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# Chinese judicial justice on the cloud: a future call or a Pandora's box? An analysis of the 'intelligent court system' of China

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## ABSTRACT

The incorporation of information and communication technology as part of the process of Chinese judicial reform has appeal to both legislators and policy-makers who focus on its positive features. The launch of the 'intelligent court system' represents part of this process to equip the judiciary with the most up-to-date modern technology that aims to reshape case resolution procedure by way of moving the legal process online. The central aspect of this is to establish an online case resolution process through an 'e-court' or 'online court', which will shift the judicial process towards working within the expectation of modern commercial practice and technological capacity. However, the realisation of the ideals underlining the project is not without problems. An examination of the two different models introduced for the pilot e-court system, indicates that insufficient consideration has been given with regards to its potential adverse effects and that more thought needs to be given to how these issues should be addressed in order to improve the role and function of online courts in China.


## KEYWORDS

online court; judicial reform; big data; cloud technology; informative management; ODR

## 1. Introduction

### 1.1. E-commerce and ODR in China

Online dispute resolution (ODR)<sup>1</sup> is, by no means, a fresh concept. It emerges from the introduction of information and communication technology (ICT) into the processes of dispute resolution, including both alternative dispute resolution (ADR) and traditional judicial dispute resolution processes.<sup>2</sup> The emergence and development of ODR in recent

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<sup>1</sup>Scholarship on this topic is immense. See generally Maria Mercedes Albornoz and Nuria Gonzdzlez Martin, 'Feasibility Analysis of Online Dispute Resolution in Developing Countries' (2013) 44 *Inter-Am L Rev* 39. Nicole Gabrielle Kravec, 'Dogmas of Online Dispute Resolution' (2007) 38 *U Tol L Rev* 125. Ethan Katsh and Colin Rule, 'What Do We Know and Need to Know about Online Dispute Resolution' (2016) 67 *SC L Rev* 329. Anjanette H Raymond, 'Yeah , But Did You See the Gorilla? Creating and Protecting an Informed Consumer in Cross-Border Online Dispute Resolution' (2014) 19 *Harv Negot L Rev* 129. Bruce L Mann, 'Smoothing Some Wrinkles in Online Dispute Resolution' (2009) 17 *Intl J L IT* 83. Kananke Chinthaka Liyanage, 'The Regulation of Online Dispute Resolution: Effectiveness of Online Consumer Protection Guidelines' (2012) 17 *Deakin LR* 251. Dafna Lavi, 'Three is Not a Crowd: Online Mediation-Arbitration in Business to Consumer Internet Disputes' (2016) 37 *U Pa J Intl L* 871.

<sup>2</sup>See Pablo Cortés, *Online Dispute Resolution for Consumers in the European Union* (Routledge, 2010) 53.

decades largely benefits from the fast growth of electronic commerce around the globe. It is stated in a recent survey that nearly 1.8 billion people are now engaged in e-commerce worldwide, accounting for 24.3% of the world population in 2015.<sup>3</sup> Online business dilutes territorial boundaries, and provides easy access to a vast variety of goods and services regardless of the location of parties.<sup>4</sup> In such an environment, traditional forms of dispute resolution, which require paper-based filing systems and the presence of parties in a courtroom, become less practical and are inefficient.

In China, the benefits that e-commerce brings to business, most notably the lowering of costs and increased accessibility,<sup>5</sup> have been exploited massively. According to the latest survey conducted by the China Electronic Commerce Research Centre (CECRC), the market size of e-commerce in 2015 has reached an astounding \$2.73 trillion,<sup>6</sup> and more than 460 million people are classified as regular digital buyers.<sup>7</sup> In other words, 'online shopping' currently constitutes an essential component of life, especially among younger Chinese.<sup>8</sup>

Such a large-scale market and the enormous number of users can also generate a noticeable amount of disputes arising from online. This in turn leads to questions about the best form of dispute resolution in this context. Alternatives to traditional dispute resolution, such as the introduction of ODR, was discussed in China as early as 2003.<sup>9</sup> ODR has been gradually put in place in various forms, including online mediation,<sup>10</sup> online arbitration,<sup>11</sup> an online consumer complaint system (often referred to as negotiation),<sup>12</sup> and finally the emerging online court system.

## 1.2. Judicial reform and informatisation of Chinese courts

Over the past two decades, the Chinese judicial system<sup>13</sup> has undergone robust reform.<sup>14</sup> Driven by rapidly developing technology, the latest developments in China's judicial reform are fuelled by the technological power generated by the 'big data era'.

According to the 2015 Annual Working Report of the Supreme People's Court of the People's Republic of China (SPC), Chief Justice Qiang Zhou noted that an important part of judicial reform was 'to advance judicial publicity and to put judicial justice under the sun'.<sup>15</sup> This is the area where the Chinese judiciary aims to apply ICT to reshape the conventional way in which justice is delivered and the way in which the judiciary is managed.

