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China's IP in foreign eyes

global survey of IT decision makers revealed that China is one of the four countries most ready to leverage Machine-to-Machine (M2M) technology to transform business and society. If you are a millennial living in North America or Europe, the best thing you can do is spend some time living in a fast growing economy like China. It will be a life-changing experience. (Can Big Data and Mobile Make A Meaningful Impact in China? by

一项针对 IT 决策者的全球性调查显示,中国是最有准备利用机器到机器(M2M)技术来改造商业和社会的四个国家之一。如果你现在生活在北美或欧洲,你可以做的最好的事情就是在一个像中国这样的经济快速增长地区生活一段时间。这将是一段彻底改变你生活的经历。(《大数据及移动通讯对中国的积极意义》, 滿布斯)

Comment:

The fast pace of technology innovation in emerging countries like China is exciting to the West, not only from a business perspective, but also its positive impact on society. Nowadays, young people can apply technology to help make the world better than before. China is becoming a global leader as establishing innovative practise.

无论是从商业角度来看,还是从 对社会的积极影响角度看,技术创新 在以中国为代表的新兴国家的飞速 发展,都令西方社会备感兴奋。如今, 年轻人比其前辈们更懂得运用新技 术来改变世界。中国正在成为一个致 力于创新实践的全球领袖。



huanghui International Holdings Ltd., the Chinese company that agreed to pay \$4.7 billion for Smithfield Foods Inc. (SFD), the world's biggest hog producer, said China needs food-safety technology from overseas. (Shuanghui Says China Needs Overseas Food -Safety Technology, by Bloomberg Businessweek)

中国的双汇国际控股有限公司,已同意以 47 亿美元收购全球最大的生猪生产商美国史密斯菲尔德食品公司(SFD)。该公司还表示,中国需要从海外引进食品安全技术。(《双汇:中国需要海外食品安全技术》,彭博商业周刊)

Comment:

Attracted to Smithfield's strict food safety management, effective measures on environmental protection, advanced technology and well-known brands, Shuanghui is aiming to enhance domestic industry level. We hope the deal between China's largest meat processor and the leading U.S. pork producer will set up a win-win model and benefits both countries.

点评:

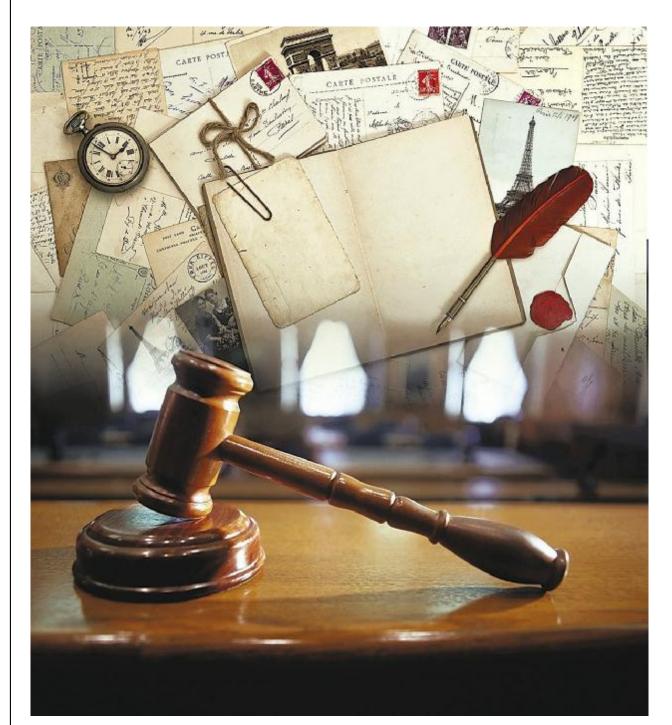
被史密斯菲尔德公司严格的食品安全管理、有效的环保措施、先先的技术以及知名的品牌所吸引,双汇更多地着眼于提升国内同行业整体水平。我们希望这个中国最大的为类生产商与美国领先的猪肉生产商之间的合作能够为同行业设立一个双赢的模式,并使中美两国同业者共同受益。

(by Correspondent Wang Weiwei from Canada)

(本报通讯员汪玮玮发自加拿大)

Literary couple's letters off auction amid protest

拍卖钱钟书书信手稿侵权吗?



he auction of Qian Zhongshu's personal letters took a new turn on June 6. The Beijing-based auction company Sungari announced a decision to stop public auction of Qian's personal letters on its website. According to the decision, out of respect for Yang Jiang, Sungari decide to stop the auction which would be held on June 21, 2013.

