

**Huang Zhijia v. SINA.COM, et. al.**  
**2009 Civil Complaint for**  
**Breach of Contract and Copyright Infringement**

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**People's Court of Haidian District, Beijing**

**Civil Complaint**

**I. The Parties**

Plaintiff Huang Zhijia; male; born March 17, 1972; Tujia ethnicity; originally from Jianshi county; Hubei; judge at the People's Court of Jianshi County; household registration: Group 7, Maan Shan Village, Jinyang Township, Jianshi County; current address (care of): People's Courthouse, Guandiankou, Guandian Village, Jianshi County, Hubei, Postal Code 445311, Telephone 15971728398, QQ 745250869, Email 745250869@qq.com or 45250869@163.com.

Defendant SINA.COM Technology (China) Co., Ltd.; address: Utopia Tower, No. 58, Fourth Ring Road, Haidian District, Beijing.

Defendant Beijing SINA Internet Information Services Co., Ltd.; address: Utopia Tower, No. 58, Fourth Ring Road, Haidian District, Beijing.

**II. Request for Relief**

1. It is requested that the defendant immediately cease all actions infringing upon the plaintiff's copyright, immediately restore the plaintiff's blog, and repost on the plaintiff's blog all blog posts that the plaintiff has previously published. If the defendant had justification for deleting the plaintiff's blog posts or shutting down the plaintiff's blog, then it is requested that the defendant immediately return all the texts that the plaintiff has posted on the SINA.COM blog.

2. It is requested that the defendant post a formal apology to the plaintiff on the SINA.COM website home page in a prominent position for illegally deleting the plaintiff's blog posts, shutting down the plaintiff's blog, and infringing upon the plaintiff's copyright.

3. It is requested that the defendant compensate the plaintiff's losses in the amount of 10,000 yuan.

### **III. Facts and Arguments**

In 2008, the plaintiff registered a blog on the SINA.COM website operated by the defendant with the user name Judge Huang Zhijia with a password having 556 as the first three digits. Afterwards, the plaintiff published a large number of his own essays on this little patch of earth including: "Selected Articles on the 'Constitution of the People's Republic of China'" and "Suing the Chinese Communist Party Central Party School, Ministry of Justice, and the Ministry of Education." Naturally, there is no free lunch in this world, and SINA.COM provides bloggers with a publishing platform because of the significant economic benefits, including revenues, from click-through advertising, that they bring as a result of the special characteristics of bloggers. SINA.COM already benefits from each of its bloggers, including the plaintiff. After the plaintiff registered, SINA.COM regularly and without justification deleted the plaintiff's blog posts. In May 2009, when the plaintiff signed on to his blog, a web page was suddenly thrown in front of him (URL: [http://blog.sina.com.cn/myblog/htmlsource/blog\\_notopen.php?uid=1504388291&x](http://blog.sina.com.cn/myblog/htmlsource/blog_notopen.php?uid=1504388291&x)) displaying: "This blog has been closed! If you have any questions please call the customer service telephone: 95105670." The plaintiff was puzzled and proceeded to call 01095105670 dozens of times to inquire as to the reason for shutting down the blog. On June 1, in an email that SINA.COM sent to the plaintiff's 745250869@163.com email account, they admitted they had deleted the plaintiff's blog postings and shut down his blog illegally. During a subsequent phone conversation a SINA.COM customer service agent confirmed that they had sent the email to the plaintiff.

Regardless of whether a website does or does not want to allow someone to publish their works, they should not arbitrarily delete their works or shut down their blog. As a beneficiary website, they should act in accordance with their rights and responsibilities and the principles of equity and should not unilaterally delete works or shut down blogs without justification. To do so is not only a breach of contract, it also constitutes an infringement of Internet work copyright.

SINA.COM breached its contract. SINA.COM failed to observe legally established procedures when it deleted the plaintiff's works and shut down the plaintiff's blog without any legal contractual or factual basis. This constitutes a breach of contract.

1. SINA.COM's deletion of works and closure of blogs was without contractual basis.
2. If the form contract that was unilaterally formulated by SINA.COM included provisions permitting SINA.COM to delete works and shut down blogs without authorization and without consulting the blogger, then any such provisions should be deemed unenforceable in accordance with article 40 of the "Contract Law of the People's Republic of China."

3. If SINA.COM had a legal contractual basis permitting it to delete works and shut down blogs under specific circumstances, it does not have evidence proving that the plaintiff's works fell under those specific circumstances and should be deleted or that the plaintiff's blog fell under those specific circumstances and should be shut down.