<sup>3</sup>See 'Digital Buyer Penetration Worldwide from 2014 to 2019' <<http://www.statista.com/statistics/261676/digital-buyer-penetration-worldwide/>> last visited 15 July 2016.

<sup>4</sup>See Faye Wang, *Internet Jurisdiction and Choice of Law: Legal Practices in the EU, US and China* (CUP, 2010) 9.

<sup>5</sup>The highly efficient and affordable price of logistics service also plays an essential role in advancing e-commerce of China. The figure includes both B2B and B2C sales. See 2015 Annual Report of Chinese E-commerce Market Statistics <<http://www.100ec.cn/zt//2015ndbg/>> last visited 15 July 2016.

<sup>7</sup>According to the 37th Report of Internet Development in China, released by CNNIC, about half of the whole regular online users, 688 millions, have more or less some online shopping experience, <<http://www.cnnic.net.cn/hlwfzyj/hlwxzbg/201601/P020160122469130059846.pdf>> page 1, last visited 15 July 2016.

<sup>8</sup>According to the 37th Report of Internet Development of China, released in January 2016, about 75% of online users fall in the age group between 10 and 39 <<http://www.cnnic.net.cn/hlwfzyj/hlwxzbg/201601/P020160122469130059846.pdf>> page 42, last visited 15 July 2016.

<sup>9</sup>See YP Xiao and XS Xie, 'ORD as New Mode for Commercial Dispute Resolution', (2003) 6 Chinese Leg Sci 147.

<sup>10</sup>Notably the mymaini.net <<http://www.ca-maimai.com/tiaojie/>>.

<sup>11</sup>Online arbitration is now available at China International Economic and Trade Arbitration Commission (CIETA) <<http://www.cietacodr.org/>>.

<sup>12</sup>See Y Ding, 'Online Resolution of E-consumer Disputes – A Case of Taobao Platform' (2015) 17 Intl L Rev Wuhan U 208.

<sup>13</sup>For a general description of the Chinese judiciary system, see Jonathan Lippman, 'Towards a Unified Court System: A Comparison Between New York State Courts and Chinese Courts' (2015) 8 TCLR 2.

<sup>14</sup>See generally X Xu, YH Huang and XT Wang, 'Annual Report on China's Judicial Reform 2015' (2016) 34 Trib Pol Sci L 104; *The Reform Outline of People's Court in the 4th 5-Year Plan (2014–2018)*.

The overall project commenced in 1996, at the Working Conference on Communications and Computers of People's Courts.<sup>16</sup> Twenty years has passed since then, and judicial reform in the present phase has entered into a 'crucial period of strategic opportunities',<sup>17</sup> where the application of technology in courtrooms could mark a huge difference.

ICT now becomes an essential component in the advancement of Chinese judicial reform.<sup>18</sup> Different stages of this reform process are referred to as 'People's Court Informatisation 1.0, 2.0, and 3.0',<sup>19</sup> terminology borrowed from the concept of Web 1.0, 2.0, and 3.0.<sup>20</sup>

Stage 1.0 represents the 'readable' phase where the transmission of information is one-sided, with flat data. Examples of this kind are to be found in the launch of three official websites, 'Chinese Judicial Process Information Online',<sup>21</sup> 'Chinese Judgments Online',<sup>22</sup> and 'Chinese Enforcement Process Information Online'.<sup>23</sup> The main purpose of those online facilities is to deliver information, so as to increase transparency in the judicial process and provide easy access for the general public. It has proven to be fruitful so far.<sup>24</sup>

Stage 2.0 refers to the 'writable' phase where communication and interaction between users and providers are available on a large scale. One of the biggest achievements completed in Stage 2.0 is the '12368 Litigation Services Platform'.<sup>25</sup> The platform provides a wide range of services which allow present or prospective litigants to contact lawyers and judges for updates on specific procedures, receiving consultation, and making complaints.

Represented by the full construction of the 'Scale Project'<sup>26</sup> (System Engineering on National Judicial Information), at the end of 2015, it is recognised that the aim of building the peoples' court system featured by correlation and communication have been substantially achieved.<sup>27</sup> It is now reaching the point where a step forward to the higher level of integration and comprehensiveness of the 3.0 stage is required. To be more specific, the Stage 2.0 is characterised by the following three aspects:<sup>28</sup>

<sup>15</sup>The 10 features of Chinese judicial reform include 'registration system for case-filing', 'circuit court', 'cross-district court', 'IP court', 'accountability of judges', 'reforming the enforcement procedure', 'harmonizing choice-of-law', 'classified management of personnel', 'advancing the reform of people's juror', and finally 'publicity of judicial justice'. See <[http://news.xinhuanet.com/politics/2016lh/2016-03/20/c\\_1118384470\\_2.htm](http://news.xinhuanet.com/politics/2016lh/2016-03/20/c_1118384470_2.htm)>.

<sup>16</sup>Supreme People's Court [1996] No. 54, 'The Project of Establishing Computer Information Network System among People's Courts'.

<sup>17</sup>See Y Xiao, 'The Reform of the Judicial System in China is confronted with a Crucial Period of Strategic Opportunities' (2015) 10 Front L China 1.

