

COPYRIGHT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

Chapter I General Provisions

Article 1 This Law is enacted, in accordance with the Constitution for the purposes of protecting the copyright of authors in their literary, artistic and scientific works and rights and interests related to copyright, of encouraging the creation and dissemination of works which would contribute to the building of an advanced socialist culture and ideology and to socialist material development, and of promoting the development and flourishing of socialist culture and sciences.

Article 2 Works of Chinese citizens, legal persons or entities without legal personality, whether published or not, shall enjoy copyright in accordance with this Law. Works of foreigners first published in the territory of the People's Republic of China shall enjoy copyright in accordance with this Law. Any work of a foreigner published outside the territory of the People's Republic of China which is eligible to enjoy copyright under an agreement concluded between the country to which the foreigner belongs and China, or under an international treaty to which both countries are parties, shall be protected in accordance with this Law.

Article 3 For the purpose of this Law, the term "works" includes works of literature, art, natural science, social science, engineering technology and the like which are created in the following forms:

- (1) written works;
- (2) oral works;
- (3) musical, dramatic, quyi and choreographic works;
- (4) Works of fine art and photographic works;

(5) cinematographic, television and video-graphic works;

(6) drawings of engineering designs and product designs, and descriptions thereof;

(7) maps, sketches and other graphic works;

(8) computer software;

(9) other works as provided for in law and administrative rules and regulations.

Article 4 Works the publication or distribution of which is prohibited by law shall not be protected by this law.

Copyright owners, in exercising their copyright, shall not violate the Constitution or laws or prejudice the public interests.

Article 5 This law shall not be applicable to:

(1) laws; regulations; resolutions, decisions and orders of state organs; other documents of legislative, administrative and judicial nature; and their official translations;

(2) news on current affairs; and

(3) calendars, numerical tables, forms of general use and formulas.

Article 6 Measures for the protection of copyright in works of folk literature and art shall be established separately by the State Council.

Article 7 Where any scientific or technological work is protected under the Patent Law, the Law on Technology Contracts or similar laws, the provisions of those laws shall apply.

Article 8 The copyright administration department under the State Council shall be responsible for the nationwide administration of copyright. The copyright administration department under the people's government of each province, autonomous region and municipality directly under the Central Government shall be responsible for the administration of copyright in its respective administrative area.

Chapter II Copyright

Section 1 Copyright Owners and Their Rights

Article 9 The term "copyright owners" shall include:

- (1) authors; and
- (2) other citizens, legal persons and entities without legal personality enjoying copyright in accordance with this Law.

Article 10 The term "copyright" shall include the following personal rights and property rights:

- (1) the right of publication, that is, the right to decide whether to make a work available to the public;
- (2) the right of authorship, that is, the right to claim authorship and to have the author's name indicated on his works;
- (3) the right of alternation, that is, the right to alter or authorize others to alter one's work;

(4) the right of integrity, that is, the right to protect one's work against distortion and mutilation;

(5) the right of exploitation and the right to remuneration, that is, the right of exploiting one's work by means of reproduction, performance, broadcasting, exhibition distribution, making cinematographic, television or video production, adaptation, translation, annotation, compilation and the like, and the right of authorizing others to exploit one's work by the above-mentioned means, and of receiving remuneration therefor.

Section 2 Ownership of Copyright

Article 11 Except where otherwise provided in this Law, the copyright in a work shall belong to its author.

The author of a work is the citizen who has created the work.

Where a work is created according to the will and under the sponsorship and the responsibility of a legal or entity without legal personality, such legal person or entity without legal personality shall be deemed to be the author of the work. The citizen, legal person or entity without legal personality whose name is indicated on a work shall, in the absence of proof to the contrary, be deemed to be the author of the work

Article 12 Where a work is created by adaptation, translation, annotation or arrangement of a pre-existing work, the copyright in the work thus created shall be enjoyed by the adaptor, translator or arranger, provided that the exercise of such copyright shall not prejudice the copyright in the original work.

Article 13 Where a work is created jointly by two or more co-authors, the

copyright in the work shall be enjoyed jointly by those co-authors. Any person who has not participated in the creation of the work may not claim the co-authorship. If a work of joint authorship can be separated into independent parts and exploited separately, each co-author may be entitled to independent copyright in the parts that he has created, provided that the exercise of such copyright shall not prejudice the copyright in the joint work as a whole.

