



InterPARES 2 Project

International Research on Permanent Authentic Records in Electronic Systems

Policy Cross-domain

Legislation Study – People’s Republic of China (Report II): Workright Law

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List of Examined Laws and Regulations

1. Archives Law of the People's Republic of China
2. Workright Law of the People's Republic of China (Standing Committee of NPC, 2001)
3. Keeping-Secret Law of the People's Republic of China
4. Implementation Measures for the Archives Law of China
5. General Provisions for Archival Institutions' Work
6. Implementation Ordinance of the Workright Law of the People's Republic of China (Order No.359, State Council, 2002)
7. Implementation Measures for Administrative Punishment Respecting Workright (Order No. 3 of the State Workright Administration, 2003)
8. Circular on the Implementation of the Workright Law by the Supreme People's Court (Supreme People's Court, 1993)
9. Ordinance on Collective Management for Workright (Order No.429, State Council, 2004)
10. Stipulation on the Implementation of International Workright Conventions (Order No.105, State Council, 1992)
11. Interim Measures on Administration of Foreign-Workright Agency (State Workright Administration, 1996)
12. Explanation on Applicable laws to the Trial of Workrights Civil Dissension Cases by the Supreme People's Court (Supreme People's Court, 2002)
13. Ordinance on the Protection of Computer Software (Order No.339, State Council, 2002)
14. Circular on Prohibition of Using Illegal Reproduction of Computer Software by the State Copyright Administration (State Copyright Administration of the PRC, 1999)
15. Explanations on Applicable Laws to the Trial of Dissension Cases Involving Computer Network Workright by the Supreme People's Court (Supreme People's Court, 2000)
16. Administrative Protective Measures for the Workright on the Internet (State Workright Administration, Ministry of Information Industry, 2005.05)
17. Circular on Prohibition of Distributing Pirate Software (State Workright Administration, 2001)
18. Stipulation on the Administration of Electronic Publication (General Administration of Press and Publication, 1997)
19. Circular on Registration and Authentication of the Workright Authorization Contract for Publishing and Reproducing Foreign Electronic Publications and Computer Software (State Workright Administration, 1996)
20. Circular on the Use of Unified Authorization Form for Electronic Publication Reproduction (General Administration of Press and Publication, 1996)

Workright Law and its Lower-Position Laws

All lower-position laws are summarized for the purpose of future further inquiries, and currently identified provisions are translated.

Workright Law of the PRC

Overview of the Law

The Workright law¹ is enacted by China's top legislation, the Standing Committee of the National People's Congress, first in 1991 and revised in 2001, in accordance with the Constitution Law to grant legal rights (including moral rights) to authors for their literary, artistic and scientific works and to protect the associated rights and interests. The construction of the Workright law is an important component of China's national policy of opening to the outside. The intention of normalizing the relationships with foreign countries regarding workright and the recognition of international treaties and conventions result in the fact that the principal articles in the Chinese Workright law correspond to those in the Berne Convention to a large degree.²

The Law consists of sixty articles in six chapters: (1) General Provisions, (2) Workright, (3) Use Authorizing and Transfer Contracting of Workright, (4) Publishing, Performing, Sound and Video Recording, (5) Legal Liability and Law Enforcement Measures and (6) Additional Provisions. The Law covers works of Chinese citizens, legal entities and other organizations, including published and unpublished works;³ it also protect works authored by foreigners or stateless persons in compliance with nation-to-nation agreements or international treaties, works of such individuals first published in the territory of China, and works first published in an country which is a party to an international treaty with China even though the country of the author does not have an agreement with China in particular.

Types of Rights⁴

The term “works” in the Workright Law include “works of literature, art, natural science, social science, engineering technology and the like, taking forms as follows:

1. written works;
2. oral works;
3. musical, dramatic, quyi⁵ choreographic and acrobatic works;
4. works of fine art and architecture;
5. photographic works;
6. cinematographic works and works created utilizing similar methods of film production;
7. engineering drawings, product designs, maps, schematic drawings and other graphic works and model works;
8. computer software; and
9. other works stipulated by laws and administrative regulations.”