<sup>18</sup>The Reform Outline of People's Court in the 4th 5-Year Plan (2014-2018) listed a total 65 reform projects, 35 out of which will more or less depend on ICT, see SPC [2015] No. 3.

<sup>19</sup>See *Series Reports of National Think Tank: Third Party Evaluation Report on the Informatisation of Chinese Courts*, issued by Chinese Academy of Social Sciences (Chinese Social Sciences Press 2015). Also See 'From 2.0 to 3.0: Informatisation of People's Court Reform' <[http://www.legaldaily.com.cn/xwzx/content/2016-04/12/content\\_6583771.htm](http://www.legaldaily.com.cn/xwzx/content/2016-04/12/content_6583771.htm)>.

<sup>20</sup>Briefly speaking, 'Web 1.0 (cognition) is a tool for thought; Web 2.0 (communication) is a medium for human communication; and Web 3.0 (cooperation) technologies are networked digital technologies that support human co-operation'. C Fuchs, *Internet and Society: Social Theory in the Information Age* (Routledge, London 2010) 101. See also Fuchs, Christian, Hofkirchner, Wolfgang, Schafranek, Matthias Raffl, Celina et al. 'Theoretical Foundations of the Web: Cognition, Communication, and Co-Operation. Towards an Understanding of Web 1.0, 2.0, 3.0' (2010) 2 *Future Internet* 41.

<sup>21</sup><<http://splcgk.court.gov.cn/zgsplcxgkw/>> last visited 28 July 2016.

<sup>22</sup><<http://wenshu.court.gov.cn/>> last visited 28 July 2016.

<sup>23</sup><<http://shixin.court.gov.cn/>> last visited 28 July 2016.

<sup>24</sup>Up until February 2016, People's courts nationwide have published over 1.5 million judgments, 3.5 million pieces of information about the defendant in the enforcement procedure, and live broadcasted 130 thousands of judicial hearings through the above mentioned websites, according to the Annual Working Report of SPC 2015.

<sup>25</sup><<http://www.gzcourt.gov.cn/12368/>> last visited 28 July 2016.

<sup>26</sup><<http://www.chinacourt.org/article/detail/2010/11/id/437165.shtml>> last visited 28 July 2016.

<sup>27</sup>See The Annual Working Report of SPC 2015.

<sup>28</sup>See *Series Reports of National Think Tank: Third Party Evaluation Report on the Informatisation of Chinese Courts*, issued by Chinese Academy of Social Sciences (Chinese Social Sciences Press, 2015) 10–15.

- (1) The construction of information infrastructure, which generates a linked network through administrative intranet, local network of courts, specialised extranet, and confidential intranet.
- (2) Ten computer applications that are put in use for the purpose of supporting judicial activities, enforcement procedure, and administration.
- (3) A breakthrough in the integrated management of data, covering judicial activities, personnel management, and administration.

The process of judicial reform now aims for a higher purpose at the 3.0 stage. This involves the integration of ICT into the daily operation of individual courtrooms. It is the 'executable' phase where dynamic applications, interactive services, and interaction among different sectors facilitate the resolution of cases. It is stated in the calendar of the SPC that by the end of 2017,<sup>29</sup> the informatisation of the people's court should reach the ideal 3.0 stage. Similar to the 'Scale Project', the completion of the 3.0 stage will also be reflected in the related project that establishes an 'intelligent court system' in China.

## 2. The 'intelligent court system' in the 'big data era'

The beauty of the big data era lies in the opportunities it provides to discover the riches in the large amount of data that has been collected intentionally or unintentionally. The time seems to be ripe for big data analysis to be fully embedded into China's judicial system. However, in the march towards Stage 3.0, the judiciary seems to possess enormous confidence in harnessing new technology. As is the case in most scenarios, the more powerful a tool is, the more dangerous it can be. The adverse consequences of the adoption of this approach must also be considered and will be discussed further below.

### 2.1. Definition

The phrase the 'intelligent court' was officially introduced in the Annual Working Report of the SPC in 2015, delivered by Chief Justice Zhou Qiang on 13 March 2016. Ideally, the 'intelligent court system' should

make full use of technologies such as internet, cloud computing, big data, artificial intelligence and so on, to promote the modernization of trial system and judgment capability, so as to achieve the highly intellectualized operation and management of the people's court.<sup>30</sup>

The word 'intelligent' in this context refers to three key areas:

- (1) Intelligent case resolution
- (2) Intelligent office administration
- (3) Intelligent personal evaluation.

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<sup>29</sup>See Working Plan of The Annual Working Report of SPC 2015, and *The Reform Outline of People's Court in the 4th 5-Year Plan (2014–2018)*.

<sup>30</sup>See 'Informatisation of People's Court 3.0: Taking the Wind of Intelligent Court' <<http://finance.sina.com.cn/sf/news/2016-04-12/111026885.html>> last visited 25 July 2016.

This article focuses on the first of these, as it constitutes the core value of the whole project, although there will be some reference to the other two areas.

