

## Implementing Regulations of the Copyright Law of the People's Republic of China

(of May 24, 1991)

### CHAPTER I

#### General Provisions

*Article 1.* These Implementing Regulations (hereinafter referred to as "the Regulations") are formulated pursuant to Article 54 of the Copyright Law of the People's Republic of China\* (hereinafter referred to as "the Law").

*Article 2.* The term "works" used in the Law shall mean original intellectual creations in the literary, artistic and scientific domain, insofar as they are capable of being reproduced in a certain tangible form.

*Article 3.* The term "creation" mentioned in the Law shall mean intellectual activities from which literary, artistic and scientific works directly result.

The provision of administrative support, consultations, material means or other supporting services for others in their creative activities, shall not be deemed as acts of creation.

*Article 4.* The works as mentioned in the Law and the Regulations shall mean the following:

(1) written works are works expressed in written form, such as novels, poems, essays and theses;

(2) oral works are works which are created in spoken words and have not been fixed on any material carrier, such as impromptu speeches, lectures and court debates;

(3) musical works are such works as symphonic works and songs, with or without accompanying words, which can be sung or performed;

(4) dramatic works are such works as dramas, operas and local art forms which are used for stage performance;

(5) "quyi" works include such works as "xiang sheng" (cross talk), "kuaishu" (clapper talk), "dagu" (ballad singing with drum accompaniment) and "pingshu" (story-telling based on classical novels), which are all used mainly for being performed in a way involving recitation, singing, or both;

(6) choreographic works are works which are or can be expressed in successive body movements, gestures and facial movements;

(7) works of fine art are two- or three-dimensional works created in lines, colors or other medium which, when being viewed, impart aesthetic effect, such as paintings, works of calligraphy, sculptures and works of architecture;

(8) photographic works are the kind of artistic works created by recording images on light-sensitive materials with the aid of devices;

(9) cinematographic, television and video-graphic works are works which are recorded on some material consisting of a series of images, with or without accompanying sound, and which can be projected or broadcast with the aid of suitable devices;

(10) drawings of engineering designs and product designs, and their descriptions, are drawings designed for the purpose of actual construction and manufacturing, and the description contained in the said drawings;

(11) maps, sketches and other graphic works refer to two- or three-dimensional works showing geographical phenomena and demonstrating the fundamentals or the structure of a thing or an object, such as geographical maps, circuit plans or anatomical drawings.

*Article 5.* The means of exploitation of works referred to in the Law and in the Regulations shall mean the following:

*Entry into force:* June 1, 1991.

*Source:* English translation supplied by the Government of China.

\* See *Copyright*, February 1991, insert *Laws and Treaties*, text 2-01.

(1) reproduction is the act of producing one or more copies of a work by printing, photocopying, copying, lithographing, making a sound recording or video recording, duplicating a recording, or duplicating a photographic work, or by other means;

(2) performance is the public presentation of a work by performing music or drama, reciting a poem, or doing similar acts, through vocal sound, facial movements and body movements, directly or with the aid of technical devices;

(3) broadcasting is the communication of works through wireless radio waves and cable television system;

(4) exhibition is the public display of the original copies or reproductions of works of fine art and photography;

(5) distribution is the provision of a certain number of copies of a work to the public through selling, renting or other means, insofar as the said number of copies satisfy the reasonable needs of the public;

(6) publication is the public distribution of copies of the edited version of a work;

(7) the making of cinematographic, television and video works means the fixation for the first time of a work on a certain carrier by way of cinematographic production or similar means. The mere mechanical recording of a performance or scenery shall not be regarded as the making of the above-mentioned works;

(8) adaptation is the creation of new original works on the basis of preexisting ones by changing their original forms of expression or their purposes for use;

(9) translation is the conversion of the language of a work into another language;

(10) annotation is the explanation of the characters, words and sentences used in a written work;

(11) compilation is the creation of a work by assembling a number of selected preexisting works, in whole or in part, according to an arrangement designed for a specific purpose;

(12) arrangement is the re-editing of preexisting works or materials by changing their state of being fragmented and poorly ordered into one of being systematic and orderly, such as the glossing and repairing of ancient classics.