¹ Article 56 in the Additional Provisions chapter of the Law designates “workright in this law is namely copyright.”

² China is a member of the Berne Convention (joined in 1992) and the Universal Copyright Convention (joined in 1992).

³ Article 57 in the Additional Provisions chapter of the Law specifies “publishing” as the “reproducing and distributing of works.”

⁴ The definition of works is provided by the Implementation Measures of the Law.

⁵ Quyi refers to such traditional art forms as ballad singing, storytelling, comic dialogues, clapper talks and cross talks.

The term “works” in this Law does not include:

1. works that are prohibited to publish and distribute;
2. laws; regulations; resolutions, decisions and orders of State organs, other documents of a legislative, administrative or judicial nature and their official translations;
3. news on current affairs; and
4. calendars, numerical tables and forms of general use, and formulas.

The Law stipulates that workright owners, when exercising their workrights, shall not violate the Constitution and laws and shall not damage public interests.

Administration of the Law

This law is administrated by the workright administration department under the State Council at the national level, and a chain of workright administration department is established in accordance with the administrative hierarchy of the government, i.e., province, autonomous region and municipality directly under the Central Government.

Collective Workright Management Organization

Article 8 of the Law states the owners of workright and the holders of workright-related rights may authorize a collective workright management organization to exercise their workrights and workright-related rights. The collective workright management organization with authorization may claim the right for the workright owners and workright-related right holders in its own name, and participate, as the party to civic activities, in litigation or arbitration relating to the workright or workright-related right.

The collective workright management organization⁶ is defined as non-profit organization in this Law, which then further delegates the State Council to make regulations on such organization’s establishment, its rights and obligations, the collection and distribution of the royalties of licensing, and measures to supervise and administrate the organization.⁷

Ownership of Workright

Workright owners include (1) authors; (2) other citizens, juridical persons and other organizations conferred with workrights by this Law. (article 9)

There are nine articles in Section II Ownership of Workright in Chapter II Workright, specifying the conferring of workrights in various situations where ownership of different types of workrights may be held by different parties having relationship with the work. These provisions have immediate impact on the use and reproduction of the work since use permission or transfer assignment regarding workright need to first identify the types and associated owner of the right. Only the general rules regarding the recognition of ownership is provided in this report.

Article 11: Except where otherwise provided in this Law, the workright in a work shall belong to its author. The author of a work is the citizen who has created the Work.⁸

⁶ It has been a very slow development in China after the Workright Law first enacted in 1991. Up to date, there is only one such organization existing, the China’s Music Workright Association, coming into existence in 1992. The revised Workright Law has the will to promote and facilitate the development of collective workright management organization.

⁷ See Ordinance on Collective Management for Workright for further information.

⁸ See definition of creation in the Implementation Measures of the Law.

In addition to individual author, it also stipulates “where a work is created according to the intention and under the supervision and responsibility of a juridical person or other organization, such juridical person or organization shall be deemed to be the author of the work,” and “the citizen, juridical person 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.”

Types of Workright

Article 10 defines seventeen types of workrights, combining economical and moral rights together. The type # 17 is in fact an umbrella stipulation that covers every else workright-related right not being defined by the preceding types, which is also a vague one since there is no further designation or reference to other laws/regulations regarding how to identify such rights. Please see details below.