## 2.2. The project

The ultimate goal of the project is to deliver judicial justice on an individual case basis so as to achieve social fairness and raise the judicial authority in the public.

In 2015, SPC launched the project 'online case resolution' or 'e-court', and it is considered that judicial ODR represents the future direction of informatisation of Chinese courts.<sup>31</sup> The SPC has selected two People's High Courts, Jilin and Zhejiang, situated respectively in northern and south eastern China, to initiate the pilot programs within their jurisdictional reach.

## 3. Provisional developments in pilot e-courts

One year on, interestingly enough, the two High Courts have adopted rather different approaches in designing their respective e-court systems. The prediction is that the SPC will take serious account of the practical results reflected in the implementation of the two types of e-courts, and then design an appropriate form of e-court at the national level. In this regard, the two models of the e-court may represent the potential future of Chinese courts in adjudicating cases. Therefore, a further evaluation of the performance of the courts under the two models requires further analysis.

### 3.1. Model 1 – e-court in Jilin Province

Upon the launch of the 'intelligent court system' in 2014, Jilin People's High Court initiated the 'Jilin E-Court Website'<sup>32</sup> in 2015. The main idea of Jilin's attempt is to move as many offline activities up to the online space as possible. Currently, services provided by the system include: opening a proceeding, making judicial payment, being served of electronic documents, making complaints, filing petitions, submission and exchange of evidence, 'cloud conference',<sup>33</sup> online hearings, online mediation, online enforcement, and online judicial auction.<sup>34</sup> The presumable merits of online adjudication will facilitate litigants, lawyers as well as judges, as it substantially lowers the barriers which discourage people from going to the courtroom. The central idea is to 'let information do the leg work on the cloud'.

#### 3.1.1. Signature features

For litigants, their access towards the website allows them to acquire information, participate in a procedure, and provide feedback. For judges, the website offers an alternative way to perform their role. The e-court system established by Jilin People's High Court has several distinctive features:

<sup>31</sup>See *Blue Book of Rule of Law: Annual Report of China's Rule of Law 2016* (China Social Science Press) 34.

<sup>32</sup><<http://www.e-court.gov.cn/>> last visited 29 July 2016.

<sup>33</sup>The expression is used in the website, but it refers to a similar thing with teleconference.

<sup>34</sup>See <<http://my.e-court.gov.cn:8090/login/pro.htm?url=%2Fpro%2FuserInfo.htm>> last visited 29 July 2016.

### (1) Full coverage of caseload

The online court system is applicable for all cases which fall within the scope of the jurisdiction of 93 courts<sup>35</sup> in Jilin Province, including civil, criminal, and administrative proceedings as well as enforcement procedures. Litigants at the first instance of a trial, appeal, retrial, and petitions can initiate proceedings in the online system.

### (2) Twenty-four hour non-stop services

The online facilities allow litigants to send requests and submit documents outside 9 am to 5 pm working hours. However, the statement conveys something more than an eye-catching expression. The judicial activities are also largely facilitated on behalf of judges at the same time. An office mobile application is made available for judges. All the data and information are simultaneously updated with that held in online system, thus enabling judges to respond more efficiently at their earliest convenience, follow up and conduct some actions, for instance, replying to requests, setting the dates for hearings, and sending documents through the application, no matter where they are, and when it is. Judges in effect become always on-call, and hence 'non-stop'.

### (3) Fully traceable procedures

Every step in the procedures will leave a trace in the system, which integrates with the overall adjudication procedures and the enforcement of judgments. All information generated along the process will be available for relevant parties engaged in the litigation. Selected cases will be reported to the general public,<sup>36</sup> so as to achieve a higher level of judicial transparency.

### (4) Comprehensive cooperation among different sectors

The e-court system also collaborates with other relevant sectors involved in judicial procedures, the most notable being the public prosecution organ, the police, and the judicial administrative organ.<sup>37</sup> The establishment of collaborative information sharing platforms enables the e-court to conduct online hearings in criminal cases, and acquire personal information for enforcement procedures<sup>38</sup> in a more accurate, timely, and efficient manner.

### (5) Subsidiary to the traditional procedure

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<sup>35</sup>Those 93 courts include one High Court, 17 intermediate courts, and 75 district court, a full coverage of all people's court situated in Jilin Province. See 'List of Jilin People's Court' <<http://jlfy.chinacourt.org/article/detail/2015/12/id/1767872.shtml>> last visited 29 July 2016.

<sup>36</sup>In the last year, 326,655 cases are published in online judgments website of Jilin Province. See Annual Working Report of Jilin People's High Court 2016 <[http://www.jlrd.gov.cn/zt1/rdhyzt/ljhy/jlsdsyjrdschy\\_56366/wjbg/201601/t20160128\\_2153052.html](http://www.jlrd.gov.cn/zt1/rdhyzt/ljhy/jlsdsyjrdschy_56366/wjbg/201601/t20160128_2153052.html)>. However, it remains unclear that on what basis would a case be selected.

