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**Paper
New Development of Intellectual Property Protection in
China**

New Development of Intellectual Property Protection in China

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- **I. The release and implementation of Regulations on Protecting the Right of Propagation through Information Network**
- (It was passed on May 10, 2006, released on May 18, 2006 and implemented on July 1, 2007)
- **1. Standardize the protection of the right for information dissemination through network**
- Anyone who wishes to provide works of the owner to the public through the information network shall be approved by the owner and make the necessary payment unless specifically defined by law and regulations.

- **I. The release and implementation of Regulations on Protecting the Right of Propagation through Information Network**
- **II. Further lower the threshold of criminal liabilities in intellectual property rights to reinforce the criminal remedy**
- **III. Join WCT and WPPT**

- **2. Standardize the protection of the technical measures taken by the owner for protecting the right of dissemination through the information network**
- It is forbidden to manufacture, import or provide to the public any systems or parts that are used for evading or destroying the technical measures or to provide services in evading or destroying the technical measures.
- **3. Standardize the protection of the right of managing electronic information**
- It is forbidden to provide works for which it is known or should be known that the right of electronic information management has been deleted or changed without authorization of the owner.

- **4. Establish simple procedures of “notify and delete” in handling infringement disputes**

- In case the owner believes any works on the network have infringed its right or have deleted or changed the right management electronic information, it can require the network service provider in written form to delete the works or disconnect linkage with the works. The network service provider, upon receipt of the notice from the owner, shall immediately delete the works or disconnect linkage with the works that are suspected of infringing rights and shall notify the client. In case the client believes the works have not infringed the rights of others and has requested in written form to recover, the network service provider shall immediately recover the deleted works and restore the linkage to the works. The owner who has misused the notice and has caused any losses to the client shall bear the compensation expenses.

- (2) Statutory license

- For the purposes of implementing the nine-year compulsory education or any state education plan via the information network, it is allowed to use extracts, short writings, music works, single art work or photographic works of the copyright owner for preparing teaching materials, which will be provided to registered students by statutory educational departments via the information network. However, remuneration should be paid.
- In case a network service provider need to provide to the public any works that have been published by a Chinese citizen, proprietor or organization which are related with poverty relief or any works that meet the basic cultural demand for poverty-relief purposes, it should consult with the copyright owner by means of announcements and pay the necessary remuneration. However, it shall not directly or indirectly gain profit from it.

- **5. Clarify the reasonable restraint on the right of communication via information network**

- (1) Reasonable use
- To reasonably extend the reasonable use of works to the network environment as stipulated by the Copyright Law, the provision of works of the owner via the information network for purposes of classroom teaching and governmental use will require no permission from or payment to the owner.
- With regard to the works that are damaged, damaged or the storage format is outdated, which have been legally digitalized, the libraries and archives can provide such works to their clients via the information network.

- **6. Clarify exemption conditions for the network service provider**

1. A network service provider that provides automatic connection service and automatic transmission service, as long as it has provided the services in compliance with commands of the clients without changing the transmitted works or transmitting the works to unauthorized parties, it shall not bear any liabilities related with compensation.
2. In case a network service provider has used automatic storage information to provide service to the clients for the purpose of increasing the network transmission efficiency, it shall not bear any liabilities related with compensation as long as it has not changed the stored works, has not affected the monitoring of the use of the works by the client's website and has processed according the disposal of the works by the client website.

3. A network provider that only provides services of information storage space shall not bear any liabilities related with compensation as long as it has specified it only provides service, will not change the stored works, does not know or should know the works are infringing products, has not earned profit from such infringement and has immediately deleted the infringing works upon receiving written notice from the copyright owner.
4. A network provider that only provides services of searching and linkage shall not bear any liabilities related with compensation as long as it has immediately disconnected linkage with the infringing works upon receiving written notice from the copyright owner. However, it will bear the liabilities of infringement if it continues linkage with the works when it knows or should know they are infringing works.