Article 14 The copyright in a work created by compilation shall be enjoyed by the compiler, provided that the exercise of such copyright shall not prejudice the copyright in the preexisting works included in the compilation. The authors of such works included in a compilation as can be exploited separately shall be entitled to exercise their copyright in their works independently.

Article 15 The director, screenwriter, lyricist, composer, cameraman and other authors of a cinematographic, television or video-graphic work shall enjoy the right of authorship in the work, while the other rights included in the copyright shall be enjoyed by the producer of the work.

The authors of screenplay, musical works and other works that are included in a cinematographic, television or video-graphic work and can be exploited separately shall be entitled to exercise their copyright independently.

Article 16 A work created by a citizen in the fulfillment of tasks assigned to him by a legal person or entity without legal personality shall be deemed to be a work created in the course of employment. The copyright in such a work shall, subject to the provisions of the second paragraph of this Article, be enjoyed by the author, provided that the legal person or entity without legal personality shall have a right of priority to exploit the work within the scope of its professional activities.

During the two years after the completion of the work, the author may not, without the consent of the legal person or entity without legal personality, authorize a third party to exploit the work in the same way as the legal person or entity without legal personality does.

The author of a work created in the course of employment in one of the following circumstances shall enjoy the right of authorship, while the legal person or entity without legal personality shall enjoy the other rights included in the copyright and may reward the author:

- (1) drawings of engineering designs and product designs and descriptions thereof; computer software; maps and other works created in the course of employment mainly with the material and technical resources of the legal person or entity without legal personality and under its responsibility;
- (2) works created in the course of employment where the copyright is, in accordance with laws, administrative rules and regulations or contracts concerned, enjoyed by the legal person or entity without legal personality.

Article 17 The ownership of copyright in a commissioned work shall be agreed upon in a contract between the commissioning and the commissioned parties. In the absence of a contract or of an explicit agreement in the contract, the copyright in such a work shall belong to the commissioned party.

Article 18 The transfer of ownership of the original copy of a work of fine art, or other works, shall not be deemed to include the transfer of the copyright in such work, provided that the right to exhibit the original copy of a work of fine art shall be enjoyed by the owner of such original copy.

Article 19 Where the copyright in a work belongs to a citizen, the right of

exploitation and the right to remuneration in respect of the work shall, after his death, during the term of protection provided for in this Law, be transferred in accordance with the provisions of the Law of Succession.

Where the copyright in a work belongs to a legal person or entity without legal personality, the right of exploitation and the right to remuneration shall, after the change or the termination of the legal person or entity without legal personality, during the term of protection provided for in this Law, be enjoyed by the succeeding legal person or entity without legal personality which has taken over the former's rights and obligations, or, in the absence of such a successor entity, by the state.

Section 3 Term of Protection of Rights

Article 20 The term of protection of the rights of authorship, alteration, and integrity of an author shall be unlimited.

Article 21 The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a work of a citizen shall be the life time of the author and fifty years after his death, expiring on December 31 of the fiftieth year after his death. In the case of a work of joint authorship, such term shall expire on December 31 of the fiftieth year after the death of the last surviving author.

The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a work where the copyright belongs to a legal person or entity without legal personality, or in respect of a work created in the course of employment where the legal person or entity without legal personality enjoys the copyright (except the right of authorship), shall be fifty

years, expiring on December 31 of the fiftieth year after the first publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected under this Law.

The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a cinematographic, television, video-graphic or photographic work shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected under this Law.

Section 4 Limitations on Rights

Article 22 In the following cases, a work may be used without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work shall be indicated and the other rights enjoyed by the copyright owner by virtue of this Law shall not be prejudiced:

- (1) use of a published work of others for the user's own private study, research or self entertainment;
- (2) appropriate quotation from a published work of others in one's work for the purposes of introduction to, or comment on, a work, or demonstration of a point;
- (3) use of a published work in newspapers, periodicals, radio programmes, television programmes or newsreels for the purpose of reporting current affairs;

(3) reprinting by newspapers or periodicals, or rebroadcasting by radio stations or television stations, of editorials or commentator's articles published by other newspapers, periodicals, radio stations or television stations;

(5) publication in newspapers or periodicals, or broadcasting by radio stations or television stations, of a speech delivered at a public gathering, except where the author has declared that the publication or broadcasting is not permitted;