4. If there was evidence proving that the plaintiff's works fell under those specific circumstances and should be deleted or that the plaintiff's blog fell under those specific circumstances and should be shut down, pursuant to article 96 of the "Contract Law of the People's Republic of China" SINA.COM should have informed the plaintiff prior to deletion or closure.

SINA.COM infringed. Whether or not it breached its contract, SINA.COM nevertheless committed infringement.

1. SINA.COM's deletion of blog posts and closure of the blog in breach of contract resulted in an infringement of the plaintiff's Internet work copyright. This is common sense and need not be elaborate upon.

2. Even if SINA.COM did not breach its contract, its unilateral deletion of blog posts and closure of the blog constitutes infringement. According to the "People's Republic of China Contract Law," even following the termination of a contract, the parties' rights and duties should return to their original condition, and you SINA.COM should at the very least return to the blogger those works that have already been published. It is as if you were to loan someone a house in which to store property. If later on you were to not lend the house, would you not only take back the house but also have the right to confiscate that person's property as well? The house is yours, but the property is someone else's. Its fine to not lend the house to someone, but it is unreasonable to allow someone else to take that person's property. If you tycoons at SINA.COM who are relying on us users for your livelihood, do not want to see a blogger's works and are not even willing to safeguard the blogger's works, then the least you could do before you delete their works and shut down their blog is to notify the blogger, and allow the blogger the opportunity to come up with their own means of preserving their own works! Understand that these works that seem to you like the merest of trifles, are like cherished treasures to the blogger who has toiled and sweated over them. With the blog posts I published there was not a single article that was not specifically crafted with a careful eye to meeting my own unique aesthetic tastes, from the choice of font colors, fonts, and font sizes, to the content. These kinds of works are unique and irreplaceable. They are precious and have become a part of my life. In accordance with the "Copyright Law of the People's Republic of China," anyone who infringes upon a work's right of integrity must bear responsibility, and when SINA.COM deleted my blog posts and shut down my blog, all of my articles disappeared, and all of my works disappeared without a trace. Where can I still see these kinds of quality articles? Is it possible that SINA.COM should not bear responsibility?

As a company that enjoys a global Internet brand as "China's first portal website," SINA.COM should particularly abide by the law and maintain credibility, and while it derives benefits it should also protect the just rights and interests of the broader masses of Internet users. By deleting the plaintiff's blog posts and shutting down the plaintiff's blog without the plaintiff's

permission and in violation of legal procedures, SINA.COM prevented the plaintiff from exercising his Internet works copyright, insulted his dignity, and inflicted emotional pain and suffering. Should it not bear responsibility?

Expressing oneself on the Internet is the modern citizen's means to enhance his role as master of the State. It is an important outlet for easing the pressures of modern day evils. If the high-handed actions like those of SINA.COM are not stopped and corrected in a timely manner, then it is inevitable that citizens' freedom of expression stipulated in the "Constitution" will be restricted, causing the mass of citizens to be unwilling to speak out, to feel ready to burst but not daring to release what is pressing to get out, to be bound up as if in a cocoon. It is difficult to imagine a more flagrant example of blocking criticism, opposing democracy, causing the Party to become estranged from the masses, and damaging social harmony. "The power of an example is infinite," and the illegal actions of a large-scale website such as SINA.COM will inevitably lead to particularly significant negative consequences, with many websites rallying together to follow them, as has been the case recently, with the deletion of blog posts and the closure of blogs becoming seemingly ubiquitous. In the socialist new China under the great, glorious, and correct leadership of the Chinese Communist Party, where every man is a master of his own affairs, "stopping the people's mouths is like trying to stop a river." If this can be tolerated, what cannot be tolerated? For this reason I have filed a lawsuit in court requesting that the People's Court support the plaintiff's lawsuit's request and find the operator of SINA.COM, this "most respected company in China" that "makes it our responsibility to serve the greater China region and Chinese people living overseas," and that is "most highly esteemed in mainland China and among Chinese people around the world," must bear legal responsibility.

Respectfully.

Beijing Haidian District People's Court

Plaintiff Huang Zhijia

June 7, 2009

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**Translator's notes:**

- The phrase "The power of an example is infinite" appears to be a common paraphrase of a statement in Lenin's "The Immediate Tasks of the Soviet Government," 1918: "After political power has passed to the proletariat, after the expropriators have been expropriated, the situation radically changes and as prominent socialists have repeatedly pointed out—*force of example for the first time is able to influence the people.*" <http://www.marxists.org/archive/lenin/works/1918/mar/x03.htm>
- The phrase "Stopping the people's mouths is like trying to stop a river" is from the Records of the Grand Historian [Shi Ji].