<sup>37</sup>It is also a governmental organ, usually including prisons and detention houses.

<sup>38</sup>The lack of access to personal information of a large number of offenders has become a significant reason that leads to the long-standing problem of difficulties in enforcing judgments in China.

The function of the e-court system, at present, is only to facilitate some parts of the judicial process, not to fundamentally transform the manner in which a case will be solved. Therefore, it is not necessary for a case opened online to be completely resolved online. The current practice remains that most substantial hearings would be conducted in person in a courtroom, whereas other auxiliary steps, such as submitting documents and pre-trial negotiations, will be conducted online, through either asynchronous<sup>39</sup> or synchronous communication.<sup>40</sup> In a sense, parties have the decisive power to move a hearing offline even though it is opened online.

The observation made above is only based on current development of the website. There are more services on the way, including the mock trial,<sup>41</sup> judicial data analysis, and the personal assessment of judges.<sup>42</sup>

### 3.1.2. Results

After a full year since the establishment of first pilot e-court in mainland China, there are positive results that have been achieved.

Firstly, the idea of the e-court has been widely embraced among the general public. According to the Annual Working Report of Jilin People's High Court 2016,<sup>43</sup> a total 25,854 cases have been initiated through the online court system, and 94.2% of those cases are first instance civil cases, accounting for 32.5% of the overall civil cases heard by courts situated in Jilin Province. Also it is indicated in the report that a total of 21,876 cases<sup>44</sup> have been accepted, and 66% of those cases were concluded so far.<sup>45</sup>

Additionally, efficiency has been attained in a tangible form through a huge drop in the average time taken in adjudicating online cases in comparison with a traditional hearing. The reduced time is to be attributed largely to two reasons. One, the submission and exchange of documents through the online system, and the online payment of judicial fees, largely save the time of litigants. Secondly, in cases where parties attend main hearings which take place in an actual courtroom, the overall time required for the hearing is substantially shortened, since the main issues and some minor disputes have been discussed and solved during the pre-trial negotiations held online.

## 3.2. Model 2 – e-commercial court in Zhejiang Province

In April, 2015, as the other limb of the pilot project, Zhejiang High People's Court initiated the establishment of an e-court system in four selected lower courts for disputes relating to e-commerce in particular.<sup>46</sup> The launch of the new e-commercial court proved to be

<sup>39</sup>This is usually used for pre-trial hearings, in an image-text mode.

<sup>40</sup>Actual trial hearings should be conducted through 'cloud-conference', a synchronous teleconference.

<sup>41</sup>Those services are listed in the website, but the content are not fully accessible.

<sup>42</sup>It is reported that courts in Jilin Province have started to incorporate the data generated in the process of online courts for the purpose of judges' performance assessment. See *Blue Book of Rule of Law: Annual Report of China's Rule of Law 2016* (China Social Science Press) 35.

<sup>43</sup>It is delivered by Changsong Wang, President of People's High Court of Jilin in 28 January 2016, at The Annual People's Congress of Jilin Province <[http://www.jlrd.gov.cn/zt1/rdhyzt/ljhy/jlsdsyjrdscy\\_56366/wjbg/201601/t20160128\\_2153052.html](http://www.jlrd.gov.cn/zt1/rdhyzt/ljhy/jlsdsyjrdscy_56366/wjbg/201601/t20160128_2153052.html)> accessed 29 July 2016.

<sup>44</sup>Ibid.

<sup>45</sup>Presumably, the balance of about 4000 represents cases that were rejected by courts for lack of jurisdiction, but a more detailed information is currently not available through public access.



welcomed by the public. Up until November 2015, a total of 406 case applications were received by the e-court system and 8 cases were concluded, during a period of only 6 months after its implementation.<sup>47</sup>

Compared with the practice in Jilin, Zhejiang conducted a more radical approach which could change the conventional perception of how a civil case should be resolved by the judiciary. The e-commercial court no longer simply aims at moving some steps in a traditional lawsuit to the online space to secure a higher degree of proficiency and expediency; rather, it is designed to provide a one-stop case resolution process where no offline activities would even be needed from the opening of a proceeding until a judgment is finally enforced. All steps could be finished upon a series of mouse clicks within a short period of time.

This becomes possible because of the collaboration between Zhejiang High People's Court with Alibaba Group Holding Ltd,<sup>48</sup> the e-commerce giant in China. Currently, the Alibaba Group is engaged in the Zhejiang e-commercial court project in the following ways:

#### (1) Registration

The e-court system is only open to certified individuals. Users need to provide details of the account held in Alipay,<sup>49</sup> affiliated with Alibaba, as part of the certification procedure, at the time of their registration with the e-court website.

#### (2) Scope of jurisdiction

The e-commercial court only has a comparatively limited jurisdiction. If it is a dispute arising from online sales, the e-court can only exercise jurisdiction if the sale is conducted on Taobao or Tmall<sup>50</sup> shopping platforms, both of which are subsidiary companies of Alibaba.

