis Report on Judicial Big Data of the Entertainment Industry—Film Volume·Beijing" there are the words "Original: Film Lawyers, Beijing Film Law Firm" and "China's First Boutique Law Firm Specializing in Entertainment Practices," on the right side of which there is the QR Code of the plaintiff's WeChat official account and other contents. The central part is the preface to the *Analysis Report on Judicial Big Data of the Entertainment Industry*, the main contents of which are: "Looking into the Future: No Entertainment, No Future ... The key word of 2017 in the tech field is undoubtedly artificial intelligence. In the future, various industries of the national economy will experience explosive development with the help of artificial intelligence, greatly promoting the material civilization progress of mankind. In the cultural field, what we see is that the entire entertainment industry is influencing people's thoughts through one after another works and their combinations … As long as we start from now to study the laws and trends of the pan-entertainment industry and build a solid foundation for its healthy and benign development, we will surely create a bright future for the entertainment industry! The *Analysis Report on Judicial Big Data of the Entertainment Industry* will be the first work Film contributes to the industry. To avoid delayed publication of the work, we will publish the report by different volumes (film, TV play, game) and different regions and finally complete the integrated collection. The following is the Film Volume · Beijing of the report."

The Article Involved first introduces the retrieval overview, including the Wolters Kluwer Database used for the retrieval and the retrieval keywords, case types, document types, trial procedures, etc. The retrieval description states that after the plaintiff searched the judgments according to the above conditions and reviewed and screened the results, 2,589 cases meeting certain conditions were identified as cases of the film industry and received statistical analysis. The Article Involved covers the basic situation of cases of Beijing's film industry(including the annual trend of the number of cases of the film industry, the distribution

of the number of these cases heard by Beijing courts at all levels, the identity characteristics of plaintiffs and defendants of these cases, the distribution of the number of these cases with different causes of actions, the distribution of the number of judgments for cases of the industry, and the ratio of hiring lawyers among enterprises in the industry); the characteristics of various types of cases of Beijing's film industry (tort, contract, others); and the conclusion. Among them, the conclusion part includes: (1) Legal risks exist in every step of the film industry. In the whole life cycle of a film, from the initial planning to the mid-term investment, shooting and production, and then to the publicity, distribution, and merchandise development at the later stage, there are many kinds and large amount of legal risks which are difficult to prevent and deal with. (2) The film industry sees a high incidence of disputes over the right of information communication on networks. Among the lawsuits filed by enterprises of the film industry, disputes of this type account for more than 32% of the total, a phenomenon closely related to the rapid development of Internet technology. Thus having a risk prevention and control plan for Internet infringement should become the standard configuration for every enterprise of the film industry. (3) Enterprises of the film industry are highly motivated to hire lawyers. An enterprise having hired lawyers is far more likely to win a lawsuit. Among infringement cases with only the plaintiff being an enterprise in the industry, 90% of the winning cases are represented by lawyers. (4) The amount of compensation ordered for infringement cases in the film industry is generally low. In the infringement cases in which the obligee claims for compensation, the compensation amount does not exceed RMB 11,000 in 62% of the cases and does not exceed RMB 20,000in 79% thereof. This is in sharp contrast to the huge infringement income that infringers can easily obtain from film works. With low amount of compensation, judicial judgments will have no deterrent effect on infringers. To curb the high incidence of infringement cases, it is imperative to increase the amount of compensation for infringement in judicial judgments. The Article Involved uses 15 graphs such as curves, histograms and doughnuts to illustrate relevant statistical data.

2. An electronic data storage letter. Beijing Guoxin Notary Office issued an Electronic Data Storage Letter (No. 2018091810574881047 4576) on September 18, 2018, which said that user"qujianhuan005" fixed the webpage with the URL of http://mpweixin.qq.com…… as an evidence using the Static Webpage Forensics function of the Notary Office's Notarization

Cloud system at 10:57:48 on September 18, 2018 and submitted the evidence to the Notary Office for storage. The electronic data fingerprint (MD5) of the webpage data file stored is ... (special note: this storage letter is only a receipt for the electronic data storage, not to be used as a certificate. If the contents of the relevant documents need to be proved, please submit a separate application for notarization. The notary office will decide whether to issue a notarization certificate or not after review in accordance with the law). The defendant raised objection to the "Electronic Data Storage Letter," arguing that it is not a notarial certificate issued by the notary office and cannot prove that the plaintiff is the right holder of the Article Involved.

3. Documents related to the creation process of the Article Involved. The plaintiff submitted a number of documents including its work plan, statistical table of judicial big data, judicial big data analysis report (outline), in-process drafts of the big data report etc. to prove that the Article Involved was created and finally completed under the organization of the plaintiff. The defendant refuses to recognize the authenticity of these evidence, arguing that the work plan for the big data report and the judicial big data analysis report (outline) were created or last stored after the publication of the Article Involved and that neither could the rest of the evidence prove that the Article Involved was created by the plaintiff.

