

# Judicial Protection of IPR in China

--Intellectual Property Rights In China--

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

(Adopted at the Fifteenth Session of the Standing Committee of the Seventh National People's Congress on 7 September 1990, and revised in accordance with the Decision on the Amendment of the Copyright Law of the People's Republic of China adopted at the 24th Session of the Standing Committee of the Ninth National People's Congress on 27 October 2001.)

### 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 the copyright-related rights and interests, of encouraging the creation and dissemination of works which would contribute to the construction of socialist spiritual and material civilization, and of promoting the development and prosperity of the socialist culture and science.

**Article 2** Works of Chinese citizens, legal entities or other organizations, whether published or not, shall enjoy copyright in accordance with this Law.

Any work of a foreigner or stateless person which is eligible to enjoy copyright under an agreement concluded between the country to which the foreigner belongs or in which he has habitual residence and China, or under an international treaty to which both countries are party, shall be protected in accordance with this Law.

Works of foreigners or stateless persons 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 who belongs to a country which has not concluded an agreement with China, or which is not a party to an international treaty with China or a stateless person first published in a country which is a party to an international treaty with China, or in such a member state or nonmember state, shall be protected in accordance with this Law.

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

- (1) written works;
- (2) oral works;
- (3) musical, dramatic, quyi', choreographic and acrobatic works;
- (4) works of fine art and architecture;
- (5) photographic works;
- (6) cinematographic works and works created by virtue of an analogous method of film production;
- (7) drawings of engineering designs, and product designs; maps, sketches and other graphic works and model works;
- (8) computer software;

(9) other works as provided for in laws and administrative 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 a legislative, administrative or judicial nature; and their official translations;

(2) news on current affairs; and

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

**Article 6** Regulations for the protection of copyright in expressions of folklore shall be established separately by the State Council.

**Article 7** The copyright administration department under the State Council shall be responsible for the nationwide administration of copyright. The copyright administration department of 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 administrative region.

**Article 8** The copyright owners and copyright-related right holders may authorize an organization for collective administration of copyright to exercise the copyright or any copyright-related right. After authorization, the organization for collective administration of copyright may, in its own name, claim the right for the copyright owners and copyright-related right holders, and participate, as an interested party, in litigation or arbitration relating to the copyright or copyright-related right.

The organization for collective administration of copyright is a non-profit organization. Provisions for the mode of its establishment, rights and obligations, collection and distribution of the royalties of copyright licensing, and supervision and administration thereof shall be separately established by the State Council.

## Chapter II Copyright

### Section 1 Copyright Owners and Their Rights

**Article 9** The term "copyright owners" shall include:

(1) authors;

(2) other citizens, legal entities and other organizations enjoying copyright in accordance with this Law.

**Article 10** The term "copyright" shall include the following personality 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 mentioned in connection with the work;

(3) the right of alteration, 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 reproduction, that is, the right to produce one or more copies of a work by printing, photocopying, lithographing, making a sound recording or video recording, duplicating a recording, or duplicating a photographic work or by any other means;

(6) the right of distribution, that is, the right to make available to the public the original or reproductions of a work through sale or other transfer of ownership;

- (7) the right of rental, that is, the right to authorize, with payment, others to temporarily use cinematographic works, works created by virtue of an analogous method of film production, and computer software, except any computer software that is not the main subject matter of rental;
- (8) the right of exhibition, that is, the right to publicly display the original or reproduction of a work of fine art and photography;
- (9) the right of performance, that is, the right to publicly perform a work and publicly broadcast the performance of a work by various means;
- (10) the right of showing, that is, the right to show to the public a work, of fine art, photography, cinematography and any work created by analogous methods of film production through film projectors, over-head projectors or any other technical devices;
- (11) the right of broadcast, that is, the right to publicly broadcast or communicate to the public a work by wireless means, to communicate to the public a broadcast work by wire or relay means, and to communicate to the public a broadcast work by a loudspeaker or by any other analogous tool used to transmit symbols, sounds or pictures;
- (12) the right of communication of information on networks, that is, the right to communicate to the public a work, by wire or wireless means in such a way that members of the public may access these works from a place and at a time individually chosen by them;
- (13) the right of making cinematographic work, that is, the right to fixate a work on a carrier by way of film production or by virtue of an analogous method of film production;
- (14) the right of adaptation, that is, the right to change a work to create a new work of originality;
- (15) the right of translation, that is, the right to translate a work in one language into one in another language;
- (16) the right of compilation, that is, the right to compile works or parts of works into a new work by reason of the selection or arrangement; and
- (17) any other rights a copyright owner is entitled to enjoy.