1. It has further reduced the standard for constituting the crime of copyright infringement:

- It has reduced the standards of crimes related with copyright infringement from the total volume of 1000 pieces to 500 pieces with regard to the copy and distribution of writings, music, movies, TV programs, video works, computer software and other works without permission of the copyright owner.

• **II. Further lower the threshold of criminal liabilities in intellectual property rights to reinforce the criminal remedy**

- On April 4, 2007, the No. 1422 conference of the judicial committee of the Supreme People's Court and the No.75 conference of the 10th the procuratorial committee of the Supreme People's Procuratorate have passed the Provisions of the Supreme People's Procuratorate and the Supreme People's Court on Relevant Issues Regarding the Processing of Criminal Cases Related with the Infringement of Intellectual Property Rights (2), which was released and implemented on April 5, 2007. It has further revised and supplemented the standards of criminal liabilities related with copyright infringement.

2. It has revised and reduced the standards of "other serious circumstances" and "other especially serious circumstances":

- It has reduced the standards of other serious circumstances related with crimes of copyright infringement from the total volume of 1000 pieces to 500 pieces with regard to the copy and distribution of writings, music, movies, TV programs, video works, computer software and other works without permission of the copyright owner.
- It has reduced the standards of other especially serious circumstances related with crimes of copyright infringement from the volume of 5000 pieces to 2500 pieces of copy products.

- 3. It has clearly defined the meaning of "copy distribution" crime of copyright infringement which includes copy, distribution and the conduct combining copy and distribution. The holder of infringing products who promotes infringing products through advertising and soliciting subscription will be regarded as "distribution".
- 4. It has standardized the application of charges against crimes related with copyright infringement which has clearly defined the illegal publication, copyright and distribution of the works of others will constitute crimes and are subject to penalties according to the criminal rules on copyright infringement.
- 5. It has clearly defined the standards of condemnation and sentence for entities and individuals. An entity that has committed crimes related with the infringement of intellectual property as stipulated from Article 213 to Article 219 of the Criminal Law will be punished according to the standards of condemnation and sentence for individuals as stipulated in the Provisions released in 2004 and the New Provisions.

- 7. It has stipulated the rules of public prosecution and private prosecution for criminal cases related with intellectual property which has truly protected the rights of the victim in criminal private prosecution. It has defined that the people's court shall accept according to law any criminal cases related with infringement of intellectual property for which the victim has evidence to prove and has appealed to the people's court. With regard to any criminal cases that seriously undermine social order and the interests of the state, the people's procuratorate will initiate public prosecution according to law.
- 8. It has defined the circumstances of crimes related with infringement of intellectual property which are applicable to probation. The criminals related with the infringement of intellectual property which meet probationary conditions are subject to probation. The following four circumstances are not applicable to probation: those who have again committed crimes related with infringement of intellectual property after they have received criminal or administrative penalties due to infringement of intellectual properties. Those who refuse to demonstrate repentance. Those who refuse to surrender the illegal gains. Other circumstances that are not suitable for probation.

- 6. It has defined the considerable increase of fine in addition to the application of principal penalty which for the first time has specified the standards of fine related with infringement of intellectual property. With regard to crimes related with infringement of intellectual property, the people's court will determine the fine by comprehensively considering the illegal gains, illegal business volume, losses that have been caused to the victim, social harmfulness, etc.. The fine will be at least the same amount and less than five times the amount of the illegal income, or will be above 50% and less than the same amount of the illegal sales volume.

III: Joining WCT and WPPT

- **WIPO Copyright Treaty (WCT) was signed in Geneva on December 20, 1996 and came into force on March 6, 2002. By December 2006, 62 countries have joined this treaty. China decided to join this treaty on December 29, 2006 and it joined this treaty on June 9, 2007.**
- **WIPO Performances and Phonograms Treaty (WPPT) was signed in Geneva on December 20, 1996 and came into force on May 20, 2002. China decided to join this treaty on December 29, 2006 and it joined this treaty on June 9, 2007.**

Thank you!

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