Regulations for the Implementation of the Copyright Law of the PRC

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

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Chapter I — General Provisions

Article 1 — These Regulations are formulated in accordance with the Copyright Law of the People's Republic of China (hereinafter referred to as the "Copyright Law").

Article 2 — The term "work" as used in the Copyright Law means an original intellectual creation in the literary, artistic or scientific domain that can be reproduced in a tangible form.

Article 3 — The term "creation" as used in the Copyright Law means intellectual activities that directly produce literary, artistic or scientific works. Organizing work, providing consultation, material conditions or

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other auxiliary services conducted for the creation of another person shall not be deemed as creation.

Article 4 — The meanings of the following terms concerning works as used in the Copyright Law and these Regulations are as follows:

(1) Written works: works expressed in written form, such as novels, poems, essays and theses;

(2) Oral works: works expressed in spoken form, such as impromptu speeches, lectures and court debates;

(3) Musical works: works, such as songs and symphonies, with or without accompanying words, that can be sung or performed;

(4) Dramatic works: works, such as dramas, operas and local operas, created for stage performance;

(5) Quyi works: works, such as cross talk, clapper talk, drum ballads and storytelling, created mainly for performance by talking and singing;

(6) Choreographic works: works expressed through continuous body movements, gestures and facial expressions;

(7) Acrobatic art works: works expressed through body movements and skills, such as acrobatics, magic and circus performances;

(8) Artistic works: two-dimensional or three-dimensional works of the plastic arts with aesthetic significance created through lines, colors or other means, such as paintings, calligraphy and sculptures;

(9) Architectural works: works with aesthetic significance expressed in the form of buildings or structures;

(10) Photographic works: works recording the images of objective objects on photosensitive materials or other media by means of instruments;

(11) Cinematographic works and works created by a process analogous to cinematography: works recorded on certain media, consisting of a series of images, with or without accompanying sound, which can be projected or otherwise communicated with the aid of appropriate devices;

(12) Graphic works: works, such as engineering design drawings and product design drawings, created for construction and production, and maps and schematic diagrams reflecting geographical phenomena and explaining the principles or structures of things;

(13) Model works: three-dimensional works created in accordance with the shape and structure of objects in a certain proportion, for the purposes of demonstration, experiment or observation.

Article 5 — The meanings of the following terms concerning the date and place of publication of works as used in the Copyright Law and these Regulations are as follows:

(1) The "date of publication" of a work means the date on which the work is first made available to the public;

(2) The "place of publication" of a work means the country or region where the work is first made available to the public.

Article 6 — Copyright shall arise on the date on which the creation of a work is completed.

Article 7 — The publication of the works of foreigners or stateless persons within the territory of China as mentioned in the proviso of paragraph 1 of Article 2 of the Copyright Law means that the works of foreigners or stateless persons that have not been published are lawfully and first published within the territory of China, or first published outside the territory of China but published within the territory of China within 30 days thereafter.

Article 8 — Where the works of foreigners or stateless persons are first published outside the territory of China and then published within the territory of China within 30 days, they shall be deemed to be first published within the territory of China.

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Chapter II — Copyright Administrative Authorities

Article 9 — The copyright administration department under the State Council shall be responsible for the nationwide administration of copyright. The copyright administration departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall be responsible for the administration of copyright within their respective administrative regions.

Article 10 — The copyright administration department under the State Council may, on behalf of the State, exercise copyright in works in accordance with the law.

Article 11 — The term "competent copyright administrative authority" as used in the Copyright Law means the copyright administration department under the State Council and the copyright administration departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government.

Chapter III — Ownership and Exercise of Copyright

Article 12 — The copyright in a work of which the author is unknown shall be exercised by the owner of the original copy of the work, except the right of authorship. After the author is determined, the copyright shall be exercised by the author or the author's heir.

Article 13 — Where a work of an unidentified author is owned by the State, the copyright administration department under the State Council shall exercise the copyright on behalf of the State.

Article 14 — The copyright in a work of joint authorship shall be exercised by all the co-authors through consensus; where consensus cannot be reached and there is no justified reason, no party may prevent the other party or parties from exercising any rights other than assignment. However, the benefits obtained shall be reasonably distributed among all the co-authors.

Article 15 — Where the co-author of a work of joint authorship dies and has no successor or legatee, the other co-author shall enjoy the copyright in the work of joint authorship.

Article 16 — The right to exploit a work through compilation enjoyed by the compiler of a compiled work shall not affect the copyright of the author of the pre-existing work.

Article 17 — Where a work is created at the behest of another person and the ownership of the copyright is not agreed upon by the parties through a contract or is not clearly stated in the contract, the ownership of the copyright shall be vested in the commissioned party.

Article 18 — The right of authorship, the right of revision and the right of integrity of a work shall be protected by the owner of the original copy after the death of the author, where the author has no successor or legatee.

Article 19 — Where the author is deceased and the work is a work of the author's own authorship, if the author has no successor or legatee, the right of authorship, the right of revision and the right of integrity of the work shall be protected by the copyright administration department.

