

Regulations for the Implementation of the Copyright Law of the People's Republic of China

(Promulgated by Decree No. 359 of the State Council of the People's Republic of China on August 2, 2002, and effective as of September 15, 2002)

Article 1 These Regulations are formulated in accordance with the Copyright Law of the People's Republic of China (hereinafter referred to as "the Copyright Law").

Article 2 The term "works" as referred to in the Copyright Law means intellectual creations with originality in the literary, artistic or scientific domain, insofar as they can be reproduced in a tangible form.

Article 3 The term "creation" as referred to in the Copyright Law means intellectual activities in which literary, artistic or scientific works are directly created.

Any organizational activity, consultation, material support or other auxiliary services conducted or offered for another person's creation shall not be deemed as creation.

Article 4 For the purposes of the Copyright Law and these Regulations, the following expressions concerning works shall have the meanings hereunder assigned to them:

- (1) "written works" means works expressed in written form, such as novels, poems, essays and theses;
- (2) "oral works" means works expressed in form of spoken language, such as impromptu speeches, lectures and court debates;
- (3) "musical works" means such works as songs and symphonic works, with or without accompanying words, which can be sung or performed;
- (4) "dramatic works" means such works as dramas, operas and local traditional operas for stage performance;
- (5) "*qu yi* works" means such works as "*xiang sheng*" (cross talk), "*kuai shu*" (clapper talk), "*da gu*" (ballad singing with drum accompaniment) and "*ping shu*" (story telling based on novels), which are mainly performed by recitation or singing, or by both;
- (6) "choreographic works" means works in which ideas and feelings are or can be expressed through successive body movements, gestures, facial movements, etc;
- (7) "acrobatic works" means works expressed through body movements and skills, such as acrobatics, magic and circus;
- (8) "works of fine arts" means two- or three-dimensional works of the plastic arts created in lines, colours or other media which impart aesthetic effect, such as paintings, works of calligraphy and sculptures;
- (9) "works of architecture" means works with aesthetic effect which are expressed in form of buildings or structures;
- (10) "photographic works" means artistic works created by recording images of objects on light-sensitive or other materials with the aid of devices;
- (11) "cinematographic works and works created by a process analogous to cinematography" means works which are recorded on some material, consisting of a series of images, with or without accompanying sound, and which can be projected with the aid of suitable devices or communicated by other means;
- (12) "graphic works" means such works as drawings of engineering designs and product designs for the purpose of actual construction and manufacturing, and as maps and sketches showing geographical phenomena and demonstrating the fundamentals or the structure of a thing or an object;
- (13) "model works" means three-dimensional works made on the basis of the shape and the structure of an object to a certain scale, for the purpose of display, test or observation.

Article 5 For the purposes of the Copyright Law and these Regulations, the following expressions shall have the meanings hereunder assigned to them:

(1) “news on current affairs” means the mere facts or happenings conveyed through the media such as newspapers, periodicals and radio and television programmes;

(2) “sound recordings” means aural fixations of sounds of performances or of other sounds;

(3) “video recordings” means fixations of a connected series of related images or pictures, with or without accompanying sounds, other than cinematographic works and works created by a process analogous to cinematography;

(4) “producer of sound recordings” means the person who first makes the sound recordings;

(5) “producer of video recordings” means the person who first makes the video recordings;

(6) “performer” means an actor, or a performing group or any other person who performs literary or artistic works.

Article 6 A copyright shall subsist on the date when a work is created.

Article 7 Works of foreigners or stateless persons first published in the territory of China, as provided in the third paragraph of Article 2 of the Copyright Law, shall be protected from the date of the first publication of the works.

Article 8 Where a work of a foreigner or a stateless person first published outside the territory of China is published in the territory of China within 30 days thereafter, it shall be deemed published simultaneously in the territory of China.

Article 9 Where a work of joint authorship cannot be separated into parts and exploited separately, the copyright therein shall be enjoyed by the co-authors and exercised under a unanimous agreement; where an agreement thereupon cannot be reached through consultation, any party may not, without justifications, prevent the other party or parties from exercising the copyright, except the transfer right; however, the gains thus obtained shall be distributed reasonably among all the co-authors.

Article 10 Where a copyright owner authorizes another person to make, based on his works, cinematographic works or works created by a process analogous to cinematography, it is deemed that he has permitted him to make necessary alteration of his works, insofar as such alteration does not distort or mutilate the original works.

Article 11 The term “tasks” as referred to in the first paragraph of Article 16 of the Copyright Law regarding a work created in the course of employment means the duties the citizen shall fulfill in the legal person or organization by which he is employed.

The term “material and technical resources” as referred to in the second paragraph of Article 16 of the Copyright Law regarding a work created in the course of employment means the funds, equipment or materials purposely provided to the citizen by the legal person or organization by which he is employed for the creation of a work.

Article 12 Where, within two years after the completion of a work created in the course of employment, the author, with the consent by the entity he belongs to, authorizes a third party to exploit his work in the same manner as the entity may have, the remuneration obtained therefrom shall be divided between the author and the entity according to the agreed proportions.

The period of two years after the completion of the work shall be calculated from the date on which the author submits the work to the entity.

Article 13 In the case of a work of an unidentified author, the copyright, except the right of authorship, shall be exercised by the owner of the original copy of the work. Where the author is identified, the copyright shall be exercised by the author or his successor.

Article 14 Where one of the co-authors of a work dies without any successor or legatee, the rights he enjoyed in the work as stipulated in subparagraphs (5) through (17) of the first paragraph of Article 10 of the Copyright Law shall be exercised by the other co-authors.

Article 15 The right of authorship, the right of revision and the right of integrity included in a copyright shall, after the death of the author, be protected by his successor or legatee.