Workrights include:

1. publishing right, namely the right to decide whether or not to make a work available to the public;
2. signing right, namely the right to claim authorship and to sign name on the work;
3. revising right, namely the right to revise or to authorize others to revise one's work;
4. right of protecting integrity, namely the right to protect one's work against distortion and tampering;
5. reproducing right, namely the right to produce one or more copies of a work by printing, photocopying, lithographing, sound or video recording, sound or video duplicating, photographic work duplicating or any other means;
6. releasing right, namely the right to provide the public with the original or reproductions of a work though selling or bestowing;
7. renting right, namely the right to temporarily rent others cinematographic works, works created by similar methods of film production, and computer software, in a fee-based manner.
8. displaying right, namely the right to publicly display the original or reproduction of a work of fine art and photography;
9. performing right, namely the right to publicly perform a work and publicly broadcast the performance of a work by various means;
10. showing right, namely the right to show the public works of fine arts, photography, cinematography or work created by similar methods of film production through film projectors, over-head projectors or any other technical devices;
11. broadcasting right, namely 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 similar tool used to transmit symbols, sounds or pictures;
12. right of network transmitting, namely the right to provide works through wire or wireless means to public and let the public to access the work at their choice of location and time;
13. right of making cinematographic work, namely the right to fixate a work through the method of film production or any other similar methods of film production;
14. adapting right, namely the right to change a work to create a unique new work;
15. translating right, namely the right to translate a work from one language into another;

16. compiling right, namely the right to compile works or parts of works into a new work through selection and/or arrangement; and
17. any other rights a workright owner is entitled to.

The same article principally stipulates the authorization and transfer of workrights by its owner, who may authorize another person to exercise the rights of types (5) to (17), or may assign, in part or in whole, the rights of type (5) to (17), and receive remuneration pursuant to an agreement or this Law.

Protection Period of Workright

Section 3 Protection Period of Workright stipulates the length of protection of works. As mentioned in the opening paragraph of this report, China is a member of the two main international copyright conventions, which makes the length of protection to a large degree same with the set international conventions.

Article 21: For citizen's works, the publishing right and the rights defined as types from (5) to (17) in Article 10 of the law shall be protected in the lifetime of the author plus fifty years after his or her death, expiring on December 31 of the fiftieth year. In the case of jointed authorship, the protection shall expire on December 31 of the fiftieth year after the death of the last author.

The same types workrights as above (except for the signing right), when held by juridical persons or other organizations, are protected for fifty years, expiring on December 31 of the fiftieth year after the first publishing of the work; however, if the work has not been published within fifty years, the workrights will not be protected by the law afterwards. The workright of film works and other works created through the similar methods of film making are protected in the same time period and also will not be protected after fifty years if the film work has not been released within fifty years.

Article 20 in this section provides much stronger protection than the Berne Convention and the Canadian Copyright Act to the author's signing and revising rights and the right of protecting the integrity of works - they are granted unlimited, permanent protection by the Workright Law.⁹

Limitations to Rights (Fair Use)

This section consists of two articles deals with fair use (or fair dealing in Canada) of works. Article 22: in the following cases, a work may be used without permission from, and without payment of remuneration to, the workright owner, the name of the author and the title of the work, however, shall be referred explicitly and the other rights held by the workright owner granted by this Law shall not be infringed:

1. the use of a released work¹⁰ for the purposes of the user's own study, research or entertainment;
2. the appropriate quotation from a published work in one's own work for the purposes of introduction to, or comments on, a work, or of demonstrating a point;

⁹ The Berne Convention, second entry of article 2.2, and the moral right in the Canadian Copyright Act is protected by the same time period as for economical rights, which is, in general, the lifetime of the author and the remainder of the year in which the author dies, plus an additional 50 years.

¹⁰ See definition of "released work" in the Implementation of the Law.

3. inevitable re-presentation or citation of published work in media such as newspapers, periodicals, radio, and television for the purpose of reporting current events;
...
6. the translation or copying small quantities of published works used by teaching staff and scientific researchers in teaching activities at schools or scientific research, shall not be published or distributed, however.
7. the use of published works, within proper scope, by a State organ for the purpose of fulfilling its official duties;
8. the reproduction of works in their collections by library, archives, memorial hall, museum, art gallery or any other similar institutions, for the purposes of displaying or preserving works;
...
11. the translation of a published works of a Chinese citizen, legal entity or any other organization from the Han language into any minority nationality language for publishing and distributing within the country; and
12. the publishing of published works in their Braille version.