(II) Records of inquest. During the trial of this case, the Court presided over an inquest of relevant information on the Internet with the participation of both the plaintiff and the defendant. The details are described below:

1. Inquest record of the plaintiff's WeChat official account. The public information of the plaintiff's WeChat official account mainly shows that the organization name is the plaintiff's name, the account ID is Film Law, the authentication received is WeChat authentication, the subject of the account is the plaintiff (other organization), and the account passed review on October 20, 2017. The defendant confirmed that the Article Involved is in the official account platform but argued that it does not mean the Article Involved is a legal person's work created by the plaintiff.

2. Inquest record of Wolters Kluwer Database. Since both the plaintiff and the defendant acknowledge that the Wolters Kluwer Database was used during the creation of the Article Involved, the Court organized the plaintiff and the defendant to conduct an inquest on

the application of the related functions of the Wolters Kluwer Database. As a professional legal information query tool, Wolters Kluwer Database can provide various legal information services such as laws and regulations, judgments, commonly used legal document templates, practice guides, legal English translation, etc. After opening the Wolters Kluwer Database, the homepage has "Copyright © Wolters Kluwer" at the lower side and offers options including regulations, cases, interpretation, tools, problems, law updates, and practice in turn at the upper side. With the consent of the plaintiff and the defendant, the plaintiff's agent ad litem logged into the Wolters Kluwer Database through Alpha Intelligent Legal Operating System and carried out the following operations as per the defendant's instructions: set retrieval conditions in "Wolters Kluwer Cases" with "film" for the keyword, "Beijing courts" for the trial court, and "from January 1, 1995 to December 31, 2017" for the trial date, click search, and then click "Visualization" to generate the Big Data Report 1. Main contents of this report include data sources, visualization of retrieval results (analysis of overall situation, distribution based on causes of action, distribution based on industries, classification of procedures, judgment results, visualization of amounts involved, visualization of trial duration, courts, judges, lawyers and law firms, and frequently cited articles of laws), and appendices. The report also contains visualized analysis graphs in the form of curves, histograms, doughnuts, etc., and analysis of data displayed in the graphs. A comparison of the Article Involved with the Big Data Report 1 by searching corresponding keywords shows that:

(1) Figure 2: Distribution of Number of Cases of the Film Industry Tried by Beijing Courts at all Levels in the Article Involved shows the number of cases of the film industry accepted by 17 courts of Beijing, including among others Chaoyang District People's Court and Haidian District People's Court. The figure of the "court" part in the Big Data Report 1 shows the number of cases of the film industry accepted by 5 courts of Beijing, including Chaoyang District People's Court and Haidian District People's Court. Both figures suggest that Chaoyang District People's Court accepted the largest number of cases, followed by Haidian District People's Court.

(2) The Article Involved uses graphs to display and text to analyze the ratio of enterprises in the industry hiring lawyers and the ratio of enterprises in the industry involved in infringement cases hiring lawyers. The Big Data Report 1 uses graphs to display and text to analyze the number of cases represented by lawyers and law firms. The graphic data and

composition and the text analysis of the two are different. Figure 1: Annual Trend Chart (line chart) of the Number of Cases of the Film Industry in the Article Involved shows the number of cases of the film industry each year from 1995 to 2017 and its trend of change, accompanied by an analysis of its cause. The "analysis of overall situation" in the Big Data Report 1 shows the trend of change in the number of cases from 2009 to 2017 (a curve), also accompanied by a text analysis. The two are different in terms of graphic data, graph type and text analysis. The Article Involved also uses graphs to display and text to analyze the range of compensation amount ordered for infringement cases while the Big Data Report 1 does not cover this part.

(3) Retrieval using keywords like "identity," "plaintiff," "cause of action," "subject matter," "contract" and "labor" shows that the two are different in all these contents.

3. Set retrieval conditions in "Wolters Kluwer Cases" with "film" for the keyword, "Beijing courts" for the trial Court, "from January 1, 1995 to December 31, 2017" for the trial date, and "copyright ownership and infringement dispute" for the cause of action, click search, and then click "Visualization" to generate the Big Data Report 2. Main contents of the Big Data Report 2 include data sources, visualization of retrieval results (analysis of overall situation, distribution based on causes of action, distribution based on industries, classification of procedures, judgment results, visualization of amounts involved, visualization of trial duration, courts, judges, lawyers and law firms, and frequently cited articles of laws), and appendices. The report also contains visualized analysis graphs in the form of curves, histograms, doughnuts etc. and analysis of the data displayed in the graphs. A comparison of the Article Involved with the Big Data Report 2 by searching corresponding keywords shows that: Figure 4: Distribution of the Number of Cases of the Industry with Different Causes of Actions (histogram) in the Article Involved shows the number of cases of 10 different causes of action, including copyright ownership and infringement dispute and dispute over the right of information communication on networks. The "distribution based on causes of action" part in the Big Data Report 2 shows the number of cases (histogram) of 5 different causes of action, including copyright ownership dispute and dispute over infringement of the right of information communication on networks, and their proportions (doughnut). The two are different in graphic data, graph type, graphic analysis dimension, and text analysis content.