Article 20 — The term of protection of the right of publication and the property rights of a work of an unidentified author shall be 50 years ending on December 31 of the 50th year after the first publication of the work. The provisions of Article 21 of the Copyright Law shall apply after the author is determined.

Article 21 — Where a citizen's work meets the requirements of a work made for hire in accordance with the provisions of paragraph 2 of Article 16 of the Copyright Law, after the death of the citizen, the right of authorship, the right of revision and the right of integrity of the work shall be protected by the legal person or entity without legal personality.

Article 22 — Where a work created by a citizen before the implementation of the Copyright Law has not been published and meets the requirements of a work made for hire in accordance with the provisions of

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paragraph 2 of Article 16 of the Copyright Law, after the death of the citizen, the copyright shall be enjoyed by the legal person or entity without legal personality during the term of protection as provided for in the Copyright Law. Where the legal person or entity without legal personality is changed or terminated, the copyright shall be enjoyed by the legal person or entity without legal personality that succeeds to its rights and obligations; where there is no successor, the copyright shall be owned by the State.

Article 23 — The use of another person's work shall be agreed upon with the copyright owner through a contract, unless copyright can be used without permission in accordance with the provisions of the Copyright Law.

Article 24 — The contents of the contract for the use of a work as provided for in Article 24 of the Copyright Law shall be agreed upon by the parties and may include:

(1) The type of right to be licensed;

(2) Whether the right to be licensed is an exclusive or non-exclusive right;

(3) The geographic scope and the time limit of the license;

(4) The standard for the remuneration and the method for payment thereof;

(5) Liability for breach of contract;

(6) Other matters deemed necessary by the parties.

Article 25 — The contract for the use of a work shall clearly state the exclusive right of use as provided for in Article 24 of the Copyright Law. Where a contract for the use of a work does not clearly state the grant of an exclusive right of use, or where the parties have agreed on it, only the non-exclusive right of use shall be deemed to have been granted.

Article 26 — The provisions of Articles 23 and 24 of the Copyright Law shall apply to a contract for the assignment of exclusive rights of use made with a copyright owner.

Article 27 — For the purposes of the Copyright Law, "fair use" of a work means use that does not affect the normal exploitation of the work and does not unreasonably prejudice the legitimate rights and interests of the copyright owner.

Chapter IV — Copyright Licensing and Assignment Contracts

Article 28 — The term "remuneration" for the use of a work as used in the Copyright Law means the remuneration paid by a user of a work to the copyright owner for the license to use the work.

Article 29 — The rate of remuneration for the use of a work may be agreed upon by the parties or may be determined in accordance with the rate of remuneration fixed by the copyright administration department under the State Council, in conjunction with the relevant departments. Where the parties have not agreed upon the rate of remuneration, the rate of remuneration fixed by the copyright administration department under the State Council, in conjunction with the relevant departments, shall apply.

Article 30 — Where a copyright owner licenses another person to use a work, the copyright owner shall be entitled to obtain remuneration in accordance with the provisions of the relevant laws and administrative regulations or in accordance with the contract.

Article 31 — Where the parties have not made an agreement on the use of a work or the agreement fails to specify clearly the right to use, the provisions of Articles 24 and 25 of the Copyright Law shall apply.

Chapter V — Legal Liability

Article 32 — The administrative penalties provided for in Article 48 of the Copyright Law may be imposed by the copyright administration department under the State Council or by the copyright administration

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departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government.

Article 33 — The term "illegal business revenue" as used in Article 48 of the Copyright Law means the total revenue derived from the infringing act.

Article 34 — The term "illegal gains" as used in Article 48 of the Copyright Law means the amount of income derived from the infringing act minus reasonable expenses.

Article 35 — In imposing administrative penalties on copyright infringements, the copyright administration department may order the infringer to cease the infringing act and may impose a fine, confiscate the illegal gains, and confiscate and destroy the infringing copies. Where the circumstances are serious, the copyright administration department may also confiscate the materials, tools and equipment mainly used for making the infringing copies.

Article 36 — Where a party commits an act of infringement of copyright and damages the public interest at the same time, the copyright administration department may impose a fine of not more than three times the illegal business revenue. Where the illegal business revenue is difficult to calculate, a fine of not more than RMB 100,000 may be imposed.

Article 37 — Where a party fails to institute legal proceedings within the statutory time limit, or fails to perform the administrative penalty decision after the time limit, the copyright administration department may apply to the people's court for compulsory enforcement.

Article 38 — In investigating and punishing infringing acts, the copyright administration department may question the parties concerned, inspect and make copies of the contracts, invoices, account books and other relevant materials relating to the infringing acts, and seal up or seize the articles relating to the infringing acts.

Chapter VI — Supplementary Provisions

Article 39 — The protection of computer software and the protection of the right of communication through information networks shall be governed by separate administrative regulations formulated by the State Council.

Article 40 — These Regulations shall take effect as of September 15, 2002. The Regulations for the Implementation of the Copyright Law of the People's Republic of China approved by the State Council on May 24, 1991 and promulgated by the National Copyright Administration on May 30, 1991 shall be repealed simultaneously.

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