The above limitations to rights shall be applied to the rights of publishers, performers, producers of sound and video recordings, radio stations and television stations as well.

Article 23: When compiling and publishing textbooks for implementing the nine-year compulsory education and the national educational plan, subject to the author's declaration of restriction, portions of published works, short literature works, music works or single copy of fine arts or photographic works may be compiled into textbooks without the authorization from the authors; nevertheless, remuneration must be paid in compliance with relevant regulations, the name of the author and the title of the work must be referred, and other rights held by the workright owners shall not be infringed.

These limitations to rights are also applicable to the rights of publishers, performers, producers of sound and video recordings, radio stations and television stations.

Exception of use permission

The exception of use permission for workright is specified in Chapter 3, Use Authorization and Transfer Agreement.

The reproduction of sound recordings of music works that were legally-made, the producer of such reproduction may not obtain permission from, but shall pay remuneration to the workright owner in compliance with regulations, subject to declaration of restriction of the workright owner. (article 39)

The producer of sound or video recordings shall have the right to authorize others to reproduce, release, rent and communicate to the public through information networks and shall

be paid with remuneration. The length of protection for such rights holders is the same as for others, i.e., fifty years, expiring on December 31 of the fiftieth year after the recording was first produced. Nevertheless, the person with such authorization shall also obtain permissions from and pay remuneration to the workright owner and the performer when reproduce, release and transmit these sound and video records. (article 41)

Violation

Violation of the workright law is handled by various administrative regulations and laws such as contract law, civil law, and criminal law, depending on consequences and damage of the violation.

The publisher or producer of reproductions who fails to prove such reproductions were carried with legal authorization; the distributor of reproductions or the renter of film works, computer software and sound and video recordings who fails to prove the lawful source of such reproductions or works, shall assume legal liability. (article 52)

Implementation Ordinance of the Workright Law of the PRC (2002)

The implementation ordinance of the workright law further specifies the definitions of works, creation (of work), all types of works, publishing, workright-related rights and relevant participating persons in the process of creation and reproduction. It specifies the administration of the Workright Administration Department in the State Council and stress on the protection of works created by foreigners or stateless authors. It also specifies administrative penalty of infringement of workrights and sets condition (very broad) for fair use.

Archival institutions workrights involving the compiling of materials, construction of databases, if their organization or selection are considered as unique and creative to some extent.

Definition of Works

Works in the Workright Law refer to the intellectual achievements in the fields of literature, arts and science that are of originality and can be reproduced through some visible means. (provision 2)

Definition of Creation

Creation in the Workright Law means intellectual activities that directly generate literature, arts and science works. (provision 3) the organizing activities, providing advice and material conditions, or other assisting activities shall not be considered as creation.

Workright come into existence at the date of the completion of the work's creation.¹¹ (provision 6)

Definition of Released Works

Works that are already released in the Workright Law refers to works that were opened to the public by the owner of the workright, or others with authorization. (provision 20)

¹¹ This is a vague and non-operational provision because there is no procedure in this regulation or reference to others regarding the identification of the "date of completion of the work's creation." It remains a particular problem when dealing with unpublished and unreleased works.

Definition of Make of Sound Recording

The maker of sound recordings refers to the maker of the first sound recording.

Definition of Maker of Video Recording

The maker of video recording refers to the maker of the first video recording.