Regarding the above inquest results, the plaintiff alleges that the Article Involved is original and not generated by Wolters Kluwer Database on the following grounds: the Article Involved is different from the Big Data Report 1 and 2 automatically generated by the Wolters Kluwer Database in content; as to the graph types, the Article Involved uses normal distribution charts (line charts) while the Big Data Reports 1 and 2 use curves as in fact Wolters Kluwer Database cannot automatically generate normal distribution charts (line charts); and the graphs in the Article Involved were created through artificial improvement of lines and colors on the basis of the basic graphs generated by Wolters Kluwer Database. The plaintiff claims that the Article Involved is its original work created in the following steps: first searching judgments in Wolters Kluwer Database according to certain conditions, then reviewing the documents one by one to exclude irrelevant cases and sort out 2,589 cases of the film industry according to the standard of determining cases of the film industry set by the plaintiff, and making statistical analysis on these selected judgments to form the final Article Involved. During the creation process, statistical analysis was made using Microsoft Excel while graphs were drawn using Microsoft Excel and Microsoft PowerPoint.

The defendant argues that the Article Involved is not original but generated by Wolters Kluwer Database on the following grounds: the Article Involved has the same or similar structure, graph types, case types, distribution based on causes of action, and courts conducting trial, and mode of presenting graphs before text analysis to those of the Big Data Reports 1 and 2 generated automatically by Wolters Kluwer Database; the difference between the Article Involved and the Big Data Reports 1 and 2 is only due to the constant updates of Wolters Kluwer Database; the graphs and data are from Wolters Kluwer Database, not obtained by the plaintiff through investigation, search or collection; neither are the graphs drawn by the plaintiff; the Copyright Law only protects the creation of natural persons, not contents generated by artificial intelligence.

The above facts are supported by the evidence submitted by the plaintiff, court trial records, inquest records, and statements of the parties.

Two, facts related to the plaintiff's claim that the defendant committed infringement

(I) The plaintiff submitted the following evidence to the Court to prove that the defendant published the article accused of infringement on the Baijiahao platform operated thereby without authorization, thus infringing on the plaintiff's right of authorship, right of integrity, and right of information communication on networks:

1. The result of searching “judicial big data report of the entertainment industry” in Baidu Search, the screenshot of the webpage publishing the article accused of infringement on Baijiahao platform, and electronic data storage letters of the two issued by Notarization Cloud Platform, to prove that Baijiahao platform published the article accused of infringement on September 10, 2018.The contents shown on the webpage screenshot are basically the same as those of the Article Involved, except that there is no plaintiff’s signature, preface, retrieval overview, the annual trend chart of the number of cases of the film industry of Figure 1, or the annotation part at the end of the Article Involved; below the title is the word “Dianjinss” and on the right side of the article is a brief introduction of Dianjinss which says “a well-known financial commentator, with 10 years of practical experience in securities.” The electronic data storage letters have basically the same contents as the electronic data storage letter mentioned above, except for the website and the electronic data fingerprint. In this case, the plaintiff once claimed that the article accused of infringement was published by the user Dianjinss but later changed its claim to allege it was published by the defendant.

2. Webpage screenshots of More Baidu Products, Baijiahao’s information on Baidu Encyclopedia, Baijiahao Instruction Manual, etc. and their respective electronic data storage letter issued by Notarization Cloud Platform, to prove that the defendant is the operator of Baijiahao. The electronic data storage letters have basically the same basic contents as the electronic data storage letter mentioned above, except for the website and the electronic data fingerprint.

3. Screenshots of other webpages, including Notarization Cloud Platform’s homepage, “About the Platform” page, “Notarization Cloud Platform User Service Agreement” page, and the electronic data storage page of Beijing Guoxin Notary Office;

4. Video of the forensics process of Baijiahao Service Agreement, Baijiahao Instruction Manual, Baijiahao’s Business Model, and Service Agreement and Rules, and their respective IP360 Forensics Data Preservation Certificates, together with Baijiahao’s content-to-be-published review page, to prove that Baijiahao is a platform provided to content creators for their content distribution and monetization and fan management and that the defendant, as the network service provider, has extremely strong control and management capabilities over Baijiahao platform;

5. An evidence showing that the first result of a search of “Judicial Big Data Report of the Entertainment Industry” with Baidu Search is an article entitled “Analysis Report on Judicial Big

Data of the Entertainment Industry" with part of the URL being https://baijiahao.com, and the corresponding electronic data storage letter issued by the Notarization Cloud Platform, together with the video of the forensics process of Baijiahao Service Agreement, Baijiahao's Business Model, and Service Agreement and Rules, to prove that Baidu's search engine would actively recommend the article accused of infringement;

6. Baijiahao's revenue indicator description, together with the video of the forensics process of Baijiahao Service Agreement, Baijiahao Instruction Manual, Baijiahao's Business Model, and Service Agreement and Rules, to prove that the defendant places advertisements on contents uploaded by Baijiahao platform users and share with them the advertising revenue according to the number of ad clicks generated by specific content and the commission according to the number of commodity orders generated by specific content and that the two are closely linked in content cooperation and benefit sharing.