- The phrase “If this can be tolerated, what cannot be tolerated?” is from the Analects of Confucius [Lun Yu].
- The relevant provisions of the Contract Law are as follows:

Article 40. When standard terms fall within the circumstances stipulated in Article 52 and Article 53 of this Law, or the party which offered the standard terms exempts itself from liabilities, imposes more severe liabilities on the other party, or deprives the other party of material rights, those terms shall be null and void.

Article 52. A contract shall be null and void under the following circumstances:

1. one party concludes the contract through fraud or coercion and damages the interests of the State;
2. parties collude maliciously to damage the interests of the State, society, or a third party;
3. a legal purpose conceals an illegal arrangement;
4. it would harm the public interest;
5. it would violate compulsory provisions of laws or administrative regulations.

Article 53. An immunity clause in a contract shall be null and void if it:

1. causes personal injury to the other party;
2. results in property damage to the other party through willful intent or gross negligence.

Article 93. Parties who reach a consensus through consultation may rescind a contract.

The parties to a contract may agree upon the terms under which one party may rescind the contract. When the conditions for rescission are met the party entitled to rescind the contract may rescind it.

Article 94. Parties may rescind a contract under the following circumstances:

1. The purpose of the contract cannot be realized because of a force majeure;
2. Prior to the expiration of the performance period one party explicitly expresses or indicates through its actions that it will not perform a material obligation;
3. One party delays performance of a material obligation and fails to perform it within a reasonable time period following formal notice from the other party;

4. One party delays performance of a material obligation or commits other acts in breach of contract rendering the purpose of the contract unachievable;
5. Other circumstances stipulated by law.

Article 96. A party to a contract shall provide notice to the other party if it proposes to rescind a contract pursuant to the provisions of Article 93, Clause 2, and Article 94 of this Law. The contract shall be rescinded upon the other party's receipt of the notice. If the other party objects the rescinding party may request a people's court or an arbitral organization to confirm the effectiveness of contract's rescission.

Where laws or administrative regulations stipulate that the rescinding of a contract shall go through approval and registration formalities, those provisions thereof shall be followed.

- Comments and suggestions welcome: [infoatfeichangdaodotcom](mailto:infoatfeichangdaodotcom).
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# 黄志佳诉讼书

## 民事诉状

### 一、当事人的基本情况

原告黄志佳，男，生于1972年3月17日，土家族，湖北省建始县人，建始县人民法院法官，户口所在地：建始县景阳镇马鞍山村七组，现住(送达地址)：湖北省建始县官店镇官店口人民法庭，邮政编码445311,电话号码15971728398,qq号745250869，邮箱745250869@qq.com 或者 745250869@163.com。

被告新浪网技术(中国)有限公司，住所地：北京市海淀区北四环西路58号理想国际大厦。

被告北京新浪互联信息服务有限公司，住北京市海淀区北四环西路58号理想国际大厦。

### 二、诉讼请求

- 1、要求被告立即停止侵犯原告著作权的行为，立即恢复原告的博客，将原告已经发表的博文等作品重新显示在原告本人的博客上；如果被告删除原告博文、关闭原告博客有理，则要求被告立即归还原告发表在新浪网博客中的所有文章；
- 2、要求被告就其删除原告博文、关闭原告博客、侵犯原告著作权的违法行为在新浪网首页显著位置刊登文章向原告赔礼道歉；
- 3、要求被告赔偿原告损失10000元。

### 三、事实和理由

原告于2008年在被告经营的新浪网上注册了博客，登录名：黄志佳法官，密码前三位数字：556。之后，原告在自己的这块小天地里发表了《<中华人民共和国宪法>条文精选》、《状告中共中央党校、司法部、教育部》等大量文章。当然，世界上没有免费的午餐，新浪网为博主提供写作与发表平台，因博主所特有的人气而带来的包括广告点击收入在内的经济利益是相当巨大的，新浪网已经从包括原告在内的它的每个博主受益。原告注册后，新浪网经常无理删除原告的博文。2009年5月，当原告登录博客时，突然，映入眼帘的网页(网址 [http://blog.sina.com.cn/myblog/htmlsource/blog\\_notopen.php?uid=1504388291&x](http://blog.sina.com.cn/myblog/htmlsource/blog_notopen.php?uid=1504388291&x))显示：“此博客已被关闭！如有疑问请拨打客服电话：95105670”。原告疑惑不解，遂数十次拨打电话至01095105670询问博客被关闭的原因。6月1日，新浪网在给原告的745250869@163.com邮箱发送的邮件中，承认了非法删除原告博文、关闭