Anonymous Author

The workrights, except for the signing right, of the work with anonymous author are exerted by the owner of the original. (provision 13)

The protection of the economical rights of the work with anonymous author expires at December 31 of the fiftieth year after the first publishing of the work. (provision 18)

Inheriting of Moral Rights

The signing right, revising right and the right of protecting the integrity of the work shall be protected by the inheritor to the author after his or her death.¹²

In case there is no inherit of the workright, the signing right, revising right and the right of protecting the integrity of the work shall be protected by the workright administration departments. (provision 15)

Condition to Use Exception

The use of published work that may not obtain permission from the workright owner shall not affect the normal use of the work and shall not unreasonably damage the lawful interests of the workright owner. (article 21)

Stipulation on the Implementation of International Workright Conventions (1992)

The Stipulation on the Implementation of International Workright Conventions was made to shorten the distance between the China's Workright Law and the Berne Convention. It closes up the protection for workrights of foreign works to Berne Convention; moreover, since many of the provisions in the Stipulation directly coming from the People's Republic of China and the United States of America Intellectual Property Memorandum, some rules transcend the Berne Convention.¹³

Provision 7 explicitly stipulates "foreign computer software is protected as the literary work, which may not register. The length of protection is the reminder of the year in which the software releases, plus an additional 50 years."

Provision 8 states "foreign works compiled by materials that are not entitled protection, but are creative in the selection or organization of the work shall be protected in pursuance with article 14 of the Workright law." This protection of right, namely the compiling right, then can be expanded to productions such as databases consisting of works which are not entitled with workright or already outdate workright protection but organized in a unique way.

¹² Article 19 in the Workright Law stipulates that the economical rights, within their protection periods, shall be transferred in compliance with the Inherit Law of the PRC.

¹³ Wei Zhi. From Berne Convention to the Revision of China's Workright Law. Available at <http://www.privatelaw.com.cn/new2004/ztyj/..%5Cshtml%5C20050515-104744.htm>.

Interim Measures on the Administration of the Foreign-Workright Agency (1996)

The Interim Measures on the Administration of the Foreign-Workright Agency, in accordance with the Workright Law, regulates the establishment, business scope, structure, operation and liability of the foreign-workright agency under the supervision of the National Copyright Administration of the People's Republic of China¹⁴ and the State Administration for Industry and Commerce.

Foreign-workright business in this regulation refers to the agency, acting on behalf of the client, conducts the transfer of property rights and the use permission of the workright, as well as other civil legal activities relating to foreign workright within its business scope. The agency is defined as enterprise legal entity that is lawfully established and undertakes business relating to foreign workright.

Ordinance on Collective Management for Workright (2004)

The Ordinance on Collective Management for Workright is made in pursuance to the Workright Law for the purposes of regulating the collective management activities for workrights, benefiting the owner of workright and facilitating the use of works. It stipulates the establishment, structure, activities of and the supervision to the collective management organization, as well as the corresponding legal liabilities.

It defines the collective management for workright as “the collective management organization, with authorization from the right-holder, centralizes the exercise of rights and carries on such activities as making permission contracts with users, collecting royalties from users, transferring royalties to the right-holders and being an interested party in litigations and arbitrations relating to workright in its own name.” (provision 2)

It defines the collective management organization is “a social association that is legally established for the interests of the right-holder, and collectively manage the workrights and workright-related rights according to the authorization from the right-holder.” (provision 3) The Workright Administration Department is in charge of the administration of collective management cross the country. (provision 5)

The rationale for the inclusion of collective management for workright in the Workright Law is as the same as that for western countries, as the regulation states “the performing right, showing right, broadcasting right, renting right, right for transmitting through information networks, reproducing right and the like that are difficult to exert effectively by the right-holders themselves, may authorize the collective management organization to manage such rights collectively.” (provision 4)

Ordinance on the Protection of Computer Software (2002)

As a typical lower-position law of the Workright Law, the Ordinance on the Protection of Computer Software have its provisions correspond with the articles in the Workright Law, such

¹⁴ The term “copyright,” “Ban Quan” in Chinese, is used by the bureau; Workright, “Zhu Zuo Quan” in Chinese, is used by the Law and all of the regulations examined in this report. The National Copyright Administration is the highest administrative institution for workright, under directly the State Council. It was established in 1985.

as the defining of types of workrights, ownership of workright, protection period of rights, authorizing and transferring of workrights and legal liability. Specifically, it defines computer software as computer programs and the associated documentation in provision 2, and then further defines computer program and documentation.