#### (3) Examination of evidence

Specifically, for cases arising from online sales disputes on the Taobao or Tmall platforms, the examination of evidence, to a great extent, relies on the record held in the system, thus access to first-hand evidence can be made readily available.

#### (4) Enforcement of judgments

A payment order confirmed by the e-court now can be enforced immediately if the details of the Alipay account of the debtor is acknowledged. Furthermore, Sesame Credit,<sup>51</sup> operated by an affiliate of Alibaba, will provide credit checking for the person

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<sup>46</sup>See Zhejiang People's High Court on Approval of Establishing Electronic Commercial Courts in Four Courts, including Hangzhou Intermediate People's Courts, [2015] No. 43 <<https://www.yuncourt.com/portal/main/domain/lassenNewsNoticeInfo.htm?spm=0.0.0.0.PjFVnM&securityId=yMdxWuBf62lvShjDbHE0kA>> last visited 29 July 2016.

<sup>47</sup>See 'Establishment of Intelligent Court – A Collaboration with Alibaba Group' <[http://www.zjcourt.cn/art/2015/11/24/art\\_82\\_8843.html](http://www.zjcourt.cn/art/2015/11/24/art_82_8843.html)> last visited 29 July 2016.

<sup>48</sup>Its gross merchandise volume in 2016 has reached RMB 946 billion, with over 400 million active buyers. See <[http://www.alibabagroup.com/en/ir/Alibaba\\_Financials\\_and\\_Metrics\\_Eng.pdf](http://www.alibabagroup.com/en/ir/Alibaba_Financials_and_Metrics_Eng.pdf)> last visited 29 July 2016.

<sup>49</sup>Alipay is a third-party online payment platform, and it currently has more than 400 million certified users who use its services on a regular base. See <<https://ab.alipay.com/i/jieshao.htm>> last visited 29 July 2016.

<sup>50</sup>Taobao and Tmall are popular online retail shopping platforms, with dominant position in the relevant market.

<sup>51</sup>Sesame Credit is an independent, third party credit scoring system which takes account of the social activities and network into the scoring system.

in an identified payment order on a regular basis, and the activities of the person will then be subject to prospective restrictions imposed by other Alibaba services, such as Alipay, Taobao, Tmall, etc.<sup>52</sup>

(5) Judicial auction

E-courts in Jilin and Zhejiang are similar in this regard. Taobao is selected as outsourcing parties to provide an open and transparent platform for the courts to conduct judicial auctions. In 2015, over 99.8% of litigation property was sold by way of the Taobao platform by judicial auction, with a higher than average premium acquired.<sup>53</sup>

(6) Additional data services

Apart from the above-mentioned services, Alibaba Cloud,<sup>54</sup> also provides the e-court with data storage and cloud computing services. External experts in AliCloud together with the judiciary, will likely collaborate in the future on how ‘big data analysis’ will enable the evolution of judicial practice.

The partnership between Alibaba Group and Zhejiang High Court is thus a comprehensive package. It also demonstrates the enormous degree to which the private sector has penetrated judicial processes. The dynamic, integrated, and systematic operation of all-rounded services of the Alibaba Group, will now be reflected in Zhejiang e-commercial courts in a similar fashion. Unfortunately, it remains unclear as to the full extent to which Alibaba is involved in this, due to the lack of detailed information available for public access.

A potential conflict of interest could also easily be raised in such circumstances, since Alibaba, as the biggest online shopping platform in China, could itself be a party in an online case.

**3.3. Comparison of the two models**

Overall, model 1 focuses on the potential of the e-court on case-management in addition to traditional resolution, whereas model 2 attempts to develop an e-court system as a separate, alternative means to traditional resolution. The different features can be summarised in the following table:

Differences	Models	
	Jilin e-court	Zhejiang e-commercial court
Jurisdiction	Broad 1. Civil, criminal, and administrative cases	Limited Only selected civil and commercial disputes <sup>55</sup>

(Continued)

<sup>52</sup>For example, Alipay may change the limits on the amount of money a person could spend online accordingly as his credits rate held in Ant Financial fluctuates.

<sup>53</sup>See *Annual Working Report of Zhejiang People’s High Court 2016* <[http://www.zhejiang.gov.cn/art/2014/1/24/art\\_32591\\_1090436.html](http://www.zhejiang.gov.cn/art/2014/1/24/art_32591_1090436.html)> last visited 29 July 2016.

<sup>54</sup>Alibaba Cloud offers reliable and secure cloud computing services and solutions at competitive prices’.

<sup>55</sup>The e-court at first can only exercise jurisdiction over the disputes relating to e-commerce, but its jurisdictional scope has expanded recently. See ‘In the Search of Online Dispute Resolution for Road Accident Liabilities’ <[http://www.zjcourt.cn/art/2016/3/14/art\\_104\\_9415.html](http://www.zjcourt.cn/art/2016/3/14/art_104_9415.html)> last visited 29 July 2016.

Continued.