A copyright owner may authorize another person to exercise the rights under the preceding paragraphs (5) to (17), and receive remuneration pursuant to an agreement or this Law.

A copyright owner may assign, in part or in whole, the rights under the preceding paragraphs (5) to (17), and receive remuneration pursuant to an agreement or this Law.

## **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 intention and under the supervision and responsibility of a legal entity or other organization, such legal entity or organization shall be deemed to be the author of the work.

The citizen, legal entity or other organization whose name is mentioned in connection with 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 preexisting work, the copyright in the work thus created shall be enjoyed by the adapter, translator, annotator 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. Co-authorship may not be claimed by anyone who has not participated in the creation of the work.

If a work of joint authorship can be separated into independent parts and exploited separately, each co-author shall 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** A work created by compilation of several works, parts of works, data that do not constitute a work or other materials and having originality in the selection or arrangement of its contents is a work of compilation. The copyright in a work of compilation shall be enjoyed by the compiler, provided that the exercise of such copyright shall not prejudice the copyright in the preexisting works.

**Article 15** The copyright in a cinematographic work and any work created by an analogous method of film production shall be enjoyed by the producer of the work, but the scriptwriter, director, cameraman, lyricist, composer, and other authors thereof shall enjoy the right of authorship in the work, and have the right to receive remuneration pursuant to the contract concluded with the producer.

The authors of the screenplay, musical works and other works that are incorporated in a cinematographic work and work created by virtue of an analogous method of film production 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 entity or other organization shall be deemed to be a work created in the course of employment. The copyright in such work shall be enjoyed by the author, subject to the provisions of the second paragraph of this Article, provided that the legal entity or other organization shall have a priority right to exploit the work within the scope of its professional activities. During the two years after the completion of the work, the author shall not, without the consent of the legal entity or other organization, authorize a third party to exploit the work in the same way as the legal entity or other organization does.

In any of the following cases the author of a work created in the course of employment shall enjoy the right of authorship, while the legal entity or other organization shall enjoy the other rights included in the copyright and may reward the author:

(1) drawings of engineering designs and product designs and maps, computer software and other works created in the course of employment mainly with the material and technical resource of the legal entity or other organization and under its responsibility;

(2) works created in the course of employment where the copyright is, in accordance with laws, administrative regulations or contracts, enjoyed by the legal entity or other organization.

**Article 17** The ownership of the 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 rights under Article 10, paragraphs (5) to (17), of this Law 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 Inheritance Law.

Where the copyright in a work belongs to a legal entity or other organization, the rights under Articles 10, paragraphs (5) to (17), of this Law, shall, after the change or the termination of the status of the legal entity or other organization, during the term of protection provided for in this Law, be enjoyed by the succeeding legal entity or other organization which has taken over the former's rights and obligations, or, in the absence of such successor entity or other organization, by the State.

### **Section 3 Term of Protection for rights**

**Article 20** The rights of authorship, alteration and integrity of an author shall be unlimited in time.

**Article 21** The term of protection for the right of publication and the rights referred to in Article 10, paragraphs (5) to (17), of this Law in respect of a work of a citizen shall be the lifetime of the author and fifty years after his death, and expires on 31 December of the fiftieth

year after the death of the author. In the case of a work of joint authorship, such term shall expire on 31 December of the fiftieth year after the death of the last surviving author.