Definitions of Computer Program

Computer program refers to “coded commands sequence for the purpose of generating certain results that can be executed by devices such as computer and the like capable of processing information, or symbolic commands sequence or symbolic sentence sequence that can be converted automatically into coded commands sequence.” The source program and target program of the same computer program are considered as one work.

Definitions of Documentation

Documentation refers to text materials, graphics and the like utilized to describe the content, composition, design, function and specification, developing information, testing results as well as application method of the program, such as introduction booklet for program design, flow chart and user manual.

Definitions of Software Developer

The software developer refers to the juridical person or other organization that actually organizes the development, directly conducts the development and assumes responsibilities of the completed software; or the natural person, relying on their own conditions, independently completes the development, and assumes responsibilities of software.

Definitions of Workright Owner of Software.

The workright owner of software refers to the natural person, juridical person or other organization entitled workright as stipulated by this regulation. (provision 3)

Conditions to Protection

Software protect by this regulation must be developed by the developer independently, and is fixed to certain solid object. (provision 4)

The protection of the workright of software by this regulation shall not be extended to the thoughts, handling process, operational methods or mathematical concepts involved in the development. (article 6)

Chinese citizens, juridical persons or other organizations are the owners of the workrights of their developed software, regardless if it is published or not.

Software developed by foreigners or stateless persons that first released in the territory of China is entitled of workrights in accordance with this regulation.

Software developed by foreigners or stateless persons is protected by this regulation in accordance with the conventions concluded between China and the country to which the developer belongs or the country in which the developer reside; or in accordance with the international conventions in which china participates. (provision 5)

Rights of the Owner of a Legal Copy of Software

These include the right to:

1. install the software into devices that are capable of processing information such as computers based on the need of using the software;

2. make backup copies of the legal copy for the purpose of preparing for damage to the legal copy. The owner shall not provide these backup copies to anybody by any means, and they are responsible for the deconstruction of such copies when the ownership of the legal copy loses; and
3. modify the function and capability of the software necessarily for the purpose of employing the software in an actual computer application environment; nevertheless, the modified software shall not be provided to any third party without the permission from the workright owner of the software, subject to agreements set by contract. (provision 16)

Exception to Rights

For the purpose of studying and researching the design concepts and principles, to use the software through means of installing, displaying, transmitting or saving software may not obtain permissions from, or pay remuneration to, the workright owner.

Circular on Prohibition of Using Illegal Reproduction of Computer Software by the State Copyright Administration (1999)

For the purpose of effectively implementing the Workright Law and the Ordinance on the Protection of Computer Software, this regulation stipulates “any unit shall not use unauthorized computer software in its computer system.”

Circular on Prohibition of Distributing Pirated Software (2001)

All software-selling units are prohibited, without any exception, from selling pirated software.

Implementation Measures for Administrative Punishment Respecting Workright (2003)

The Implementation Measures for Administrative Punishment Respecting Workright, constructed in accordance with the Workright Law and the Administrative Punishment Law of the PRC (National People’s Congress, 1996), regulates the administrative punishment process and various methods utilized by the National Copyright Administration and workright administration departments of local government at all levels, including detailed procedures of case acceptance, case trial and hearing, enforcement of rulings and the transfer of cases to criminal courts based on the consequences and damages caused by workright infringing activities.

The law-violation behaviours in this regulation means the infringing activities listed by article 47 in the Workright Law and article 24 in the Ordinance on the Protection for Computer Software, which are also harmful to public interests. (provisions 3)

Administrative Protective Measures for the Workright on the Internet (2005-05)

The Administrative Protective Measures for the Workright on the Internet is constructed for the purpose of reinforcing administrative protection for the right of information network transmission in the Internet information service activities and of regulating administrative enforcement behaviour, in accordance with the Workright Law as well as relevant laws and administrative regulations.