原告博客的事实。在随后的电话交谈中，新浪网的客服人员对给原告发送的邮件予以确认。

网站要么不让人发表作品，让人发表了，就不应该随意删除作品、关闭博客。作为受益者的网站，根据权利与义务对等的原则，没有正当理由，更不应该擅自删除作品、关闭博客，否则，不仅构成违约，而且构成对网络作品著作权的侵害。

新浪网违约。新浪网在没有合法的合同依据和事实根据的条件下，不按照法定程序删除原告的作品、关闭原告的博客，构成违约。

1、新浪网删除作品、关闭博客没有合同依据；

2、即使新浪网单方面制定的格式合同中有允许新浪网不征求博主意见擅自删除作品、关闭博客的条款，根据《中华人民共和国合同法》第四十条，这样的条款依法也应认定为无效；

3、即使新浪网有合法的合同依据允许其在一定的条件下删除作品、关闭博客，也没有证据证明原告的作品符合了这一定的条件而应该被删除、原告的博客符合了这一定的条件而应该被关闭；

4、即使有证据证明原告的作品符合了这一定的条件而应该被删除、原告的博客符合了这一定的条件而应该被关闭，根据《中华人民共和国合同法》第九十六条，新浪网在删除、关闭前也应该通知原告。

新浪网侵权。违约与否，新浪网均构成侵权。

1、新浪网违约删除博文、关闭博客必然侵犯原告的网络作品著作权，此乃常识，无需赘述。

2、即使新浪网没有违约，但单方面删除博文、关闭博客，也构成侵权。依照《中华人民共和国合同法》，即使终止合同以后，当事人的权利义务关系也应该恢复原状，你新浪网最起码也要把已经发表的作品退还给博主啊。这就好象你给别人借了一间房子放物资，后来，你不借房子了，难道除了收回房子外你还有权利没收别人的物资吗？房子是你的，物资是别人的，不借房子可以，要把物资让别人取走，这才是道理。靠我们用户养活的新浪网的大款们，你们不想看到博主的作品，更不愿意保护博主的作品，但删除作品、关闭博客前起码应该提前通知博主，让博主有机会自己采取措施保全自己的作品啊！须知，这样的作品，你们视之如草芥，可负出了辛劳和汗水的博主却是相当爱惜的。就说我发表的博文吧，每一篇，从字的颜色、字体、字号到内容，从谋篇布局到整体设计，无不是经过精雕细琢，作出适合自己独特爱好的具有美感的特殊安排，这样的作品是独一无二、不可替代的，是弥足珍贵的，已经成了我生命的一部分。按照《中华人民共和国著作权法》，侵犯作品的完整权都应该承担责任，新浪网把我的博文一删除，把我

的博客一关闭，整篇整篇的文章不见了，整个作品都没有了踪影，我在哪里还看得到这样好的文章呢？新浪网还不应该承担责任吗？

作为享誉全球的互联网品牌，“中国第一门户网站”新浪网更应该遵守法制、诚实守信，在自己受益的同时切实保护广大网民的正当权益。新浪网不经原告同意违反法定程序擅自删除原告的博文、关闭原告的博客，使原告不能行使网络作品的著作权，人格受到侮辱，心灵受到创伤，不应该承担责任吗？

在网络上发言是作为国家主人翁的当今公民弘扬正气、针贬时弊的重要渠道，新浪网这样的霸道行为得不到及时制止、纠正，必定会使《宪法》规定的公民的言论自由受到限制，使广大公民有话不敢说，有屁不敢放，禁若寒蝉。堵塞言路，对抗民主，疏远党群关系，破坏社会和谐，莫此为甚。“榜样的力量是无穷的”，特大型网站新浪网带头违法，必然产生极大的负面效应，许多网站群起而效之，以致于近来，删除博文、关闭博客成风，几乎到了肆无忌惮的地步。在伟大光荣正确的中国共产党领导的人民当家作主的社会主义新中国，“防民之口，甚于防川”。是可忍，孰不可忍！因此诉至法院，请求人民法院支持原告的诉讼请求，判令新浪网这一以“服务大中华地区与海外华人为己任”的、在“中国大陆及全球华人社群中最受推崇的”、“中国最受尊敬的企业”的经营者承担法律责任。

此致

北京市海淀区人民法院

具状人 黄志佳

二00九年六月七日