Differences	Models	
	Jilin e-court	Zhejiang e-commercial court
	2. First trial, appeal, and retrial 3. Petition and complaint	1. Four types <sup>56</sup> of disputes relating to e-commerce 2. Divorce and maintenance 3. Road accident liabilities 4. Contractual disputes
Procedure	1. No compulsory pre-trial mediation 2. Date of arrival for electronic-service of certain documents <sup>57</sup>	1. Compulsory pre-trial mediation <sup>58</sup> 2. Postal rule for electronic-service of documents <sup>59</sup>
Conversion between online/offline	The conversion between online/offline methods is more flexible in Jilin e-court	Under two circumstances, the online procedure will be declined <sup>60</sup> : 1. Parties refuse to attend the compulsory mediation 2. Defendant refuses the online procedure or cannot be reached
Coverage of courts	Full coverage of all people's court in Jilin Province	Only designated courts 1. 12 district courts 2. 1 intermediate court <sup>61</sup>
Allocation of risks	Strict exemption clauses in e-court service agreements, according to which, the courts will not be liable for any losses or damages caused by services provided a third party, <sup>62</sup> by fault of the litigants, <sup>63</sup> or incurred during the time online services are suspended, nor will the court guarantee on any forms of services provided, results delivered, <sup>64</sup> or the accuracy, effectiveness, security, integrity of external link provided for the convenience of the litigants <sup>65</sup>	It is implied in 'online hearing instructions' that parties should bear the risk that the online services may be interrupted.

#### 4. Future debates

Given the early days of the 'intelligent court system', it is appropriate to reflect upon several issues that might become important over time. While new technology offers many ways of improving access to justice in China, as with any country and the adoption of technology by its legal system, it is also important to be aware of any possible pitfalls in

<sup>56</sup>The four types include disputes relating to sales, copyright, trademark, and small claims of internet financing.

<sup>57</sup>If parties agree to bring the case in online court, then they will also agree on the service of documents by electronic means. Litigants are served as soon as they receive the documents. Awards, judgements, and conciliation agreement cannot be served by electronic means. Art 11 of Service Agreement of Jilin E-court Platform <<http://www.e-court.gov.cn:8090/login/protocol.htm>> last visited 29 July 2016.

<sup>58</sup>It is required that upon the application of opening an online case, both parties should attend the mediation which will last for 15 days, before the case is officially accepted. If defendant refuses to attend mediation, or cannot be reached, the case will be rejected and subject to standard procedure.

<sup>59</sup>If parties agree to bring the case in online court, then they will also agree on the service of documents by electronic means. Litigants are served as soon as the court sends out the documents.

<sup>60</sup>Art 2 and 3 of Guidance for Opening an Online Civil Procedure in Zhejiang e-commercial court.

<sup>61</sup>The Hangzhou Intermediate People's Court shall have jurisdiction over all appeals raised for online adjudicated cases.

<sup>62</sup>Art 14 of Service Agreement of Jilin E-court Platform.

<sup>63</sup>Art 15 of Service Agreement of Jilin E-court Platform.

<sup>64</sup>Art 27 of Service Agreement of Jilin E-court Platform.

<sup>65</sup>Art 28 of Service Agreement of Jilin E-court Platform

its use. Systems of justice embed important values and the application of technology cannot be used as an excuse to marginalise those values.

#### **4.1. Instrumentalised judges<sup>66</sup>**

Currently, it seems that litigants do not express concerns about online cases being decided by automatically processed systems as for many such online activity already governs much of their lives.<sup>67</sup> For the moment, actual judges, applying human intellect and discretion, continue to deliver the decisions that are then put on the cloud. Nonetheless, it should be observed that the evolution of the intelligent court system may in time alter the nature of judicial decision-making by virtue of the manner in which the technologies being used lead to a re-casting of the judicial function.

For example, suppose in the near future a judge is able to see the analytical statistics of a certain type of case and how over time he or she decides such cases. His personal assessment of a specific case could then be based on data collected about him or her in, say, the number of the judge's decisions that are overturned on appeal. To avoid such an outcome the judge could be influenced by a desire to avoid that occurring than the application of his or her view of the applicable law in a more impartial sense. In other words, the analytics introduce a factor that has more to do with the way in which certain decisions reflect on the professional competence of the judge than consideration of the individual merits of the case. More generally, this application of technology leads eventually to a system that relies more on patterns of judicial decision-making that value consistency, than an approach that values the application of human discretion and tailoring decisions around the differences in each case.

It can be argued that there must be sound legal reasons to support the findings indicated by the data, and that this justifies the need for a judge to follow the same path. However, this brings us to the possibility that at some point in the future the answer to a case no longer lies in an understanding of law, but in the algorithm<sup>68</sup> statistics used to interpret the raw data of a case.

