

Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Civil Copyright Dispute Cases

Dan Young Business Consultancy — www.danyoungcpa.com

Unofficial English translation prepared for reference only. The official Chinese text prevails.

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For the purpose of correctly adjudicating civil copyright dispute cases, and in accordance with the Civil Code of the People's Republic of China, the Copyright Law of the People's Republic of China, the Civil Procedure Law of the People's Republic of China, and other laws, the following interpretation is made on several issues concerning the application of law:

Article 1 — The people's courts shall accept the following civil copyright dispute cases:

- (1) cases concerning disputes over the ownership, infringement, and contracts of copyright and rights and interests related to copyright, in which infringement disputes include cases concerning the confirmation of non-infringement of copyright and rights and interests related to copyright;
- (2) cases concerning applications for pre-litigation cessation of infringement of copyright and rights and interests related to copyright, and cases concerning applications for pre-litigation property preservation and pre-litigation evidence preservation;
- (3) cases concerning liability for damages arising from applications for pre-litigation or in-litigation cessation of infringement of copyright and rights and interests related to copyright; and
- (4) other cases concerning disputes over copyright and rights and interests related to copyright.

Article 2 — Where a party files a lawsuit with a people's court to pursue civil liability against a person for an act of copyright infringement that has been investigated and handled by the competent copyright authority, the people's court shall accept the case.

When adjudicating a civil dispute case concerning an act of copyright infringement that has already been handled by the competent copyright authority, the people's court shall conduct a comprehensive review of the facts of the case.

Article 3 — A civil action arising from an act of copyright infringement shall be subject to the jurisdiction of the people's court at the place where the infringing act prescribed in Articles 52 and 53 of the Copyright Law was committed, the place where the infringing copies are stored, or the place of sealing or seizure, or the people's court at the defendant's domicile.

The place where the infringing copies are stored as mentioned in the preceding paragraph means the place where infringing copies are stored or concealed in large quantities or on a regular basis; the place of sealing or seizure means the place where infringing copies are sealed or seized by customs, copyright, or other administrative authorities in accordance with the law.

Article 4 — In a joint action brought against multiple defendants involving different places where the infringing acts were committed, the plaintiff may choose to file the lawsuit with the people's court at the place where the infringing act of one of the defendants was committed; where an action is brought only against one

of the defendants, the people's court at the place where that defendant's infringing act was committed shall have jurisdiction.

Article 5 — Where a lawfully established collective copyright management organization files a lawsuit in its own name based on the written authorization of the copyright owner, the people's court shall accept the case.

Article 6 — The manuscripts, originals, lawfully published works, copyright registration certificates, certificates issued by authentication or appraisal institutions, contracts for acquiring rights, and other materials related to copyright provided by the parties may be used as evidence.

Article 7 — The physical objects, invoices, and other materials obtained by a party, whether directly or through another person entrusted by it, through purchasing infringing copies by ordering, on-site transactions, or other means, may be used as evidence.

Where a notary, without disclosing his or her identity to the party suspected of infringement, truthfully issues a notarial certificate for the evidence obtained by the other party in the manner prescribed in the preceding paragraph and for the process of obtaining such evidence, the notarial certificate shall be used as evidence, unless there is evidence to the contrary.

Article 8 — "Making a work public" as prescribed in item (1) of the first paragraph of Article 10 of the Copyright Law means making a work available to unspecified persons, and does not require public awareness of the work as a constituent element.

Article 9 — With respect to the works referred to in the third paragraph of Article 17 of the Copyright Law, where the copyright owner is a natural person, the term of protection shall be governed by the provisions of the first paragraph of Article 23 of the Copyright Law; where the copyright owner is a legal person or an unincorporated organization, the term of protection shall be governed by the provisions of the second paragraph of Article 23 of the Copyright Law.

Article 10 — With respect to disputes arising from the order of attribution of authorship of a work, the people's court shall handle them in accordance with the following principles: where there is an agreement, the order of attribution shall be determined in accordance with the agreement; where there is no agreement, the order of attribution may be determined in accordance with the labor contributed to the creation of the work, the arrangement of the work, the strokes of the author's surname, and other factors.

Article 11 — Except for the circumstances prescribed in the third paragraph of Article 11 of the Copyright Law, with respect to reports, speeches, and other works that are drafted by another person but reviewed, finalized, and published in the name of the principal, the copyright shall be enjoyed by the person who delivers the report or speech. The copyright owner may pay the drafter appropriate remuneration.

Article 12 — With respect to an autobiographical work completed by agreement of the parties based on the experiences of a specific person, where the parties have an agreement on the ownership of copyright, such agreement shall prevail; where there is no agreement, the copyright shall be enjoyed by the specific person, and where the drafter or compiler has contributed labor to the completion of the work, the copyright owner may pay him or her appropriate remuneration.

Article 13 — Where works on the same subject matter are created by different authors, and the expression of each work is independently completed and original, each author shall be deemed to enjoy independent copyright in his or her own work.

Article 14 — When disseminating or reporting mere factual information gathered and compiled by another person, the source shall be indicated.