*Article 6.* The terms as mentioned in the Law and in the Regulations shall mean the following:

(1) news on current events refers to the mere facts or happenings conveyed by newspapers, periodicals and radio and television programs;

(2) sound recordings refer to the original recording of any sounds;

(3) video recordings refer to the original recording of a series of related images, with or without accompanying sounds, other than cinematographic and television and videographic works;

(4) radio and television broadcasts refer to the program communicated by a radio or television station by means of diffusing signals carrying sound or images or both;

(5) producer of sound recordings refers to a person who makes sound recordings;

(6) producer of video recordings refers to a person who makes video recordings;

(7) performer refers to an actor or any other person who performs literary and artistic works.

## CHAPTER II

### Copyright Administrative Authorities

*Article 7.* The National Copyright Administration is the copyright administration department under the State Council and shall be responsible for the nationwide work of administration of copyright. Its main functions shall be:

(1) to implement copyright-related laws and regulations and to promulgate rules in relation to copyright administration;

(2) to investigate and redress cases of infringement of copyright that are of nationwide influence;

(3) to approve the establishment of collective administration of copyright, foreign-related copyright agencies and arbitration agencies on disputes of copyright contracts, and to supervise and guide their work;

(4) to be responsible for the administration of external copyright relations;

(5) to administer copyrights of which the State is the owner;

(6) to provide guidance for the work of local copyright administration departments;

(7) to carry out other duties assigned by the State Council in relation to copyright administration.

*Article 8.* The copyright administration departments under the local people's governments shall be responsible for copyright administration within their respective jurisdiction, whose duties shall be determined by the people's government of each of the provinces, autonomous regions and municipalities directly under the central government.

## Ownership and Exercise of Copyright

### *Section I—Ownership of Copyright*

*Article 9.* Unless the Law provided otherwise, copyright of a work shall belong to the citizen who has created the work, or the legal entity or an entity without legal personality which is deemed as the author of the work.

A legal entity must be in conformity with the conditions laid down by the General Principles of Civil Law of the People's Republic of China. Registered social institutions and economic organizations which do not meet the conditions of legal entities, and each of the relatively independent departments forming a legal entity are entities without legal personality.

*Article 10.* Persons who have glossed or rearranged others' preexisting works shall enjoy the copyright in the works thus created, but shall not be entitled to copyright in the original works and shall not prevent other persons from glossing or rearranging the same preexisting works.

*Article 11.* Where joint authors failed to reach an agreement on the exercise of copyright in a work of their joint authorship which cannot be used separately, any party may not unreasonably prevent the other parties from exercising the said copyright.

*Article 12.* In the case of works of compilation, being in the form of encyclopedias, dictionaries, textbooks or photo books of large size, as the case may be, copyright in the work as a whole shall belong to the legal entities or entities without legal personality which have sponsored the creation or provided financial aid and material means for the creation and bear the responsibility in relation to the said works.

*Article 13.* Where the copyright owner has authorized others to make cinematographic, television or videographic works based on his works, it is deemed that he has permitted them to make necessary alteration of his works, insofar as such alteration does not distort or mutilate the original work.

*Article 14.* Where copyright in a work created in the course of employment belongs to the author, the author may, in the case that the entity to which

he belongs has not exploited the work within the scope of its professional activities within two years after the completion of the work, request the said entity to permit a third party to exploit the work in the same manner as the entity may have done, the said entity may not refuse the request, unless it has justified reasons.

Within two years after the creation of the work, the author may, with the permission of the entity to which he belongs, permit a third party to use the work in the same manner as the entity may have done. Remunerations thus obtained shall be divided between the author and the entity according to agreed proportions.

Even after the expiry of the said two years, the entity may continue to exploit the work within the scope of its professional activities.

The aforementioned two years period after the creation of the work shall be calculated from the date on which the work concerned was submitted to the entity.

*Article 15.* The material and technical resources mentioned in item (1), second paragraph of Article 16 of the Law shall mean the funds, equipments or materials provided expressly for the creation of a work.

*Article 16.* In the case of a work of an unknown author, the copyright, except the right of authorship, shall be exercised by the lawful holder of the original copy of the work. Where the author has been identified, the copyright shall be exercised by the author or his heir in title.

*Article 17.* Article 18 of the Law, which says that transfer of ownership of the original copy of a work of fine art or other works shall not be deemed as transfer of copyright in the work, is applicable to all works of which the ownership of the original copy can be transferred.

### *Section II—Inheritance of Copyright*

*Article 18.* Inheritance of property rights contained in copyright shall be executed in accordance with the Law of Inheritance.

*Article 19.* In the case where one of the coauthors of a work of joint authorship dies without heir in title or other behested beneficiary, the right of exploitation and the economic rights he enjoyed in the work shall be exercised by the other coauthors.