7. Screenshots of the National Copyright Administration's news webpages of the *Notice on Regulating the Order of Internet Reproducing Copyright* and *National Copyright Administration Summons 13 Internet Service Providers for a Face-to-face Meeting: Preventing Illegal Reproducing and "Content Laundering,"* the *Convention on Network Copyright Self-discipline of the Internet Society of China*, and their respective IP360 Forensics Data Preservation Certificates.

The plaintiff claims that the above evidence can prove that the defendant has obtained copyright authorization of the content uploaded by users and the right of subsequent development and utilization of copyright. As such, the defendant should thus be the content provider, is at fault, and should bear the tort liability.

(II) Records of inquest. During the trial of this case, the Court organized the plaintiff and the defendant to conduct an inquest into the Notarization Cloud Platform and the plaintiff's evidence storage on the platform.

1. Main contents of the Notarization Cloud Platform page show that: the platform is an online notarization service platform jointly developed and launched by notarization institutions across the country, which integrates functions of forensics, evidence storage, and certificate issuance. It is developed and operated by Faxin Notarization Cloud (Xiamen) Technology Co., Ltd. to provide technical support for online notarization services of notarization institutions such as online acceptance, electronic data storage, electronic contract signing and intellectual property protection. At present, the platform has established cooperative relations with more than 1,100

notarization institutions in 26 provinces (municipalities and autonomous regions).A query of the ICP filing information of the Notarization Cloud Platform shows that the name of the organizer is Faxin Notarization Cloud (Xiamen) Technology Co., Ltd., the URL of the website's homepage is www.ezcun.com, and the website was approved on October 18, 2018. After logging into the Notarization Cloud Platform account provided by the plaintiff, it is verified that the above webpage screenshots submitted by the plaintiff are consistent with the corresponding evidences (contents of corresponding webpages) stored on the platform, which is recognized by the defendant and confirmed by the Court.

In response to the inquest results, the defendant argues that the Notarization Cloud Platform is not an authoritative forensics and storage institution, thus the plaintiff's act does not meet the requirements on forensics and storage of electronic data stated in the *Regulations of the Supreme People's Court on Several Issues Concerning Case Trial by Internet Courts*. According to the contents of the electronic data storage letters, an electronic data storage letter is only a receipt for electronic data storage, not to be used as a notarial certificate which needs to be additionally applied for. Since the plaintiff is free to choose any notarization institution that stores the evidence, so the evidence has no credibility. In addition, according to the verification by the defendant, Baijiahao platform did not publish the article accused of infringement. Meanwhile, the defendant argues that Baijiahao platform only provides information storage space services but does not conduct substantive review, editing and recommendation of contents uploaded by users, thus the defendant did not commit any infringement.

The above facts are supported by the plaintiff' evidence to claim against the defendant's infringement, the court trial records, inquest records, and statements of the parties.

Three, facts related to the plaintiff's economic losses and reasonable expenses

1. In order to prove its reasonable expenses of RMB 560 incurred for this case, the plaintiff submitted the following evidences to this Court:

1) A webpage screenshot showing the charging standard of the Notarization Cloud Platform, stating that RMB 2.5 is charged for each webpage that is taken as evidence. The plaintiff took evidence for 12 webpages on this platform and spent a total of RMB 30 for this part.

2) A webpage screenshot showing the charging standard for IP360 process forensics is RMB 500 per time and a webpage screenshot showing the plaintiff has made the payment, based on which the plaintiff claims that it spent RMB 500 for the IP360 process forensics.

3) A webpage screenshot showing the charging standard for IP360 snapshot forensics is RMB 5 per time and a webpage screenshot showing the plaintiff has made the payment, based on which the plaintiff claims that it spent RMB 30 for the IP360 snapshot forensics of 6 evidences.

The defendant refuses to accept the above evidence.

2. The plaintiff claims that the defendant should compensate RMB 10,000 for its economic losses but did not submit evidence. The plaintiff claims that the Article Involved includes 4,511 characters and 15 graphs and that a higher compensation or punitive compensation should be awarded according to the provisions of the *Measures for Remuneration Payment for Use of Written Works*.

The above facts are supported by the evidence submitted by the plaintiff about the reasonable expenses, court trial records, and statements of the parties.

Four, facts related to the defendant's claim that it did not commit infringement

The defendant submitted the following evidence to the Court to prove that it did not commit infringement:

1. The printout of the result page of Baidu Search showing that "the article cannot be found for the time being" but not showing the name of the article, to prove that the article accused of infringement is not found on Baijiahao platform, and the defendant indicated that whether the article existed before could not be verified;

2. The *Visualization Analysis Report of Beijing's Culture, Sports and Entertainment Industry* created by the defendant using Alpha Intelligent Legal Operating System and searching some selected keywords, to prove that the text and graphs of the Article Involved were also generated by similar database software but not collected or compiled by the plaintiff itself.