The controversial auction was announced by Sungari on its website and involved 66 of Qian's personal letters to Li Kwok-Keung, former editor-in-chief of Hong Kong's magazine Wide Angle in the 1980s, manuscripts in pen of Qian's collected works Ye Shi Ji, the original copy of Six Stories in the Cadre School and their late daughter Qian Yuan's letters. A collection of letters and manuscripts that reveal extensive life details and literary views of renowned writer Qian Zhongshu will go under the hammer in June, despite Qian's 102-year-old widow, Yang Jiang, saying it is "very inappropriate" to publicize the family's private communications. Then Yang triggered vehement protest by denouncing the auctions as an infringement of privacy and copyright to the court. The court voiced support for Yang to halt the upcoming auction involving private missives written by her and her late husband, Qian Zhongshu, a renowned Chinese literary scholar.

How many types of right involved in letter auction?

Letters and manuscripts, as the channel for people to communicate thoughts and emotions, have been replaced by typing on computer and cell phone. However, manuscripts and letters of prominent literary scholars and writers have recently become sought-after in the art market. How many types of rights of these rare and valuable handwriting and manuscripts actually involved in this auction?

"Auctioning Qian's private letters may lead to infringement of the rights of property, authorship, privacy and reputation. Those composing the missives are their copyright owners, and auction groups should not make any copyright-related use of such missives without the consent of copyright owners," said Yu Cike, a senior official with the National Copyright Administration, adding that publicizing the letters' contents may result in publicizing right infringement.

infringement.

"While Yang does not own the letters - they belong to Li Kwok-keung, a long-time friend of the author in Hong Kong - she has the publishing rights for Qian's collected works. The violators who sold works without the consent of their copyright owners would infringe the rights of publicizing, exhibition, privacy and reputation," You Yunting explained, a partner at Shanghai Dabang Law

Meanwhile, Yu Guofu, a lawyer specializing in copyrights at the Shengfeng Law Firm had

different opinion. Under China's laws, letters could be classified as personal property, and while Yang does not own the letters - they belong to the recipient Li Kwok-keung. The copyright should belong to the writer and the recipient enjoyed the real right of movables. The copyright owner could protect his rights of publicizing, copy, publishing and communication through information network in accordance with the copyright law. In parallel, selling letter materials belonged to the transfer of the movable property," he pointed out.

Whether auctioning letters and manuscript infringing publicizing right or not

Auctioning private letters may lead to infringement of many types of rights. What about the publicizing right? Tao Xinliang, Director of IP School of Shanghai University, took a view that auctioning letters and manuscript showed an intersection of real rights and authorship. Its ownership of property and exhibition would be transferred through auction. However, the right of other authorship, personal and property were still belonging to the copyright owners. Given circumstances, the violators who publicized works in the auction without the consent of their copyright owners would infringe

the publicizing right.

"Under China's laws, the copyright of letter's content should belong to the writer and recipient

merely enjoyed the real right of movables. It is generally understood that real right was an absolute right and the owner could freely exercise their right. However, in the handwritten letters, most in calligraphy, included two aspects – the letter was both an object and the work carrier," said Dong Meigen, from East China University of Political Science and Law.

However, in Lu Zhiyong's opinion, the president of the International Auction Company of China, it should be considered that the writer had authorized the recipient to deal with the letter since the writer sent it without indicating the strictly forbid to the public. The recipient could deal with the letters without writer's permission.

How to avoid legal risk in auction

"Both client and auction agency ought to verify the copyright status of auction items and keep an eye on the auction of such handwritten letters especially whether it led to infringement of the rights of authorship, privacy and reputation or not," Tao stressed.

Auction house should not copy, publish and distribute people's private materials ahead of the sale which might cause the infringement of the copyright. However, it was not a violation of privacy that the letter holder displayed the letter in the pre-exhibition of the auction," Yu added.