*Article 20.* The right of authorship, right of revision and right of integrity shall, after the death of the author, be protected by the heir in title and other behested beneficiary.

In the absence of an heir in title or other behested beneficiary, the right of authorship, the right of revision and the right of integrity shall be protected by copyright administration departments.

*Article 21.* Copyright enjoyed by the State shall be enforced by the copyright administration departments on behalf of the State.

*Article 22.* In the case of posthumous works, the right of publication may be exercised by the author's heir in title or other behested beneficiary within a period of fifty years, unless the author expressly had stated otherwise. In the absence of an heir in title or other behested beneficiary, the said right shall be exercised by the lawful holder of the original copy of the work.

### *Section III—Acquisition of Copyright and Calculation of the Term of Protection*

*Article 23.* Copyright shall occur on the date when a work is created and shall be protected under the Law.

*Article 24.* In the case of a work of an unknown author, the term of protection in relation to the right of exploitation and the right to remuneration shall be fifty years ending on December 31 of the fiftieth year after the first publication of the work. Article 21 of the Law shall be applicable after the author of the work has been identified.

*Article 25.* Where a work of a foreigner has first been published in the territory of China, the term of protection shall be calculated from the date of the first publication of the work.

The first publication of a work of a foreigner in the territory of China mentioned in the second paragraph of Article 2 of the Law refers to the situation where an unpublished work of a foreigner has been published for the first time in the territory of China by lawful means.

Works of foreigners first published outside China shall be deemed first published in China if they are published in the territory of China within thirty days after their first publication.

Unpublished works of foreigners shall also be deemed first published in China if their authorized

adaptations or translations are first published in the territory of China.

### *Section IV—Limitations on Rights*

*Article 26.* A published work as mentioned in the Law refers to a work which has been made available by the copyright owner to the public by means stipulated in the Law.

*Article 27.* The following conditions have to be conformed with for an act to be deemed appropriate quotation of published works by others, as mentioned in Article 22(2) of the Law:

(1) the quotation is made solely for the purpose of introduction to, or comment on, a work or demonstration of a point;

(2) the quotation shall not form a major or substantial part of the work of the quoter;

(3) the interests of the copyright owner of the work being quoted shall not be prejudiced.

*Article 28.* Article 22(3) of the Law refers to unavoidable inclusion of published works as is justified by the purpose of reporting current events.

*Article 29.* The use of published works of other persons by virtue of Article 22(6) and (7) shall not harm the normal exploitation of the works concerned and shall not unreasonably prejudice the legitimate interests of the copyright owners.

*Article 30.* Where a published work is performed by virtue of Article 22(9) of the Law, no fees shall be charged on the audience and no payment shall be made to the performers.

*Article 31.* Article 22(11) of the Law shall be applicable only to works originally created in Chinese.

## CHAPTER IV

### **Copyright Licensing Contracts**

*Article 32.* The contracts with copyright owners and the license obtained for using their works shall be made in written form, except in cases where works are to be published by newspapers and periodicals.

*Article 33.* In default of a clear indication in a contract in relation to the grant of exclusive right to

use, only a non-exclusive right to use by the licensee shall be granted, unless the Law stipulated otherwise.

*Article 34.* The provision of standard forms of various copyright licensing contracts shall be the responsibility of the National Copyright Administration.

*Article 35.* The person who has obtained the exclusive right in relation to the use in a certain way of a work shall have the right to prevent any other person, including the copyright owner, from using the work in the same way. However, the sub-licensing of the same right to a third party shall be subject to permission by the copyright owner, unless the contracting parties agreed otherwise.

## CHAPTER V

### Exercise of and Limitations on Rights Related to Copyright

*Article 36.* Rights related to copyright, as mentioned in the Law and the Regulations, mean the right enjoyed by publishers in their publications, the right enjoyed by performers in their performances, the right enjoyed by producers of audio and video recordings in their products and the right enjoyed by radio and television stations in their broadcasts.

*Article 37.* Publishers, performers, producers of audio and video recordings and radio and television stations, in the course of exercising their rights, shall not prejudice the rights of the copyright owners of the works being used and of the original work.

*Article 38.* Publishers shall enjoy exclusive right of exploitation in the typographical design of the books, newspapers and periodicals which they have published.

*Article 39.* By virtue of Article 30 of the Law, legal protection shall be available for the exclusive right which a publisher obtained to publish, within the term of validity of and the territory of execution defined by the contract, a work in its original language and in the form of original edition, revised version or abridged version.