(6) translation or reproduction in a small quantity of copies, of a published work for use by teachers or scientific researchers, in classroom teaching or scientific research, provided that the translation or reproduction shall not be published or distributed;

(7) use of a published work by a state organ for the purpose of performing its official duties;

(8) reproduction of a work in its collections by a library, an archives center, a memorial hall, a museum, an art gallery or a similar institution, for the purposes of display, or preservation of a copy, of the work;

(9) free performance of a published work;

(10) copying, drawing, photographing, or video recording of an artistic work located or on display in an outdoor public place;

(11) translation of a published work from the language of the Han nationality into minority nationality languages for publication and distribution in the country;

(12) transliteration of a published work into Braille and publication of the work so transliterated.

The above limitations on rights shall be applicable also to the rights of publishers, performers, producers of sound recordings and video recordings, radio stations and television stations.

Chapter III Copyright Licensing Contracts

Article 23 Anyone who exploits a work created by others shall, except where no permission is required in accordance with the provisions of this Law, conclude a contract with, or otherwise obtain permission from, the copyright owner.

Article 24 A contract shall include the following basic clauses:

- (1) the manner of exploitation of the work covered by the license;
- (2) the exclusive or nonexclusive nature of the right to exploit the work covered by the license;
- (3) the scope and term of the license;
- (4) the amount of remuneration and the method of its payment;
- (5) the liability for breach of contract; and
- (6) any other matter which the contracting parties consider necessary.

Article 25 Without permission from the copyright owner, the other party to the contract shall not exercise the right which the copyright owner has not explicitly licensed in the contract.

Article 26 The term of validity of a contract shall not exceed ten years. The

contract may be renewed on expiration of that term.

Article 27 The tariffs of remuneration for the exploitation of works shall be established by the copyright administration department under the State Council jointly with other departments concerned.

Where otherwise agreed to in a contract, remuneration may be paid in accordance with the terms of the said contract.

Article 28 Publishers, performers, producers of sound recordings and video recordings, radio stations, television stations and other entities who or which have, pursuant to this Law, obtained the right of exploitation included in the copyright of others, shall not prejudice such authors' rights of authorship, alteration, integrity and their right to remuneration.

Chapter IV Publication, Performance, Sound Recording, Video Recording and Broadcasting

Section 1 Publication of Books, Newspapers and Periodicals

Article 29 A book publisher who publishes a book shall conclude a publishing contract with, and pay remuneration to, the copyright owner.

Article 30 A book publisher shall, during the term of the contract, have an exclusive right to publish the work delivered to him for publication by the copyright owner.

The term of the exclusive right to publish the work, enjoyed by the book publisher as specified in the contract, shall not exceed ten years. The contract

may be renewed on expiration of that term.

The exclusive right to publish a work enjoyed by the book publisher shall, during the term specified in the contract, be protected by law, and the work may not be published by others.

Article 31 The copyright owner shall deliver the work to the publisher within the time limit specified in the contract. The book publisher shall publish the work according to the quality requirements and within the time limit specified in the contract. The book publisher shall bear the civil liability in accordance with the provisions of Article 47 of this Law if he fails to publish the work within the time limit specified in the contract.

The book publisher shall notify, and pay remuneration to, the copyright owner when the work is to be reprinted or republished. If the book publisher refuses to reprint or republish the work when the stocks of the book are exhausted, the copyright owner shall have the right to terminate the contract.

Article 32 Where a copyright owner has submitted the manuscript of his work to a newspaper or a periodical publisher for publication and has not received any notification of the said publisher's decision to publish the work, within fifteen days from the newspaper publisher or within thirty days from the periodical publisher from the date of submission of the manuscript, the copyright owner may submit the manuscript of the same work to another newspaper or periodical publisher for publication unless the two parties have agreed otherwise.

After a work is published in a newspaper or a periodical, other newspaper or periodical publisher may, except where the copyright owner has declared that reprinting or excerpting is not permitted, reprint the work or print an abstract of

it or print it as reference material, but such other publishers shall pay remuneration to the copyright owner as prescribed in regulations.

Article 33 A book publisher may alter or abridge a work with the permission of the copyright owner. A newspaper publisher or periodical publisher may make editorial modifications and abridgments in a work, but shall not make any modifications in the content of the work unless permission has been obtained from the author.