3. Screenshots of the Article Involved showing that the Article Involved contains words "Wolters Kluwer," to argue that the plaintiff used the software to automatically generate the Article Involved;

4. Screenshots of relevant webpages of Beijing Guoxin Notary Office showing the notarization process of the Notary Office, to prove that the Notary Office and the Notarization Cloud Platform are two different organizations.

The plaintiff alleges that the above evidence can only prove that the article accused of infringement has been deleted but cannot prove that the article had not been published, and that the reports of other contents are irrelevant to the case.

The above facts are supported by the evidence submitted by the defendant, the court trial records, and statements of the parties.

This Court holds that:

The plaintiff claims that the defendant has infringed the copyright of the Article Involved while the defendant argues that the Article Involved does not constitute a work, that the plaintiff does not enjoy the rights of the Article Involved, and that the defendant did not provide the Article Involved to the public. Therefore, the focuses of the dispute in this case are: first, whether the plaintiff is the proper subject; second, whether the defendant has committed the alleged infringement act; and third, whether the defendant's argument that it did not commit infringement is well founded. The Court will make judgments separately based on existing evidence.

First, Whether the Plaintiff Is the Proper Subject in the Case?

The term "works" as mentioned in the Copyright Law refers to intellectual achievements in the fields of literature, art and science that are original and can be reproduced in some tangible form. Since the plaintiff claims that the Article Involved constitutes graphic works and written works, the Court will review the two points respectively.

(I) Does the graphs claimed by the plaintiff constitute graphic works?

Graphic works refer to drawings of engineering designs and product designs prepared for construction and production, as well as maps and sketches that reflect geographical phenomena or illustrate the principle or structure of things. To constitute works, graphs need to be original. So technical schemes, practical functions, operation methods etc. contained in drawings of engineering designs and product designs, as well as objective geographical elements and facts contained in maps and sketches, are not protected by the Copyright Law. In this case, the relevant graphs were made by the plaintiff based on the collected data and using relevant software. Although they show different shapes due to data changes, these differences are derived from data differences rather than creation. For the same data, different users would obtain the same graphs if applying the same software for processing; even if different software products are used, the expression of the same data should be the same as long as users display data in conventional graph types. Thus the above graphs do not meet the originality requirement of graphic works. The plaintiff claimed that it has artificially beautified the lines and colors of the above graphs but

failed to submit evidence to prove it. During an inquest, the Court compared the graphs in the Article Involved with the relevant figures in Big Data Reports 1 and 2 generated by Wolters Kluwer Database. The graph in the Article Involved on the distribution of the number of cases of the film industry accepted by Beijing courts at all levels and the figure in the "Court" part of the Big Data Report 1 are both histograms and both show that Chaoyang District People's Court accepted the largest number of cases, followed by Haidian District People's Court. But they show different numbers of courts and different numbers of cases accepted by each court. In addition to the differences between the above two graphs, other graphs in the Article Involved and other graphs in the Big Data Reports 1 and 2 are also different in terms of graphic data and graph types. However, these differences are caused by the selection of different data, software products or graph types, and cannot reflect the original expression of the plaintiff. Therefore, the graphs in the Article Involved do not constitute graphic works, the plaintiff's claim of copyright on these graphs are not well founded, and the Court will not support the plaintiff's claim in this respect.

(II) Does the text claimed by the plaintiff constitute written works?

Written works refer to novels, poems, essays, papers and other works expressed in written form.The following factors are generally considered when examining whether the relevant written content constitutes a work: (1) whether it is the creation of natural persons within the scope of literature, art and science; (2) whether it is expressed in written form;(3) whether it can be reproduced; and (4) whether it is original. In this case, the written content of the Article Involved involves the judicial analysis of the film industry, which falls in the scope of scientific creation. It is expressed in written form and can be reproduced. Therefore, the focus of dispute between the plaintiff and the defendant is whether the text of the Article Involved is original.

The Article Involved is a written expression of the overview of cases of film works accepted by Beijing courts, status of lawyer representation etc. within a certain period of time. The plaintiff claims that in order to create the Article Involved, it selected keywords corresponding to the creation purpose, used these keywords to search and screen data in Wolters Kluwer Database, sort out and analyze the judgment documents involved in the search results, and finally form the Article Involved. However, the defendant argues that the Article Involved is not original and cannot constitute a work since it was automatically generated by using the "Visualization" function of Wolters Kluwer Database, not obtained by the plaintiff through his own intellectual work.

Given the defendant's arguments, the Court should analyze and determine the nature of the analysis report automatically generated by Wolters Kluwer Database and the ownership of the rights and interests in the analysis report.

