

The Interpretation of the Supreme People's Court Concerning Several Issues on Application of Law in Hearing Correctly the Civil Copyright

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In order to hear correctly the cases concerning copyright civil disputes, several issues on application of law are interpreted as follows according to the provisions of the General Principles of Civil Law of the People's Republic of China, the Contract Law of the People's Republic of China, the Copyright Law of the People's Republic of China, the Civil Procedural Law of the People's Republic of China and other relevant laws:

Article 1 The People's Court accepts the following cases of civil dispute concerning copyrights: (a) cases of copyrights and their relevant interests and ownership, infringement, and contractual disputes; (b) cases in application for stopping the acts of infringement of the copyrights and their relevant rights and interests prior to the actions and those in application for property attachment and conservation of evidence prior to the action; and (c) other cases concerning the disputes over copyrights and their relevant rights and interests.

Article 2 The cases of civil dispute concerning copyrights shall be under the jurisdiction at level not lower than the Intermediate People's Court.

Various High People's Courts may according to the actual circumstances of their jurisdiction determine several basic-level People's Court to rule over the cases of civil dispute concerning copyrights of first instance.

Article 3 For the acts in infringement of copyrights that are under investigation by the administrative department of copyrights, when the party concerned initiates prosecution to the People's Court for pursuit of civil liabilities with the infringing party, People's Court should accept.

When investigating the cases of civil in infringement of copyrights that have been handled by the administrative department of copyrights, the People's Court should conduct complete investigation on the case fact.

Article 4 The civil proceedings initiated for acts in infringement of copyrights civil case should be governed by the local People's Courts where the infringing acts are committed, the infringing reproduced products are stored or confiscated as stipulated by Articles 46 and 47 of the Copyright Law of the People's Republic of China or where the defendant are located.

The above-mentioned places where the infringing reproduced products are stored refer to the places where infringing reproduced products are stored or hidden in great volume or

frequently, and the places where the infringing reproduced products are confiscated refer to the places where the Customs, the copyright administration and industrial and commercial administration confiscate and detain the infringing reproduced products.

Article 5 For common litigation brought forth by multiple defendants from different places involving different infringement acts, the plaintiff can choose for jurisdiction by the People's Court of the place where the infringing act of one defendant take places and for the litigation initiated to only one defendant, the jurisdiction rests with the People's court where his or her infringing act take places.

Article 6 When the collective management agencies of copyrights set up by force of law initiates an action in its own name through written authorization by the copyright owners, the People's Court should accept.

Article 7 The work papers concerning copyrights provided by the parties in question, originals, and legitimate publications, registration certificate of the copyrights, certificates issued by the authentication institution and the contracts obtained may be taken as evidence.

The natural persons, legal persons or other organizations that sign on the works or products are deemed as the right holders of the copyrights and their relevant rights and interests unless otherwise proved.

Article 8 When the parties concerned purchase the infringing reproduced products in the form of purchase order or spot transaction by themselves or by agency, the physical objects and invoices obtained may be taken as evidence.

When the notaries public do not show their status to a party concerned who are suspect of infringing copyrights, the evidence actually obtained from the other party in the above-mentioned form and the notary certificate issued during obtaining of proofs shall be taken for use as evidence unless otherwise proved.

Article 9 "To make a work available to the public" as specified in Article 10 (1) of the Copyright Law of the People's Republic of China means to make the works available to unspecified people by the copyright owners or through their permission, provided that it has not become to he public.

Article 10 For the works specified in Article 15 (2) of the Copyright Law of the People's Republic of China when the copyright owners are natural persons, the term for their protection shall be as per the provision of Article 21 (1) of the Copyright Law and when the copyright owners are legal persons or other organizations, the term for their protection shall be as per the provision of Article 21 (2) of the Copyright Law

Article 11 In case of the disputes concerning the priority of signatures of the works, the People's Court shall handle according to the following principle: determining the signature order as per the covenant, if any; otherwise, determining the signature order as

per work done for the creation works, work list number of the strokes of the family name of the authors, etc.

Article 12 In case the ownership of copyright in a commissioned work belong to the commissioned party as specified by Article 17 of the Copyright Law, the commissioning party may be entitled to use the works within the use scope as covenanted; and if both the commissioning party and the commissioned party have not covenanted the use scope of the works, the commissioning party may use the works within the specific scope of the commissioned creation free of charge.

Article 13 Except for the cases as specified by Article 11 (3) of the Copyright Law, the copyrights of the reports, speeches and other works drafted by others but reviewed and finalized not by others and not published in the name of others, the copyright belong to the report maker or the speech maker. The copyright owners may pay the drafters proper remunerations.

Article 14 The copyrights of the autobiographical works completed based on the theme of the experiences of specific persons as agreed by the parties concerned follow the covenant, if any has been covenanted by the parties; otherwise, the copyrights belong such specific persons whose experiences are utilized, provided that the copyright owners may pay the drafter or the person who have been labored in arranging for the completion of the works.

Article 15 For the works created on the same theme by different authors, the expressions of which are creative and independently completed, the authors enjoy independent copyrights of their corresponding works.

Article 16 The purely factual messages transmitted by mass media belong to news on current affairs as specified by Article 5 (2) of the Copyright Law, and when transmitting or reporting the news on current affairs complied by others, the sources of the compilation should be indicated.

Article 17 The reprints as specified by article 32 (2) of the Copyright Law refer to the act of printing by newspapers or magazines of the works already published on other newspapers or magazines. In case the reprinting has not indicate the author of the reprinted works or the sources of the original printing newspapers or magazines, civil responsibilities should be undertaken, such as eliminating he adverse influence or making apologies, etc.