#### **4.2. Inequality in another form**

Ideally, the implementation of the intelligent court system should provide a convenient and ready access to the courts by a wider range of the public, especially individuals who would have given up seeking remedies from judiciary because of the inconvenience incurred by an expensive lawsuit. Nevertheless, although putting everything on the cloud could reduce the burden of getting to the court in a traditional face-to-face manner, the benefits can only be enjoyed by those who are familiar and comfortable with using online processes. As is stated in the 37th Annual Report of Internet Development of China, conducted by the China

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<sup>66</sup>Davide Carneiro and others, 'Online Dispute Resolution: An Artificial Intelligence Perspective' (2014) 41 *Artif Intell Rev* 211. In this paper, it has been argued that an efficient implementation of intelligent behaviours in ODR will soon become a reality.

<sup>67</sup>For example, the fact that banks conduct online credit checking for personal loan applications assists in the normalisation of such processes.

<sup>68</sup>Its impact on legal profession in general, see Brian Simpson, 'Algorithms or Advocacy: Does the Legal Profession have a Future in a Digital World?' (2016) 25 *ICTL* 1.

Internet Network Information Centre in 2016,<sup>69</sup> it is still the reality that more than half of the population do not regularly use the internet. It will not be on the menu for non-'netizens'<sup>70</sup> to engage in online case resolution either as plaintiffs, or defendants.

Furthermore, another important factor affecting the personal assessment of judges in China is the number of cases concluded each year. It can be expected that a judge will prefer an online case over a traditional one for its more timely and efficient procedure. Soon enough, lawyers may face a similar choice too.<sup>71</sup> This creates another inequality as those who prefer a traditional lawsuit will be facing the shifting of human resources towards online case resolution.

#### **4.3. Transparency on a selected base**

A stated benefit of the intelligent court system is that it will greatly enhance judicial transparency, which the Chinese judicial system has been criticised for not enhancing for decades.<sup>72</sup> However, despite the increasing number of cases moved online, there is no clear guidance on the basis upon which a court shall decide to make available such information. The transparency that online resolution delivers is possibly then not so clear.

In addition, apart from the regular publication of case reports, the court is to also provide certain information to relevant parties on request. Yet, since no guidance is provided on this matter, the practice of courts varies, and to a large extent arbitrary decisions about how this is to occur prevails.<sup>73</sup>

#### **4.4. Potential abuse of power**

The lowering of costs and the ready access that online case resolution provides does have the potential to result in a number of malicious litigation cases against e-commerce sellers. The introduction of a compulsory pre-trial mediation procedure, having been adopted in Zhejiang's e-court system, and the screening of cases, may address this problem.

#### **4.5. Commercialising and outsourcing judicial services**

There are some unsettling signs observed in the current e-court systems. Judicial authorities are beginning to function in a similar way to private enterprise and as they begin to partner with commercial service providers to provide and support the platforms upon which e-courts are delivered, the very resolution of possible disputes with those providers over their own contractual terms raises potential conflicts of interest.

As discussed above, the case of the Zhejiang e-commercial courts illustrates a potential conflict of interest when the private sector is deeply involved in the judicial process. It

<sup>69</sup>Up until January 2016, the report indicates that there are in total 688 million people using internet on a regular basis <<http://www.cnnic.net.cn/hlwfzyj/hlwxzbg/201601/P020160122469130059846.pdf>> page 37, last visited 15 July 2016.

<sup>70</sup>A common phrase used in China to describe people who go online on a regular basis.

<sup>71</sup>As part of the informatisation project, now many official websites of court also provide instant communication services with lawyers if legal advice is needed.

<sup>72</sup>The issue with transparency is partly due to the fact that cases are not binding law in the Chinese legal system. However, the importance of case-law has regained weighty consideration in Chinese judicial system since the 'China Guiding Cases Project' established by SPC in 2010, and there are arguments claiming an emerging case-law system has been implanted in judicial reform. See generally, 'Chinese Common Law? Guiding Cases and Judicial Reform' (2016) 129 Harv L Rev 2213.

<sup>73</sup>See *Blue Book of Rule of Law: Annual Report of China's Rule of Law 2016* (China Social Science Press).

seems to be unavoidable as the delivery of specialised technological services requires the involvement of experts. The problem in that example lies in the dual positions of Alibaba as sometime defendants as well as online judicial facilitator. They may also not simply influence how matters are resolved but also how information about the parties to a case is held by them (as judicial facilitator) even when they may have an interest in a case (as a party). At the very least this calls for clear guideline to demarcate the boundaries of their role.

## 5. Conclusion

New technology does present a promising picture as to how the conventional operation of a judicial system can be reshaped. Tempting as it might be, a thorough and well-grounded analysis should be conducted prior to any over-hasty moves being adopted. Insofar as the 'intelligent court system' in China is concerned, the development of these processes has identified an array of issues that need to be resolved if the advantages of online case resolution<sup>74</sup> are to be achieved. These issues of transparency, conflict of interest and fairness cannot be side-lined or the aims of online courts will be seriously undermined.

## Disclosure statement

No potential conflict of interest was reported by the author.

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<sup>74</sup>Similar attempts have also been initiated in other parts of the world. See Maximilian A Bulinski and JJ Prescott, 'Online Case Resolution Systems: Enhancing Access, Fairness, Accuracy and Efficiency' (2016) 21 Mich J Race L 205.