As to whether the analysis report automatically generated by Wolters Kluwer Database constitute a work, seen from the generation process, the analysis report automatically generated by selecting the corresponding keywords and using the "Visualization" function involves the judicial analysis of the film industry, conforms to the substantive requirements of form on written works, and reflects certain originality with the selection, judgment and analysis of relevant data. However, the Court holds that originality is not a sufficient condition for written works. According to the prevailing law, written works should be created by natural persons. Although with the development of science and technology, "works" intelligently generated by computer software are increasingly close to works of natural persons in content, form and even expression, it is inappropriate to break the basic norms of civil subjects if the intellectual and economic input of such software can be fully protected within the rights protection system of prevailing laws, given the actual level of technological and industrial development. Therefore, the Court holds that creation and completion by natural persons should still be a necessary condition for "works" defined in the Copyright Law. During the whole generation process of the above analysis report, two steps have seen the participation of natural persons: the software development step and the software use step. The software developer (owner) did not input keywords for search according to his needs, nor original were expression of their thoughts or feelings conveyed in the analysis report. Therefore, the analysis report should not be deemed as being created by the software developer (owner).Similarly, the software user only inputs keywords for search, so the analysis report automatically generated by using the "Visualization" function is not an original expression of the user's thoughts and feelings. So neither should the analysis report be deemed as being created by the software user. To sum up, neither the software developer (owner) nor the user should be the author of the analysis report. The analysis report is formed by Wolters Kluwer Database through input of keywords based on the algorithm, rules and templates. In a sense, it can be recognized that Wolters Kluwer Database "created" the analysis report. Therefore, though original, it is still not a "work" defined in the Copyright Law, since it is not created by a natural person. Wolters Kluwer Database cannot be recognized as the author and enjoys relevant rights stipulated in the Copyright Law. Regarding the signature of the analysis report, no one except its

creator can sign as the author, be it the software developer (owner) or the user. Instead, the logo of the software generating the analysis report shall be displayed in the report to indicate the report is automatically generated by the software, in order to protect the public's right to be informed, maintain good faith of the society, and be conducive to cultural communication.

However, that analysis report does not constitute a work does not mean that it can enter the public domain and be freely used by the public. The analysis report, produced with the input of both the software developer (owner) and the software user, has its communication value. The absence of protection of its rights and interests will be adverse to the communication of the input result (i.e., the analysis report), making it difficult to play the report's role. The software developer (owner) can charge software use fees or resort to other means to pursue benefits, for which the input in the software development has already been rewarded. So the developer would be less motivated to communicate the analysis report that is generated by the software user based on different use requirements and retrieval settings. Therefore, if the software developer (owner) is vested with the relevant rights and interests of the analysis report, it will not actively exercise these rights and interests, which would not be conducive to the development of cultural communication and scientific undertakings. By contrast, the software user, having invested through paid use and having the analysis report generated by setting keywords based on its own needs, is motivated to promote and would expect further use and communication of the analysis report. Therefore, the software user should be vested with the relevant rights and interests of the analysis report to encourage use and communication of the analysis report. Otherwise, the software will have less users. Even those who do use the software will be reluctant to further communicate such analysis reports. In the end, it would hinder the cultural communication and value play. As discussed above, software users cannot sign the analysis report as the author. However, they may use reasonable ways to indicate their ownership of relevant rights and interests, and to protect their legitimate rights and interests and the public's right to be informed.

Whether the Article Involved is automatically generated by Wolters Kluwer Database? In this case, in order to find out the relevant facts, the Court organized the two parties to conduct an inquest of the "Visualization" function of Wolters Kluwer Database. With the search keywords provided by the defendant, Big Data Reports 1 and 2 were automatically generated. A comparison shows thatboth the Article Involved and the Big Data Report1 use only one sentence to describe the number of cases of the film industry heard by Beijing courts, both suggesting that

Chaoyang District People's Court accepted the largest number of cases, followed by Haidian District People's Court. But they are expressed in different words and account for only a tiny part of the whole text. Apart from that, the Article Involved is completely different from Big Data Reports 1 and 2 in literal contents and expressions. Thus the text of the Article Involved was not automatically generated by the "Visualization" function of Wolters Kluwer Database but was independently created by the plaintiff. Combining its originality, the text shall constitute a written work. Therefore, the defendant's argument is not well founded.

(3) Whether the Article Involved is a Legal Person's Work

The Copyright Law of the PRC stipulates that the citizen who creates a work is its author. When a work is created according to the will and under the sponsorship and the responsibility of a legal person or other organization, such legal person or other organization shall be deemed to be the author of the work. In the absence of proof to the contrary,t he attribution of a work's ownership can be presumed according to its signature. In this case, the plaintiff claims that the Article Involvedis a legal person's work and that its copyright is vested in the plaintiff. The Court holds that according to the facts ascertained, the Article Involved was first published on the WeChat official account operated by the plaintiff with the signature of the plaintiff, without mentioning any other subject involved in its creation; the Article Involved is the first in a series of reports planned by the plaintiff, with the preface and advance notice part of the series of reports indicating that the Article Involved is the work result completed by the plaintiff; the contents of the Article Involved are also analysis and evaluation made from the perspective of the plaintiff; the plaintiff submitted a number of documents formed in the creation process, which on the whole can reflect the law firm's creation process of the Article Involved although some of the documents were stored after the publication of the Article Involved. Therefore, in the absence of proof to the contrary, the Court decides that the Article Involved is a legal person's work created by the plaintiff, who is the proper subject in the case and has the right to bring a civil lawsuit against the infringement.