Article 15 — In the circumstances where the copyright in a commissioned work belongs to the commissioned party as prescribed in Article 19 of the Copyright Law, the commissioning party shall enjoy the right to use

the work within the agreed scope of use; where the parties have not agreed on the scope of use of the work, the commissioning party may use the work free of charge within the scope of the specific purpose of the commissioned creation.

Article 16 — "Artistic works located in public places" as prescribed in item (10) of the first paragraph of Article 24 of the Copyright Law means artistic works such as sculptures, paintings, and calligraphy works that are installed or displayed at places of public activity.

A person who copies, paints, photographs, or videotapes the artistic works prescribed in the preceding paragraph may, in accordance with the law, further use the results thereof in a reasonable manner and within a reasonable scope, but shall not install, display, or publicly disseminate them in the same manner without the permission of the copyright owner.

Article 17 — "Reprinting" as prescribed in the second paragraph of Article 35 of the Copyright Law means the act of a paper newspaper or periodical approved for publication by the competent authority for newspapers and periodicals, or a digital version thereof consistent with its content and layout, publishing a work that has already been published in another newspaper or periodical. Where a reprint fails to indicate the author of the reprinted work and the source of the newspaper or periodical in which it was first published, the reprinting party shall bear civil liability such as eliminating the effects and extending an apology.

The mutual reprinting of published works between newspapers and periodicals and internet information service providers, or between internet information service providers, shall not be governed by the provisions of the preceding paragraph, and the permission of the copyright owner shall be obtained and remuneration paid.

Article 18 — Where a publication infringes upon the copyright of another person, the publisher shall bear civil liability in accordance with its fault, the extent of the infringement, the consequences of the damage, and other factors.

Where a publisher fails to fulfill its duty of reasonable care with respect to the authorization for its publishing act, the source and attribution of the manuscript, the content of the publication it edits and publishes, and other matters, it shall bear civil liability in accordance with the provisions of Article 52 of the Copyright Law.

The publisher shall bear the burden of proof that it has fulfilled its duty of reasonable care.

Article 19 — Where a computer software user commercially uses computer software without permission or beyond the scope of permission, the user shall bear civil liability in accordance with item (1) of Article 53 of the Copyright Law and item (1) of the first paragraph of Article 24 of the Regulations on the Protection of Computer Software.

Article 20 — Where a copyright assignment contract is not in written form, the people's court shall examine whether the contract has been formed in accordance with the provisions of Article 490 of the Civil Code.

Article 21 — Where a publisher loses or damages a work delivered by the copyright owner for publication, resulting in the inability to perform the publishing contract, the copyright owner shall have the right to require the publisher to bear corresponding civil liability in accordance with the provisions of Articles 186, 238, and 1184 of the Civil Code and other provisions.

Article 22 — The actual loss of the rights holder may be calculated based on the reduction in the distribution of copies caused to the rights holder by the infringement, or the product of the sales volume of infringing copies and the unit profit of the rights holder in distributing such copies.

Where the reduction in distribution is difficult to determine, it shall be determined based on the market sales volume of the infringing copies.

Article 23 — Where the actual loss of the rights holder, or the illegal gains of the infringer or the reasonable royalty fee, is difficult to calculate, the people's court shall, upon the request of the parties or ex officio,

determine the amount of damages in accordance with the provisions of the second paragraph of Article 54 of the Copyright Law.

When determining the amount of damages, the people's court shall make a comprehensive determination taking into account the type of the work, the degree of fault of the alleged infringer, the nature and consequences of the infringing act, and other circumstances.

Where the parties reach an agreement on the amount of damages in accordance with the provisions of the first paragraph of this Article, such agreement shall be permitted.

Article 24 — The reasonable expenses paid to stop the infringing act as prescribed in the third paragraph of Article 54 of the Copyright Law include the reasonable expenses incurred by the rights holder or its entrusted agent in investigating and collecting evidence of the infringing act and other reasonable expenses.

The people's court may, based on the parties' claims and the specific circumstances of the case, include lawyer's fees that comply with the provisions of the relevant state authorities within the scope of damages.

Article 25 — The limitation period for an action for copyright infringement is three years, calculated from the date on which the copyright owner knows or should have known that its rights have been infringed and the identity of the obligor. Where the rights holder files a lawsuit after more than three years, if the infringing act is still continuing at the time the lawsuit is filed, the people's court shall, within the term of protection of the copyright, order the defendant to cease the infringing act; the amount of damages for infringement shall be calculated retroactively for three years from the date on which the rights holder files the lawsuit with the people's court.

Article 26 — Where a people's court takes preservation measures, it shall handle them in accordance with the Civil Procedure Law and the relevant provisions of the Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Examination of Intellectual Property Dispute Cases Involving Behavior Preservation.

Article 27 — With respect to civil copyright dispute cases accepted by a people's court, where the case involves legal facts occurring after the amendment of the Copyright Law, the provisions of the amended Copyright Law shall apply; where the case involves legal facts occurring before the amendment of the Copyright Law, the provisions of the Copyright Law before amendment shall apply, unless otherwise provided by law or judicial interpretation; where the case involves legal facts occurring before the amendment of the Copyright Law and continuing after the amendment, the provisions of the amended Copyright Law shall apply, unless otherwise provided by law or judicial interpretation.

Article 28 — Where any prior relevant provisions are inconsistent with this Interpretation, this Interpretation shall prevail.

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