*Article 40.* In the case where a manuscript was submitted to a publisher on the author's own initia-

tive, the publisher shall, within six months, notify the author whether he will publish the work or not. In the case of acceptance, a contract shall be made; in the case of refusal, notification shall be sent to the author in a timely manner. Where no notification is served and no contract is made, the author may, upon expiry of the said six months, demand that the manuscript be returned and economic compensation be made. The said six months shall be calculated from the date of receipt of the manuscript by the publisher.

*Article 41.* Articles 29, 30, 31 and 33 of the Law shall not be applicable where the cost of publication of a work is borne by the author.

*Article 42.* The state of being out of print in relation to a work mentioned in Article 31 of the Law shall be established if a period of six months, after two subscription forms were mailed by the author to the publisher, expires without action being taken to satisfy the subscription.

*Article 43.* To object to the reprinting of his work in whole or in part by virtue of the second paragraph of Article 32 of the Law, the copyright owner is required to make a statement to that effect at the same time when the work is first published in a newspaper or a periodical.

*Article 44.* No time limit shall be set on the term of protection in relation to the rights provided for in Article 36(1) and (2) of the Law.

In the case of the term of protection in relation to the right to remuneration which the performers enjoyed by virtue of the second paragraph of Article 39 and the third paragraph of Article 42 of the Law, the first paragraph of Article 39 and the second paragraph of Article 42 of the Law shall apply.

*Article 45.* In accordance with Article 35 of the Law, payment of remuneration by performers to the copyright owner shall be made through the person who has organized the performance.

*Article 46.* Performance by foreign performers taking place in the territory of China shall be protected by the Law.

*Article 47.* Audio and video recordings produced and distributed in the territory of China by foreign producers shall be protected by the Law.

*Article 48.* To object to the performance, recording or making broadcasts of his work by virtue of the second paragraph of Article 35, first paragraph of Article 37 and second paragraph of Article 40 of the Law, the copyright owner is required to make a statement to that effect at the same time when his work is published, or have the statement carried in the copyright bulletin issued by the National Copyright Administration.

*Article 49.* To use published works of other persons by virtue of the second paragraph of Article 32, the second paragraph of Article 35, the first paragraph of Article 37 and the second paragraph of Article 40 of the Law, the user shall pay remuneration to the copyright owner. In the case where the copyright owner is not identifiable or the address of the copyright owner is not available, the remuneration payable shall be remitted, within one month, to the body designated by the National Copyright Administration for further transfer to the due copyright owner.

## CHAPTER VI

### Administrative Sanctions

*Article 50.* Infringements against copyright enumerated in Article 46 of the Law shall be liable to the administrative sanctions to be imposed by copyright administration departments in the form of warning, injunction in relation to the production and distribution of infringing copies, confiscation of unlawful gains and seizure of infringing copies and equipments used for making infringing copies, as well as fine.

*Article 51.* The amount of the fine to be imposed for infringements against copyright enumerated in Article 46 of the Law shall be the following, depending on the situation of each of the cases:

(1) an infringing act as mentioned in Article 46(1) of the Law shall be liable to a fine of 100 to 5,000 yuan in RMB;

(2) infringing acts as mentioned in Article 46(2), (3), (4), (5) and (6) of the Law shall be liable to a fine of 10,000 to 100,000 yuan in RMB, or an amount of two to five times as much as the total value of the infringing copies;

(3) an infringing act as mentioned in Article 46(7) of the Law shall be liable to a fine of 1,000 to 50,000 yuan in RMB.

*Article 52.* Copyright administration departments under the local governments shall be responsible to investigate and handle the infringements against copyright enumerated in Article 46 of the Law.

The National Copyright Administration shall investigate and handle the following infringements against copyright:

(1) infringements against copyright that are of nationwide influence;

(2) infringements against copyright where a foreign party is involved;

(3) infringements against copyright that should be investigated and handled by the National Copyright Administration.

*Article 53.* In exercising its right of imposing administrative sanctions, a copyright administration department may order the infringer to compensate the loss which the infringed party suffered.

## CHAPTER VII

### Supplementary Provisions

*Article 54.* Copyright owners may exercise their copyrights by way of collective administration.

*Article 55.* The interpretation of these Regulations shall be the responsibility of the National Copyright Administration.

*Article 56.* These Implementing Regulations shall enter into force on June 1, 1991.