Second, Whether the Defendant Has Infringed the Copyright of the Plaintiff

In this case, the plaintiff claims that the defendant is the operator of Baijiahao platform and, as the network service provider, has extremely strong control and management capabilities over the latter that provides services to enable content creators' content publishing, content monetization and fan management. The defendant argues that Baijiahao platform is an

information storage platform, to which the Court does not object. During the trial of the case, the plaintiff once claimed that the article accused of infringement was provided by a user of Baijiahao but later claimed that it was provided by the defendant. The Court holds that the possibility of the operator providing content services (works, performances, audio and video products etc.)while providing technical services such as information storage space services cannot be ruled out. Given that the plaintiff changed its claim alleging that the defendant provided the article accused of infringement, the Court will comprehensively review and determine the specific situation of the defendant's services based on available evidence.

(I) Does the Article Accused of Infringement Exist on Baijiahao Platform?

The Court holds that since the plaintiff claims that the defendant provided the article accused of infringement, it shall bear the corresponding burden of proof. Now that the plaintiff has submitted evidence and preliminarily proved that the article accused of infringement can be obtained through Baijiahao platform, the defendant shall bear the burden of proof if it insists that it did not provide the contents. In this case, the plaintiff submitted a screenshot of the webpage of the article accused of infringement, showing that there was the article accused of infringement on Baijiahao platform operated by the defendant. In order to ensure the authenticity of the forensics process and the integrity of the relevant webpage, the plaintiff fixed the webpage of the corresponding website with the "Static Webpage Forensics" function of the Notarization Cloud Platform, for which Beijing Guoxin Notary Office issued the corresponding electronic data storage letter. The Court holds that the electronic data submitted by the plaintiff have proved that there was the article accused of infringement on Baijiahao platform, so the plaintiff has fulfilled its burden of preliminary proof while the defendant should bear the civil responsibility of not providing proof since it has failed to submit any evidence to the contrary to prove that it did not carry out the above act. In this case, the defendant refuses to accept the authenticity of the corresponding electronic data on the ground that the plaintiff did not fix the above electronic data by notarization. The Court holds that the plaintiff's choice of the form of the above evidence submitted is based on factors such as the type of evidence and whether the preservation procedure is complicated or not. Although evidence supported by notarial certificates would be more authoritative, it cannot be considered that only evidence preserved by notarization is authentic. Since the defendant raised objection to the authenticity of the above electronic data, the Court will examine their generation, collection, storage and transmission process based on

cross-examination results to determine if there is any defect in the whole process.The electronic data submitted by the plaintiff were obtained by means of evidence collection, fixing and anti-tampering techniques such as blockchain. The main body generating the electronic data and the time of generation are clearly stated. The content of the electronic data is clear, objective and accurate, and can be verified by electronic fingerprint. Regarding the statement made in the storage letter, the Court holds that the content of the statement suggests that the notary office was undertaking the electronic data storage business but not evidence preservation through notarization. It should be an informative statement made by the notary office at the beginning of the new business rather than a suggestion that the authenticity of the above electronic data is in doubt. To sum up, the Court ascertains that at the time when the plaintiff collected evidence, the article accused of infringement existed on Baijiahao platform operated by the defendant.

(II) Nature of Services Provided by the Defendant to Users

Generally speaking, when a plaintiff brings a civil lawsuit, it should clearly state what kind of infringement the defendant has committed. In this case, when the plaintiff lodged the lawsuit, it claimed that a user of Baijiahao–Dianjinss provided the article accused of infringement. But before the end of the court debate, the plaintiff changed its claim, alleging that the defendant provided the article accused of infringement, despite no substantial change to the facts which it bases its lawsuit on. In order to find out the facts and apply the correct law, the Court conducted a comprehensive review of the nature of the defendant's acts.

According to the evidence such as webpage screenshots submitted by the plaintiff, the webpage of the article accused of infringement on Baijiahao platform bears Dianjinss' signature and brief introduction, which alone is not enough to identify Dianjinss as the provider of the article accused of infringement. The defendant, arguing that it only provides information storage space services, shall bear the burden of proof to prove it. However, the defendant did not provide evidence on the ground that the article accused of infringement does not exist on the platform. The Court holds that the defendant, as a network service provider, holds and manages relevant user information and information retained when providing relevant services. Now that the plaintiff has submitted preliminary evidence to prove the existence of article accused of infringement on Baijiahao platform, the defendant shall further provide evidence or clues, such as relevant evidence to prove whether the uploader of the article accused of infringement on Baijiahao platform exists or not, from the perspective of facilitating the Court to find out the facts

and facilitating the obligee to safeguard its legitimate rights and interests; and if the uploader exists, the defendant shall provide the user name and contact information of the uploader, as well as the IP address, uploading time etc. stored when providing technical services for the uploader, for the comprehensive review by the Court. In this case, since the defendant did not provide relevant evidence about the uploader, the Court will not admitits argument that the defendant only provides information storage space services in this case. The Court determines that the defendant provided the article accused of infringement to the public through the information network.