The term of protection for the right of publication and the rights provided for in Article 10, paragraphs (5) to (17), of this Law in respect of a work where the copyright belongs to a legal entity or other organization or in respect of a work created in the course of employment where the legal entity or other organization enjoys the copyright (except the right of authorship), shall be fifty years, and expires on 31 December 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 for the right of publication or protection for the right of publication or

the rights referred to in Article 10, paragraphs (5) to (17), of this Law in respect of a cinematographic work, a work created by virtue of an analogous method of film production or a photographic work shall be fifty years, and expires on 31 December 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 exploited 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 mentioned and the other rights enjoyed by the copyright owner by virtue of this Law shall not be prejudiced:

- (1) use of a published work for the purposes of the user's own private study, research or self-entertainment;
- (2) appropriate quotation from a published work in one's own work for the purposes of introduction to, or comments on, a work, or demonstration of a point;
- (3) reuse or citation, for any unavoidable reason, of a published work in newspapers, periodicals, at radio stations, television stations or any other media for the purpose of reporting current events;
- (4) reprinting by newspapers or periodicals, or rebroadcasting by radio stations, television stations, or any other media, of articles on current issues relating to politics, economics or religion published by other newspapers, periodicals, or broadcast by other radio stations, television stations or any other media except where the author has declared that the reprinting and rebroadcasting is not permitted;
- (5) publication in newspapers or periodicals, or broadcasting by radio stations, television stations or any other media, 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, within proper scope, by a State organ for the purpose of fulfilling its official duties;
- (8) reproduction of a work in its collections by a library, archive, memorial hall, museum, art gallery or any similar institution, for the purposes of the display, or preservation of a copy, of the work;
- (9) free-of-charge live performance of a published work and said performance neither collects any fees from the members of the public nor pays remuneration to the performers;
- (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 of a Chinese citizen, legal entity or any other organization from the Han language into any minority nationality language for publication and distribution within the country; and
- (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.

**Article 23** In compiling and publishing textbooks for implementing the nine-year compulsory education and the national educational program, parts of published works, short written works, music works or single copies of works of painting or photographic works may be compiled into textbooks without the authorization from the authors, except where the authors have declared in advance the use thereof is not permitted, with remuneration paid according to the regulations, the name of the author and the title of the work indicated and without prejudice to other rights enjoyed by the copyright owners according to this Law.

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 and Assignment Contracts

**Article 24** Subject to provisions in this Law according to which no permission is needed, anyone who exploits a work created by others shall conclude a contract with, or otherwise obtain permission from, the copyright owner.

A licensing contract shall include the following basic clauses:

- (1) the category of right licensed for exploitation of the work covered by the license;
- (2) the exclusive or non-exclusive nature of the right to exploit the work covered by the license;
- (3) the geographic area and term of the license;
- (4) the standard of remuneration and the method of payment;
- (5) the liability in case of breach of the contract; and
- (6) any other matter that the contracting parties consider necessary.

**Article 25** Assignment of a right referred to in Article 10, paragraphs (5) to (17), of this Law shall require conclusion of a contract in writing.

A contract of assignment shall include the following basic clauses:

- (1) title of the work;
- (2) category and geographic area of the assigned right;
- (3) assignment price;
- (4) date and manner of payment of the assignment price;
- (5) liabilities for breach of the contract; and
- (6) any other matters that the contracting parties consider necessary.

**Article 26** The other party shall not, without permission from the copyright owner, exercise any right that the copyright owner has not expressly licensed or assigned in the licensing and assignment contract.

**Article 27** The standard of remuneration for the exploitation of a work may be fixed by the interested parties or may be paid according to the standard established by the copyright administration department under the State Council in collaboration with other departments concerned. Where the interested parties have not expressly fixed it, remuneration may also be paid in accordance with the standard established by the copyright administration department under the State Council in collaboration with other departments concerned.

**Article 28** Publishers, performers, producers of sound recordings and video recordings, radio stations, television stations and other entities who or which have obtained, pursuant to the relevant provisions of this Law, the right to exploit the copyright of others, shall not prejudice the authors' rights of authorship, alteration or integrity, or 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 have the exclusive right to publish the work delivered to him by the copyright owner for publication. The exclusive right to publish a work enjoyed by the book publisher specified in the contract shall be protected by law, and the work may not be published by others.