In the absence of a successor or legatee, the right of authorship, the right of revision and the right of integrity included in a copyright shall be protected by the administrative departments for copyright.

Article 16 The exploitation of a work the copyright in which is enjoyed by the State shall be managed by the administrative department for copyright of the State Council.

Article 17 In the case of a posthumous work, the right of publication may be exercised by the author's successor or legatee within a period of 50 years after the death of the author, unless the author had expressly stated otherwise. In the absence of a successor or legatee, the said right shall be exercised by the owner of the original copy of the work.

Article 18 In the case of a work of an unidentified author, the term of protection for the rights of such an author as provided in subparagraphs (5) through (17) of the first paragraph of Article 10 of the Copyright Law shall expire on December 31 of the 50th year after the first publication of the work. The provisions of Article 21 of the Copyright Law shall be applicable after the author of the work has been identified.

Article 19 Anyone who exploits another person's work shall clearly indicate the name of the author and the title of the work, except where the parties agree otherwise or the indication cannot be undertaken due to the special characteristic of the manner of exploiting the work.

Article 20 The term "published work" as referred to in the Copyright Law means a work which has been made available to the public by the copyright owner himself or under his permission.

Article 21 The exploitation of a published work which may be exploited without permission from the copyright owner in accordance with the relevant provisions of the Copyright Law shall not impair the normal exploitation of the work concerned, nor unreasonably prejudice the legitimate interests of the copyright owner.

Article 22 The rates of remuneration for the exploitation of works in accordance with the provisions of Article 23, the second paragraph of Article 32 and the third paragraph of Article 39 of the Copyright Law shall be fixed and issued by the administrative department for copyright of the State Council jointly with the competent department for pricing of the State Council.

Article 23 Anyone who exploits another person's work shall conclude a licensing contract with the copyright owner, and the contract shall be made in written form insofar as the right licensed for exploiting the work has an exclusive nature, except where the work is to be published in a newspaper or a periodical.

Article 24 The contents of an exclusive right of exploitation provided in Article 24 of the Copyright Law shall be agreed upon by the contract. In the absence of such an agreement or of any clear agreement thereupon in the contract, it shall be deemed that the licensee has the right to prevent any other person, including the copyright owner himself, from exploiting the work in the same manner; unless otherwise agreed in the contract, the sublicensing of the same right to a third party by the licensee shall be subject to the permission from the copyright owner.

Article 25 An exclusive licensing contract and a copyright transfer contract concluded with the copyright owner may be filed with the administrative departments for copyright for the record.

Article 26 The term “rights and interests related to copyright” as referred to in the Copyright Law and these Regulations means the rights enjoyed by publishers in the typographical designs of their books or periodicals, the rights enjoyed by performers in their performances, the rights enjoyed by producers of sound and video recordings in their sound and video recordings, and the rights enjoyed by radio and television stations in their broadcasting programmes.

Article 27 Publishers, performers, producers of sound and video recordings, and radio and television stations, in the course of exercising their rights, shall not prejudice the rights of the copyright owners in the works being exploited and in the original works.

Article 28 Where it is agreed in a book publishing contract that the book publisher enjoys an exclusive publishing right but its particular contents are not specified, it shall be deemed that the book publisher has the exclusive right to publish a book in the same language and in the form of original or revised version, within the term of validity of the contract and the territory defined by the contract.

Article 29 If two separate subscription forms mailed by the copyright owner to the book publisher are still not able to be fulfilled within six months, it shall be deemed that the stock of the book is exhausted as referred to in Article 31 of the Copyright Law.

Article 30 Where a copyright owner declares in accordance with the second paragraph of Article 32 of the Copyright Law that no reprinting or excerpting of his work is permitted, he shall append such a declaration to the work when it is published in a newspaper or a periodical.

Article 31 Where a copyright owner declares in accordance with the third paragraph of Article 39 of the Copyright Law that no making of sound recordings of his work is permitted, he shall make such a declaration when his work is legally recorded.

Article 32 To exploit another person’s work in accordance with the provisions of Article 23, the second paragraph of Article 32 and the third paragraph of Article 39 of the Copyright Law, the exploiter shall pay remuneration to the copyright owner within two months from the date of exploitation of the said work.

Article 33 Performances by foreigners or stateless persons in the territory of China shall be protected by the Copyright Law.

The rights enjoyed by foreigners or stateless persons in their performances under the international treaties to which China has already acceded shall be protected by the Copyright Law.

Article 34 Sound recordings produced and distributed by foreigners or stateless persons in the territory of China shall be protected by the Copyright Law.

The rights enjoyed by foreigners or stateless persons in the sound recordings produced and distributed by them under the international treaties to which China has acceded shall be protected by the Copyright Law.

Article 35 The rights enjoyed by foreign radio and television stations in their broadcasting programmes under the international treaties to which China has acceded shall be protected by the Copyright Law.

Article 36 Where any act of infringement is committed as enumerated in Article 47 of the Copyright Law, which also prejudices the social or public interests, the administrative department for copyright may impose a fine of not more than three times the volume of the illegal business; where the volume of illegal business is difficult to calculate, a fine of not more than 100,000 yuan may be imposed.

Article 37 Where any act of infringement is committed as enumerated in Article 47 of the Copyright Law, which also prejudices the social or public interests, the administrative department for copyright of the local people's government shall be responsible for the investigation into and dealing with such an act.

The administrative department for copyright of the State Council may investigate into and deal with any act of infringement that is of nationwide effect.

Article 38 These Regulations shall be effective on September 15, 2002. The Regulations for the Implementation of the Copyright Law of the People's Republic of China, which were approved by the State Council on May 24, 1991 and promulgated by the National Copyright Administration on May 30, 1991, shall be abolished at the same time.