During the trial of this case, both parties agreed that the article accused of infringement no longer exists on Baijiahao platform and the plaintiff no longer requires the defendant to desist from infringement. To this the Court has no objection.

(III) Has the Defendant Infringed the Rights Enjoyed by the Plaintiff?

The defendant, providing without permission the content of the article accused of infringement on Baijiahao platform operated thereby to the public so that they may obtain such content at selected time and place, has infringed on the plaintiff's right of information communication on networks and shall bear corresponding civil liabilities. Therefore, this Court supports the plaintiff's claim for compensation for economic losses and will determine the amount of compensation according to the nature of the Article Involved, the defendant's subjective fault, the circumstances of the infringement, and other factors. The written content of the Article Involved involves highly professional judicial analysis and lots of characters. The defendant, as a well-known company in the industry, operates a wide range of services on Baijiahao platform. The defendant provided the article accused of infringement to the public just one day after the Article Involved was published on the plaintiff's WeChat official account. The Court does not support the plaintiff's claim that it enjoys rights to the graphs in the Article Involved. Given all this, the compensation claimed by the plaintiff is too high and will not be fully supported by the Court. The reasonable expenses incurred by the plaintiff to stop the infringement shall be borne by the defendant.

The plaintiff claims that the defendant has violated its right of authorship. The Court holds that the right of authorship is the right to claim authorship and to have the author's name indicated on his works. In this case, the plaintiff marked its name and "original" in the Article Involved after finishing its creation. However, in the article accused of infringement provided

by the defendant, not only the plaintiff's signature was deleted, but the word "Dianjinss" appeared, which is enough to lead the relevant public to mistake Dianjinssfor the author, thus infringing on the right of authorship enjoyed by the plaintiff. The defendant should apologize to the plaintiff in a reasonable way and eliminate the ill influence.

The plaintiff also claims that the defendant has violated its right of integrity. The Court holds that the right of integrity refers to the right to protect one's work from distortion and falsification. In this case, a comparison between the article accused of infringement on Baijiahao platform and the Article Involved on the plaintiff's WeChat official account shows that the former deleted the preface and retrieval overview created by the plaintiff for the whole series of works, the annual trend chart of the number of cases of the film industry, and the annotation part at the end of the Article Involved. The above contents are not the main contents reflecting the original expression of the Article Involved. The ideas expressed by the plaintiff are not distorted or falsified. Therefore, this Court does not support this claim of the plaintiff.

To sum up, in accordance with the provisions of Article 9, Item 2, Item 4 and Item 12 of Paragraph 1 of Article 10, Article 47, Article 48, and Article 49 of the *Copyright Law of the People's Republic of China*, the Court hereby rules as follows:

I. The defendant Beijing Baidu Netcom Science & Technology Co., Ltd. shall, within seven days from the effective date of this judgment, publish an apology statement on the homepage of Baidu Baijiahao platform (baijiahao.baidu.com) for 48 consecutive hours to eliminate the ill influence for the plaintiff Beijing Film Law Firm (the content of the statement must be reviewed by the Court. If the defendant Beijing Baidu Netcom Science & Technology Co. Ltd. refuses to perform this order, the Court will publish the main contents of the judgment in a nationwide newspaper at the cost of the defendant);

II. The defendant Beijing Baidu Netcom Science & Technology Co., Ltd. shall, within seven days from the effective date of this judgment, compensate the plaintiff Beijing Film Law Firm RMB 1,000 for its economic losses and RMB 560 for its reasonable expenses, totaling RMB 1560;

III. Other claims of the plaintiff Beijing Film Law Firm are dismissed.

Failing to perform any obligation of pecuniary payment within the period stated in the judgment, the defendant shall pay double interest for the debt for the period of deferred

performance in accordance with Article 253 of the *Civil Procedure Law of the People's Republic of China*.

The case acceptance fee of RMB 64 (paid in advance by the plaintiff Beijing Film Law Firm) shall be borne by the defendant Beijing Baidu Netcom Science & Technology Co., Ltd. and paid within 7 days from the effective date of this judgment.

If refusing to accept the judgment, either party may, within fifteen days since the date of service of the judgment, submit an appeal to the Court with copies prepared based on the number of the opposite party to appeal to Beijing Intellectual Property Court.

Presiding judge	Lu Zhengxin
Judge	He Cheng
Judge	Han Bing

Beijing Internet Court (Seal)
April 25, 2019

This copy is checked to be consistent with the original.

Judge Assistant	Lu Ning
Clerk	Li Minglei