Article 34 When publishing a work created by adaptation, translation, annotation, arrangement or compilation of a pre-existing work, the publisher shall pay remuneration both to the owner of the copyright in the work created by adaptation, translation, annotation, arrangement or compilation, and to the owner of the copyright in the original work.

Section 2 Performance

Article 35 A performer (an individual performer or a performing troupe) who for a performance exploits an unpublished work created by others shall obtain permission from, and pay remuneration to, the copyright owner.

A performer who for a commercial performance exploits a published work created by others does not need permission from, but shall, as prescribed by regulations, pay remuneration to the copyright owner; such work shall not be exploited where the copyright owner has declared that such exploitation is not permitted.

A performer who for a commercial performance exploits a work created by adaptation, translation, annotation or arrangement of a pre-existing work shall pay remuneration both to the owner of the copyright in the work created by

adaptation, translation, annotation or arrangement and to the owner of the copyright in the original work.

Where a performer performs a work created by others for the purpose of producing a sound recording, video recording, radio programme or television programme, the provisions of Article 37 and 40 of this Law shall apply.

Article 36 A performer shall, in relation to his performance, enjoy the right:

- (1) to claim performership;
- (2) to protect the image inherent in his performance from distortion;
- (3) to authorize others to make live broadcasts; and
- (4) to authorize others to make sound recordings and video recordings for commercial purposes, and to receive remuneration therefor.

Section 3 Sound Recording and Video Recording

Article 37 A producer of sound recordings who, for the production of a sound recording, exploits an unpublished work created by others shall obtain permission from, and pay remuneration to, the copyright owner. A producer of sound recordings who, for the production of a sound recording, exploits a published work created by others, does not need permission from, but shall, as prescribed by regulations, pay remuneration to, the copyright owner; such work shall not be exploited where the copyright owner has declared that such exploitation is not permitted. A producer of video recordings who, for the

production of a video recording, exploits a work created by others shall obtain permission from, and pay remuneration to, the copyright owner.

A producer of sound recordings or video recordings who exploits a work created by adaptation, translation, annotation or arrangement of a pre-existing work shall pay remuneration both to the owner of the copyright in the work created by adaptation, translation, annotation or arrangement, and to the owner of the copyright in the original work.

Article 38 When producing a sound recording or video recording, the producer shall conclude a contract with, and pay remuneration to, the performer.

Article 39 A producer of sound recordings or video recordings shall have the right to authorize others to reproduce and distribute his sound recordings or video recordings and the right to receive remuneration therefor. The term of protection of such rights shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of the recordings. A producer of sound recordings or video recordings who is authorized to reproduce and distribute a sound recording or video recording created by others shall also pay remuneration to the copyright owner and to the performer as prescribed by regulations.

Section 4 Broadcasting by Radio Station or Television Station

Article 40 A radio station or television station which exploits, for the production of a radio or television programme, an unpublished work created by others, shall obtain permission from, and pay remuneration to, the copyright owner.

A radio station or television station which exploits, for the production of a radio or television programme, a published work created by others does not need

permission from the copyright owner, but such a work shall not be exploited where the copyright owner has declared that such exploitation is not permitted. In addition, remuneration shall be paid as prescribed by regulations unless this Law provides that no remuneration needs to be paid.

A radio station or television station which exploits, for the production of a radio or television programme, a work created by adaptation, translation, annotation, or arrangement of a pre-existing work, shall pay remuneration both to the owner of the copyright in the work created by adaptation, translation, annotation or arrangement and to the owner of the copyright in the original work.

Article 41 When producing a radio or television programme, the radio station or television station shall conclude a contract with, and pay remuneration to, the performer.

Article 42 A radio station or television station shall, in respect of a programme produced by it, enjoy the right:

(1) to broadcast the programme;

(2) to authorize others to broadcast the programme, and to receive remuneration therefor; and

(3) to authorize others to reproduce and distribute the radio or television programme, and to receive remuneration therefor.

The term of protection of the rights specified in the preceding paragraph shall be fifty years, expiring on December 31 of the fiftieth year after the first broadcasting of the programme.

A producer of sound recordings or video recordings who is authorized to reproduce and distribute a radio or television programme shall also pay remuneration to the copyright owner and the performer as prescribed by regulations.