Article 18 The artistic work located or on display in an outdoor public place as specified by Article 22 (10) of the Copyright Law refers to sculptures, paintings, calligraphies and other artistic works that are displayed or located in an outdoor public place.

For the copy, painting, photographs or video figures of the above-mentioned artistic works, the results may be used in reasonable form and within reasonable scope, which does not constitute any infringement.

Article 19 The publishers and producers shall take the burden of proof for legitimate authorization of their publications and productions, and the distributors and leasers shall take the burden of proof for legitimate sources of the reproduced products they distribute or lease. Otherwise, they shall undertake the corresponding legal responsibilities in Article s 46 and 47 of the Copyright Law.

Article 20 In case the publications infringe upon the copyrights of others, the publishers shall undertake the civil compensatory liabilities in consideration of their faults, degree of infringement, and the consequential damages.

In case the publishers have not take the duties of reasonable cares for the authorization of their publishing acts, the sources and signature of the manuscripts and the content of publications under edition, they shall undertake the compensatory liabilities according to the provisions of Article 48 of the Copyright Law.

In case the publishers have taken the duties of reasonable care and the copyright owners have not evidence to show that the publishers should have known the infringement involved in their publications, the publishers shall undertake the civil responsibilities for stopping the infringement and returning the profits obtained through infringement according to the provision of Article 117 of the General Principles of Civil Law.

The publishers shall take the burden of proof for indicating that they have taken the duties of reasonable cares.

Article 21 In case the users of computer software make commercial use of the computer software without permission or beyond the scope of permission, civil responsibilities should be undertaken according to the provisions of Article 47 (1) of the Copyright Law and Article 24 (1) of the Regulation on Protection of Computer Software.

Article 22 In case the contract on transfer of copyrights does not adopt a written form, the People's Court shall examine and check to see whether the contract is established according to the provisions of Articles 36 and 37 of the Contract Law.

Article 23 In case the publishers has lost or destroyed the works delivered by the copyright owners for publishing, enabling failure of the performance of the publishing contract, the publishers should be accorded with civil responsibilities according to the provisions of Article 53 of the Copyright Law, Article 117 of the General Principles of Civil Law and Article 122 of the Contract Law.

Article 24 The actual losses of the copyright owners may be calculated as the multiplication of the decreased distribution volume of the reproduced products due to the infringement or the sale volume of the infringing reproduced products by the unit profits of the reproduced products of the copyright owners. In case the decreased distribution volume is hard to determine, it may be determined according to the market sale volume of infringing reproduced products.

Article 25 In case the actual losses of the copyright owners or the illegitimate revenues of the infringing party cannot be determined, the People's Court shall determine the amount of compensations as per the request of the parties concerned or according to the provisions of Article 48 (2) of the Copyright Law at their discretion within their powers.

When determining the amount of compensations, the People's Court shall comprehensively consider the work type, reasonable usage fee, nature of infringing acts, results, and other relevant circumstances.

It shall be allowed for the party concerned to reach an agreement on the amount of compensations according to the provision of this Article.

Article 26 The reasonable expenses paid for stopping the infringing acts as specified by Article 48 (1) of the Copyright Law include reasonable fees occurred from investigating on the infringing acts and obtaining evidences.

The People's Court may calculate in the compensations the attorney's fees according to the provisions of the relevant state departments in consideration of the proceeding claims and specific circumstance of cases of the parties concerned.

Article 27 In terms of the cases under pleading for the infringing acts of copyrights occurred prior to the implementation of the decision on the revised copyright law for which the People's Court provides findings after the implementation of the decision on the revised copyright law, references may taken in applying the provision of Article 48 of the Copyright Law.

Article 28 The time limit for actions of copyright infringement is two years, starting from the date when the copyright owners have known or should have known the infringing acts. If the copyright owners bring the action beyond two years and if the infringing act still remains when the action is brought, the People's Court shall within the term for protection of the copyrights offer findings against the defendant for stopping the infringing acts; and the amount of compensations for infringement shall be calculated for two years taken backward from the date when the copyright owners brought the action with the People's Court.

Article 29 In case of the infringing acts specified by Article 47 of the Copyright Law, the People's Court may in addition to prosecuting infringing party with civil responsibilities as per the request by the parties concerned accord civil punishment according to the provision of Article 134 of the General Principles of Civil Law, with the amount of fine to be determined by reference with the relevant provisions of the Regulations on the Implementation of the Copyright Law of the People's Republic of China.

In case the administrative department of copyrights has accorded the same infringing acts with administrative punishment, the People's Court shall not accord civil punishment.

Article 30 For the infringing acts of copyrights occurred prior to October 27, 2001, the provisions of Articles 49 and 50 of the Copyright Law shall be applicable when the parties concerned have after October 27, 2001 applied with the People's Court for adopting the order to stop the infringing acts or take measures for conservation of evidence.

In case of taking the pre-trial measures, the People's Court shall proceed by reference with the provisions of the Interpretations of the Supreme People's Court on the Applicable Laws Concerning the Pre-trial Stop of the Acts Infringing the Rights for Exclusive Use of Registered Trademarks and the Conservation of Evidences.

Article 31 Unless otherwise provided by the Interpretations, the cases of civil dispute concerning copyrights accepted by the People's Court after October 27, 2001, if involving the civil acts occurred prior to October 27, 2001, shall adopt the provisions of the Copyright Law before the revision; if involving the civil acts occurred after October 27, 2001, shall adopt the provisions of the revised Copyright Law; and if involving the civil acts occurred prior to October 27, 2001 but lasting after such date, shall adopt the provisions of the revised Copyright Law.

Article 32 In case of any discrepancy between previous provisions and the Interpretations, the Interpretations shall prevail.