**Article 31** The copyright owner shall deliver the work within the term specified in the contract. The book publisher shall publish the work in accordance with the quality requirements and within the term specified in the contract.

The book publisher shall bear the civil liability specified in Article 53 of this Law if he fails to publish the work within the term 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 publisher refuses to reprint or republish the work when 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, within 15 days from the newspaper publisher or within 30 days from the periodical publisher, counted from the date of submission of the manuscript, any notification of the said publisher's decision to publish the work, 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.

Except where the copyright owner has declared that reprinting or excerpting is not permitted, other newspaper or periodical publishers may, after the publication of the work by a newspaper or periodical, 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 or periodical publisher may make editorial modifications and abridgements in a work, but shall not make modifications in the contents of the work unless permission has been obtained from the author.

**Article 34** When publishing works created by adaptation, translation, annotation, arrangement or compilation of preexisting works, the publisher shall both have the permission from, and pay remuneration to, the owners of the copyright in the works created by means of adaptation, translation, annotation, arrangement or compilation and the owners of the copyright in the original works.

**Article 35** A publisher has the right to license or prohibit any other person to use the typographical arrangement of books or periodicals he has published.

The term of protection for the right provided for in the preceding paragraph shall be ten years, and expires on 31 December of the tenth year after the first publication of the books or periodicals using the typographical arrangement.

##### **Section 2 Performance**

**Article 36** A performer (an individual performer or a performing entity) who for a performance exploits a work created by another person shall obtain permission from, and pay remuneration to, the copyright owner. Where a performing organizer organizes a performance, the

Organizer shall obtain permission from, and pay remuneration to, the copyright owner.

When exploiting, for performance, works created by adaptation, translation, annotation, arrangement or compilation of preexisting works, the performer shall both have the permission from, and pay remuneration to, the owners of the copyright in the works created by means of adaptation, translation, annotation, arrangement or compilation and the owners of the copyright in the original works.

**Article 37** A performer shall, in relation to his performance, enjoy the right

- (1) to claim performer ship;
- (2) to protect the image inherent in his performance from distortion;
- (3) to authorize others to make live broadcasts and public transmission of its or his performance and to receive remuneration;
- (4) to authorize others to make sound recordings and video recordings, and to receive remuneration therefore.
- (5) to authorize others to reproduce or distribute sound recordings and video recordings incorporating his performance, and to receive remuneration therefore; and
- (6) to authorize others to communicate his performance to the public on information network, and to receive remuneration therefore.

The person so authorized who exploits the work in the way referred to in the preceding paragraphs (3) to (6) shall obtain permission from, and pay remuneration to, the copyright owner.

**Article 38** The term of protection for the rights provided for in Article 37, paragraphs (1) and (2), of this Law shall not be subject to any limitation.

The term of protection for the rights provided for in Article 37, paragraphs (3) to (6), of this Law shall be fifty years, and expires on 31 December of the fiftieth year after the performance was made.

### **Section 3 Sound Recordings and Video Recordings**

**Article 39** A producer of sound recordings or video recording who, for the production of a sound recording or video recording, exploits a work created by another person, 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 preexisting work shall both obtain permission from, and pay remuneration 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.

A producer of sound recordings who exploits a music work another person has duly made into a sound recording to produce sound recordings, may not obtain permission from, but shall pay remuneration to the copyright owner as prescribed by regulations, such Work shall not be exploited where the copyright owner has declared that such exploitation is not permitted.

**Article 40** When producing a sound recording or video recording, the producer shall conclude a contract with, and pay remuneration to, the performers.

**Article 41** A producer of sound recordings or video recordings shall have the right to authorize others to reproduce, distribute, rent and communicate to the public on an information network such sound recordings or video recordings and the right to obtain remuneration therefore. The term of protection of such rights shall be fifty years, and expires on 31 December of the fiftieth year after the recording was first produced.

Any one who is authorized to reproduce, distribute and communicate to the public on an information network a sound recording or video recording shall also obtain permission from, and pay remuneration to, the copyright owner and the performer as presented by regulations.