Article 43 A radio station or television station may broadcast, for noncommercial purposes, a published sound recording without seeking permission from, or paying remuneration to, the copyright owner, performer and producer of the sound recording.

Article 44 A television station which broadcasts a cinematographic, television or video-graphic work produced by others shall obtain permission from, and pay remuneration to, the producer of the cinematographic, television or video-graphic work.

Chapter V Legal Liability

Article 45 Anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, eliminating its ill effects, making a public apology or paying compensation or damages, etc., depending on the circumstances:

- (1) publishing a work without the permission of the copyright owner;
- (2) publishing a work of joint authorship as a work created solely by oneself without the permission of the other co-authors;

(3) having one's name indicated on a work created by others, in order to seek personal fame and gain, where one has not participated in the creation of the work;

(4) distorting or mutilating a work created by others;

(5) exploiting a work by performance, broadcasting, exhibition, distribution, making cinematographic, television or video productions, adaptation, translation, annotation, and compilation, or by other means, without the permission of the copyright owner, unless otherwise provided in this Law;

(6) exploiting a work created by others without paying remuneration as prescribed by regulations;

(7) broadcasting a live performance without the permission of the performer;

(8) committing other acts of infringement of copyright and of other rights and interests related to copyright.

Article 46 Anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, eliminating its ill effects, making a public apology or paying compensation for damages, etc., depending on the circumstances, and may, in addition, be subjected by the copyright administration department to such administrative penalties as confiscation of unlawful income from the act, or imposition of a fine:

(1) plagiarizing a work created by others;

(2) reproducing and distributing a work, for commercial purposes, without the permission of the copyright owner;

(3) publishing a book where the exclusive right of publication belongs to

another publisher;

(4) producing and publishing a sound recording or video recording of a performance without the permission of the performer;

(5) reproducing and distributing a sound recording or video recording produced by others without the permission of its producer;

(6) reproducing and distributing a radio programme or television programme without the permission of the radio station or television station which has produced that programme; or

(7) producing or selling a work of fine art where the signature of the author is forged.

Article 47 A party who fails to perform his contractual obligations, or performs them in a manner which is not in conformity with the agreed terms shall bear civil liability in accordance with the relevant provisions of the General Principles of the Civil Law.

Article 48 A dispute over copyright infringement may be settled by mediation. If mediation is unsuccessful, or if one of the parties retracts from his promise after a mediation agreement is reached, proceedings may be instituted in a people's court. Proceedings may also be instituted directly in a people's court if the parties do not wish to settle the dispute by mediation.

Article 49 A dispute over a copyright contract may be settled by mediation. It may also, in accordance with the arbitration clause of contract, or a written

arbitration agreement concluded after the contract has been signed, be submitted to a copyright arbitration body for arbitration.

The parties shall implement the arbitration award. If one of the parties fails to implement the award, the other party may apply to a people's court for execution.

If the people's court which has been requested to execute an arbitration award finds that the arbitration award is contrary to law, it shall have the right to refuse the execution.

Where the people's court refuses to execute an arbitration award, the parties may institute proceedings in a people's court for contractual dispute.

Where no arbitration clause is stipulated in the contract and no written arbitration agreement is concluded after the contract has been signed, any party may institute proceedings directly in a people's court.

Article 50 Any party who is not satisfied with an administrative penalty may institute proceedings in a people's court within three months from receipt of the written decision of the administrative penalty. If the party neither institutes proceedings nor executes the decision within the time limit, the copyright administration department may apply to a people's court for execution.

Chapter VI Supplementary Provisions

Article 51 For the purpose of this Law, the term "zhuzuoquan" (author's rights) is synonymous with the term "banquan" (copyright).

Article 52 The term "reproduction" as used in this Law means 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.

The term "reproduction" as used in this Law does not cover the construction or manufacture of industrial products on the basis of drawings of engineering designs and product designs, and descriptions thereof.

Article 53 Measures for the protection of computer software shall be established separately by the State Council.

Article 54 The implementing regulations of this Law shall be drawn up by the copyright administration department under the State Council and shall enter into force after approval by the State Council.

Article 55 The rights of copyright owners, publishers, performers, producers of sound recordings and video recordings, radio stations and television stations as provided for in this Law shall, if their term of protection as specified in this Law has not yet expired on the date of entry into force of this Law, be protected in accordance with this Law.

Article 56 This Law shall enter into force as of June 1, 1991.