(by Feng Fei)

本报记者 冯 飞

6月6日,钱钟书书信手稿被拍卖一事有了最新进展,中贸圣佳国际拍卖有限公司(下称中贸圣佳)在其官网发布了《关于停止"也是集——钱钟书书信手稿"公开拍卖活动的决定》。该决定称,中贸圣佳出于对杨绛的尊重,现决定停止将于2013年6月21日举行的"也是集——钱钟书书信手稿"的公开拍卖。

事情源于中贸圣佳国际拍卖有 限公司日前在其官网上发布一则拍 卖公告。公告称,该公司将举办一场 钱钟书书信手稿专场拍卖会,集中 拍卖钱钟书的 66 封书信和《也是 集》手稿、杨绛的 12 封书信和《干校 六记》手稿以及其女儿钱瑗的6封 书信。据悉,这些信件主要是钱钟书 一家于上世纪80年代与时任中国 香港《广角镜》杂志社总编辑李国强 的书信往来。此次拍卖计划于6月 进行, 所拍卖的书信手稿涉及大量 生活细节及对一些历史事件或学人 的评判。今年 102 岁的杨绛知道此 消息后,表示公开朋友之间的私人 书信在思想上完全无法接受。随后, 杨绛委托律师向北京市第二中级人 民法院提交了责令停止侵害著作权 的诉前禁令申请书。北京市第二中 级人民法院发出诉前禁令裁定,责 令被申请人中贸圣佳国际拍卖有限 公司停止侵害钱钟书、杨绛夫妇及 女儿钱瑗的涉案书信手稿著作权的 行为。

书信手稿拍卖 涉及作者哪些权利

书信手稿这种传统的传情达意的方式虽然逐渐被网络、手机所替代,但是,书信手稿,特别是名人的书信手稿作为私人物品在收藏界正受到热捧。那么,此次拍卖行为涉及

作者的哪些权利?

5月29日,中国国家版权局版权管理司有关负责人公开发表意见称:"钱钟书私人书信将被拍卖的行为可能涉及物权、著作权、隐私权、名誉权等多项权利。就著作权问题而言,书信作为文字作品,著作权同题一个方在对信件进行处分的时候,未经著作权人同意,不得对书信做著作权意义上的任何利用,否则涉嫌对著作权人合法权益的侵害。比如,将书信的全部或部分内容公之于众,就可能涉嫌侵犯著作权人的发表权。"

对此,上海大邦律师事务所合 伙人游云庭表示,李国强是信件原 件和书稿的合法持有者,拥有原件 的物权,但信件、书稿内容的著作权 应属于钱钟书及其家人拥有。若拍 卖这些信件及书稿,至少涉及4件 权利,即发表权、展览权、隐私权、名

北京市盛峰律师事务所主任于 国富对此却有不一样的看法,他认 为,书信属于动产的范畴,寄信人寄 出书信后,动产即通过邮政系统交 付给收信人。书信上所载内容则是 受知识产权保护的。知识产权权利 人、书信收信人分别各自独立行使 著作权和动产物权。对于书信内容 的发表、复制、发行、信息网络传播 属于行使著作权的范畴,收信人无 权代为行使;但是对于书信原件的 拍卖,属于动产物权的转让。

书信手稿拍卖是否侵犯发表权

拍卖他人书信手稿有可能会侵犯作者的多项权利,但是否会侵犯作者的发表权?对此,上海大学知识产权学院院长陶鑫良认为,书信手稿的拍卖带来了物权与著作权的交集。书信手稿原件通过拍卖或者其他方式所转移的是其物权以及其展览权,而其他的著作权人身权与财产权仍然归属著作权人享有。所以,如果拍卖过程包含有将该从未发表的作品"公之于众"的事实,就会侵犯著作权人的发表权。

"就我国而言,信件内容的著作 权属于写信人,收信人只取得信件 这一物品的所有权。按一般理解,物 权是绝对权,物权人可以自由处分 其物权。"华东政法大学知识产权 学院办公室主任董美根表示,信件 属于特殊情形,信件既是物,同时又 是作品载体。

而在北京中拍国际拍卖有限公司董事长鲁智勇看来,作者若未在信件中注明不许公开或发表,其将信件寄出的同时,就已放任授权收信者任意处置其信件的权利。信件持有者无需得到写信者的同意即可处置这些信件。

如何规避拍卖中的法律风险

"在实际拍卖中,无论对于书信手稿拍卖的委托方还是拍卖机构,都应当对书信手稿这类特殊拍品承担合理关注义务,对相应书信手稿进行拍卖是否损害作者以及相关人员的著作权、隐私权、名誉权,进行合理审查。"陶鑫良在接受中国知识产权报记者采访时表示。

"在拍卖过程中除了拍卖法规定的必要的预展活动之外,不要对相关的书信、手稿进行批量复制、公开和传播,否则,可能涉及到对作者著作权的侵犯。而预展本身,则属于著作权法赋予作品原件所有人的权利,不在侵权之列,可以为拍卖目的而为之。"于国富表示。

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