### **Section 4 Broadcasting by Radio Stations or Television Stations**

**Article 42** A radio station or television station that broadcasts an unpublished work created by another person, shall obtain permission from, and pay remuneration to, the copyright owner.

A radio station or television station that broadcasts a published work created by another person does not need a permission from, but shall pay remuneration to, the copyright owner.

**Article 43** A radio station or television station that broadcasts a published sound recording, does not need a permission from, but shall pay remuneration to, the copyright owner, except that the interested parties have agreed otherwise. The specific procedures for treating the matter shall be established by the State Council.

**Article 44** A radio station or television station shall have the right to prohibit the following acts without authorization therefrom:

(1) to rebroadcast its broadcast radio or television program; and

(2) to fix its broadcast radio or television program on a sound recording or video recording carrier and to reproduce the sound recording or video recording carrier.

The term of protection for the right referred to in the preceding paragraph shall be fifty years, and expires on 31 December of the fiftieth year after the radio or television program was first broadcast.

**Article 45** A television station that broadcasts a cinematographic work, a work created by virtue of an analogous method of film production or a video graphic work produced by another person shall obtain permission from, and pay remuneration to, the producer of the

Cinematographic or video graphic work; the station that broadcasts a video graphic work produced by another person shall obtain permission of, and pay remuneration to, the copyright owner.

#### Chapter V Legal Liabilities and Enforcement Measures

**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 the effects of the act, making an apology or paying compensation for damages, 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 mentioned in connection with a work created by another, in order to seek personal fame and gain, where one has not taken part in the creation of the work;

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

(5) plagiarizing a work of another person;

(6) exploiting by exhibition, film production or any analogous method of film production, or by adaptation, translation, annotation, or by other means, without the permission of the copyright owner, unless otherwise provided in this Law;

(7) exploiting a work created by another person without paying remuneration as prescribed by regulations;

(8) rending a work, sound recording or video recording, without the permission of the copyright owner of a cinematographic work, a work created by virtue of an analogous method of film production, computer software, sound recording or video recording or the owner of a copyright-related right unless otherwise provided in this Law.

(9) exploiting the typographic arrangement of a book or periodical without the permission of the publisher.

(10) broadcasting live a performance or communicating the live performance to the public, or recording his performance without the

permission of the performer; or

(11) committing any other act of infringement of copyright and of other rights and interests relating to copyright.

**Article 47** Anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, eliminating the effects of the act, making an apology or paying damages, depending on the circumstances' and may, in addition, be subjected by a copyright administration department to such administrative penalties as ceasing the infringing act, confiscating unlawful income from the act, confiscating and destroying infringing reproductions and imposing a fine; where the circumstances are serious, the copyright administration department may also confiscate the materials, tools, and equipment mainly used for making the infringing reproductions; and if the act constitutes a crime, the infringer shall be prosecuted for his criminal liability:

(1) reproducing, distributing, performing, showing, broadcasting, compiling or communicating to the public on an information network a work created by another person,

without the permission of the copyright owner, unless otherwise provided in this Law;

(2) publishing a book where the exclusive right of publication belongs to another person;

(3) reproducing and distributing a sound recording or video recording of a performance, or communicating to the public his performance on an information network without the permission of the performer, unless otherwise provided in the Law;

(4) reproducing and distributing or communicating to the public on an information network a sound recording or video recording produced by another person, without the permission of the producer, unless otherwise provided in the Law;

(5) broadcasting and reproducing a radio or television program produced by a radio station or television station without the permission of the radio station or television station, unless otherwise provided in this Law;

(6) intentionally circumventing or destroying the technological measures taken by a right holder for protecting the copyright or copyright-related rights in his work, sound recording or video recording, without the permission of the copyright owner, or the owner of the copyright-related rights, unless otherwise provided in law or in administrative regulations;

(7) intentionally deleting or altering the electronic right management information of a work, sound recording or video recording, without the permission of the copyright owner or the owner of a copyright-related right, unless otherwise provided in law or in administrative regulations;

or

(8) producing or selling a work where the signature of another is counterfeited.