Definition of Internet Content Provider

The “Internet content provider” in this regulation refers to the Internet user who releases relevant contents on the Internet. (article 2)

Application

The measures are applicable, in the Internet information service activities, for functions of automatically providing the uploading, saving, linking or searching of works, sound and video records and the like through the Internet, according to the instruction given by the Internet content provider.

The measures are also applicable for the administrative protection of the right of transmitting performances or sound and video productions to public through the Internet by the performer, producer of the sound and video productions or other workright-related right holders. (article 17)

The Workright Law is applicable for the action of directly providing Internet contents in the Internet information service activities.

The Implementation Measures of Workright Administrative Punishment is applicable for the administrative punishment on behaviours that infringe the right of information network transmission in the Internet information service activities executed by the workright administration department. (article 4)

Circular on the Implementation of the Workright Law of China by the Supreme People’s Court (1993)

This regulation stresses the acceptance and trial of both cosmetic and foreign workright cases in compliance with the Civil Litigation Law of the PRC (Notional People’s Congress, 1991). With particular respect to workright of computer software, it regulates such cases should be accepted by either the civil court or the intellectual property court, regardless whether or not the software is registered. Because of the technical and special nature of the protection of the workright of computer software, the court should consult with relevant departments and experts’ opinion when investigating the case, and should solicit technical appraisal from software technical appraisal organization consisting of experts when there is a need to be appraised. (provision 3)

Explanations on Applicable laws to Trial of Civil Dissension Cases Respecting Workrights by the Supreme People’s Court (2002)

This regulation details the acceptance scope, trial and evidence providing procedures and ruling rationale of dissension cases regarding workright on the basis of the General Provisions of Civil Law, the Contract Law, the Workright Law and the Civil Litigation Law. The users of computer software without use permission or expand the use permission for commerce purposes shall assume civil liability. (provision 21)

Explanations on Applicable Laws to the Trial of Dissension Cases Involving Computer Network Workright by the Supreme People's Court (2000)

This regulation is based on the General Provisions for the Civil Law, the Workright Law and the Civil Litigation Law.

Provision 2: Works that are protected by the Workright Law include the digital format of all types of works listed in article 3 of the Law. Other intellectually created productions that are of originality in the fields of literature, arts and science and can be reproduced in some visible format, but cannot be brought into the scope of works listed by article 3 of the Law in network environment, the People’s court shall grant protection.

Provision 3: The reprinting, excerpting and adapting of Works on the network that have been published on newspapers or periodicals, or transmitted on networks does not infringe workright, subject to the declaration of the workright owner or the declaration of non-reprinting, non-excerpting and non-adapting by the newspapers, periodicals and network service provider authorized by the workright owner. When the reprinted, excerpted or adapted works exceed the scope of the works reprinted on newspapers or periodicals, however, shall be cognized as infringement.

The network service provider and network content service provider are both regulated by this rule on their business activities with respect to workright. They also have responsibility to help investigations on right infringement. (provisions 4, 5, 6, 7)

Stipulation on the Administration of Electronic Publication (1997)

Definition of Electronic Publication

The electronic publication is the compiled and processed information of image, text, sound and video, saved on magnetic, optical or electric media in digital coding format, accessed and retrieved by computer or devices with similar function; the mass transmission media, capable of being reproduced and distributed, to express thoughts, spread knowledge and accumulate culture, The formats of media include FD, CD-ROM, CD-I, Photo-CD, DVD-ROM, IC Card and other media formats recognized by the General Administration of Press and Publication. (provision 2)

The Stipulation is applicable for the...reproduction...of the electronic publication.

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The electronic publication reproducing unit shall not accept consignments for electronic publication reproduction from non-licensed electronic publication unit or individual. The unit shall not reproduce electronic publication, computer software without authorization. (provision 45)

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When reproducing computer software, the request-side shall apply for Electronic Publication Reproduction Authorization Form with computer software workright registration document. (provision 47)

When reproducing electronic publications on media of optical disc, the reproducing organization must have source identification code moulded. (provision 48)

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Punishing provisions are provided in a detailed manner.

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