

CASE NOTE: PEOPLE'S REPUBLIC OF CHINA

CASE NAME:

Rong-Shu-Xia Computer Ltd.
v China Society Publisher

NAME AND LEVEL OF COURT:

The First Intermediate
People's Court in Beijing

DATE OF VERDICT:

December, 2000

Brief facts

In April 2000, the China society publisher published a series of books with the theme of network life, consisting of five books. These books brought together a number of articles which had been previously published on the website of Rong-Shu-Xia Computer Ltd. Rong-Shu-Xia Computer claimed that the China society publisher infringed its exclusive publishing right over these articles, and required the China society publisher to stop publishing the books and asked for a remedy. It demonstrated that the authors of these articles had signed a copyright licensing contract with the company, the terms of which authorised Rong-Shu-Xia Computer to publish their articles at a national level and to license third parties to publish the articles. The China society publisher published the articles in the collection of five books without the consent of Rong-Shu-Xia Computer, and thus infringed its exclusive publishing rights.

The China society publisher claimed there was no infringement of the exclusive publishing right of Rong-Shu-Xia Computer. First, the China society publisher had signed the publishing contract with two editors-in-chief, Mr. Huaiyu Liu and Mr. Hongtao Li, one of the terms of which stated that if there was any copyright infringement, the editors will bear all the responsibility. Second, liability for the copyright infringement arising from the articles they collected and edited was with the editors, while the publisher did not have the duty to check with every author of the article that was collected in the book. Third, the works on-line are not protected by the copyright law. Fourth, editor-in-chief Mr. Huaiyu Liu had obtained the consent of the authors of the articles before Rong-Shu-Xia Computer. Fifth, Rong-Shu-Xia Computer is not a publisher which has been authorised by the national authority, and there is no law which allows the web site to enjoy exclusive publishing rights over materials posted on the web site.

Important evidential issues regarding the value of digital evidence in the court

The China society publisher provided the print copy of, and a disk upon which were stored, the e-mails which indicated that Mr. Huaiyu Liu contacted the authors of the articles and the reply e-mails from the authors.

However, the plaintiff questioned the authenticity and legitimacy of these e-mails and alleged that the content and date of the e-mails can be forged easily by a general computer expert; the content also contradicted the licensing contract of the authors with the plaintiff. The authors also gave evidence denying the authenticity of the e-mails and their contents.

The court's view regarding the evidential value of these emails

The court reached the conclusion that the mere existence of the e-mails cannot prove that the editors have obtained the consent of the authors. First, there is possibility that the e-mails can be forged. Second, the authors denied the e-mails in the court. Third, the defendant failed to prove the authenticity of the e-mails. Therefore, the evidential value of the e-mails was not recognised by the court, and without any further evidence, the claim that the editors obtained the authors' consent cannot be supported.

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