**Article 48** Where a copyright or a copyright-related right is infringed, the infringer shall compensate for the actual injury suffered by the right holder; where the actual injury is difficult to compute, the damages shall be paid on the basis of the unlawful income of the infringer. The amount of damages shall also include the appropriate fees paid by the right holder to stop the infringing act.

Where the right holder's actual injury or infringer's Unlawful income cannot be determined, the People's Court shall Judge the damages not exceeding RMB 500, 00 depending on the circumstances of the infringing act.

**Article 49** A copyright owner or owner of a copyright-related right who has evidence to establish that another person is committing or will commit an act of infringing his right, which could cause irreparable injury to his legitimate rights and interests if the act is not stopped immediately, may apply to the People's Court for ordering cessation of the related act and for taking the measures for property preservation before instituting legal proceedings.

The provisions of Articles 93 to 96 and 99 of the Civil Procedure Law of the People's Republic of China shall apply when the People's Court handles the application referred to in the preceding paragraph.

**Article 50** For the purpose of preventing an infringing act and under the circumstance where the evidence could be lost or is difficult to obtain afterwards, the copyright owner or the owner of a copyright-related right may apply to the People's Court for evidence

preservation before initiating legal proceedings.

The People's Court must make the decision within forty-eight hours after it accepts an application; the measures of preservation shall be taken without delay if it is decided to do so.

The People's Court may order the applicant to provide a guaranty, if the latter fails to do so, the Court shall reject the application.

Where the applicant fails to institute legal proceedings within fifteen days after the People's Court adopted the measures of preservation, the latter shall terminate the measures of preservation.

**Article 51** The People's Court hearing a case may confiscate the unlawful income, infringing reproductions and materials used for committing the illegal act of infringement of copyright or copyright-related rights.

**Article 52** The publisher or producer of a reproduction who cannot prove that his publication or production has been authorized, the distributor of a reproduction or the renter of the reproduction of a cinematographic work, a work created by virtue of an analogous method of film production, computer software, sound recording or video recording who cannot prove that his distributed or rented reproduction has been from a lawful source, shall bear legal liability.

**Article 53** A party who fails to fulfill his contractual obligations, or executes them in a manner that is not in conformity with the agreed conditions of the contract, shall bear civil liability in accordance with the relevant provisions of the General Principles of the Civil Law of the People's Republic of China, the Contract Law of the People's Republic of China and other relevant laws and regulations.

**Article 54** A dispute over copyright may be settle by mediation. It may also be submitted for arbitration to a copyright arbitration body under a written arbitration agreement concluded between the parties or under the arbitration clause in the contract.

Any party may institute proceedings directly in the People's Court in the absence of a written arbitration agreement or in the absence of an arbitration clause in the contract.

**Article 55** Any party who is not satisfied with an administrative penalty may institute proceedings in the People's Court within three months from the date of receipt of the written decision on the penalty. If a party neither institutes legal proceedings nor implements the decision within the time limit, the copyright administration department concerned may apply to the People's Court for enforcement.

#### Chapter VI Supplementary Provisions

**Article 56** For the purposes of this Law, the terms "zhuzuoquan"<sup>2</sup> is "banquan"<sup>2</sup>.

**Article 57** "publication" referred to in Article 2 of this Law means the reproduction and distribution of a work.

**Article 58** Regulations for the protection of computer software and the right of communication of information on network shall be established separately by the State Council.

**Article 59** The rights of copyright owners, publishers, performers, producers of sound recordings and video recordings, radio stations and television<sup>1</sup> stations as provided for in this Law, of which the term of protection specified in this Law has not yet expired on the date of this Law's entry into force, shall be protected in accordance with this Law.

Any infringements of copyright and the copyright-related rights or breaches of contract committed prior to the entry into force of this Law shall be dealt with under the relevant regulations or policies in force at the time when the act was committed.

**Article 60** This Law shall enter into force on June 1, 1991.

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<sup>1</sup> Quyi refers to such traditional art forms as ballad singing, story telling, comic dialogues, clapper talks and cross talks.

<sup>2</sup> Zhuzuoquan corresponds to "author's right", but literally translated as "right in a work"; "banquan" is the literal translation of "copyright".

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