Regulations on the Protection of Computer Software of the PRC

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

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Effective: January 1, 2002

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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 for the purposes of protecting the rights and interests of software copyright owners, regulating the relationship of interests arising from the development, dissemination, and use of computer software, encouraging the development and application of computer software, and promoting the development of the software industry and the informatization of the national economy.

Article 2 — For the purposes of these Regulations, “computer software” (hereinafter referred to as “software”) means computer programs and relevant documentation.

Article 3 — For the purposes of these Regulations, the following terms shall have the meanings set forth below:

(1) “Computer program” means a coded instruction sequence, or a sequence of symbolic instructions or symbolic statements that can be automatically converted into a coded instruction sequence, which is designed to be executed by a device having information processing capability such as a computer for the purpose of obtaining a certain result. The source code and the object code of a computer program shall be the same work.

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(2) “Documentation” means written materials and diagrams, such as program design specifications, flowcharts, and user manuals, used to describe the content, composition, design, functional specifications, development status, test results, and methods of use of a program.

(3) “Software developer” means a legal person, unincorporated organization, or natural person that actually organizes or directly carries out the development work and assumes responsibility for the developed software, or a legal person, unincorporated organization, or natural person that independently completes the development of software relying on its own conditions and assumes responsibility for the software.

(4) “Software copyright owner” means a natural person, legal person, or unincorporated organization that enjoys software copyright in accordance with the provisions of these Regulations.

Article 4 — Software protected under these Regulations must be independently developed by the developer and fixed in a tangible medium.

The protection of software copyright under these Regulations shall not extend to the ideas, processing, operating methods, mathematical concepts, or the like used in the development of software.

Article 5 — Chinese citizens, legal persons, or unincorporated organizations shall enjoy copyright in the software they have developed, whether published or not, in accordance with these Regulations.

Foreigners and stateless persons shall enjoy copyright in the software they have developed in accordance with the agreements signed between their home countries or the countries of their habitual residence and China or the international treaties to which both countries are parties, and under these Regulations.

Article 6 — The protection of software copyright shall not extend to the ideas, processing, operating methods, mathematical concepts, or the like used in the development of software.

Article 7 — Software copyright owners may register their software with the software copyright registration authority recognized by the copyright administrative department of the State Council. The registration certificate issued by the software copyright registration authority shall be prima facie evidence of the registered matters.

Fees shall be paid for the registration of software. The fee standards for software copyright registration shall be formulated by the copyright administrative department of the State Council in conjunction with the price administrative department of the State Council.

Chapter II — Software Copyright

Article 8 — A software copyright owner shall enjoy the following rights:

(1) The right of publication, that is, the right to decide whether to make the software available to the public;

(2) The right of authorship, that is, the right to claim authorship and to have the developer’s name mentioned in connection with the software;

(3) The right of alteration, that is, the right to supplement or abridge the software, or change the sequence of instructions or statements;

(4) The right of reproduction, that is, the right to make one or more copies of the software;

(5) The right of distribution, that is, the right to provide the original copy or reproductions of the software to the public by selling, donating, or other means;

(6) The right of rental, that is, the right to authorize others to temporarily use the software for a fee, except where the software is not the main object of the rental;

(7) The right of communication through information networks, that is, the right to provide the software to the public by wire or wireless means so that the public may access the software at a time and place individually

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chosen by them;

(8) The right of translation, that is, the right to convert the software from one natural language into another natural language; and

(9) Other rights that shall be enjoyed by software copyright owners.

A software copyright owner may authorize others to exercise the software copyright and shall have the right to receive remuneration. A software copyright owner may transfer, in whole or in part, the software copyright and shall have the right to receive remuneration.

Article 9 — The software copyright shall belong to the software developer, except as otherwise provided in these Regulations.

Where there is no proof to the contrary, the natural person, legal person, or unincorporated organization whose name is mentioned in connection with the software shall be the developer.

Article 10 — Where software is developed by two or more natural persons, legal persons, or unincorporated organizations in cooperation, the ownership of the copyright shall be stipulated in a written contract between the co-developers. In the absence of a written contract or an explicit stipulation in the contract, where the jointly developed software can be divided into parts that can be used independently, each co-developer may independently enjoy the copyright in the part developed by it; provided that the exercise of the copyright in each independent part shall not extend to the copyright in the rest of the jointly developed software. Where the jointly developed software cannot be divided into parts that can be used independently, the copyright shall be enjoyed jointly by all co-developers and shall be exercised by agreement. In the absence of an agreement, no co-developer may prevent any other co-developer from exercising the copyright except the right of transfer; provided that the proceeds obtained shall be reasonably distributed among all co-developers.

Article 11 — Where software is developed under commission, the ownership of the copyright shall be stipulated in a written contract between the commissioning party and the commissioned party. In the absence of a written contract or an explicit stipulation in the contract, the copyright shall be enjoyed by the commissioned party.

Article 12 — Where software is developed by a State organ within the scope of its functions, the ownership and the exercise of the copyright shall be stipulated in a project assignment letter or a contract. In the absence of an explicit stipulation in the project assignment letter or the contract, the copyright shall be enjoyed by the legal person or unincorporated organization that has accepted the assignment.

Article 13 — Where software is developed by a natural person during the term of his or her employment with a legal person or unincorporated organization and the software is developed in any of the following circumstances, the copyright in the software shall be enjoyed by the legal person or unincorporated organization, which may reward the natural person who developed the software:

(1) The software is developed for the purpose of performing the tasks assigned by the employer;

(2) The software is developed by making use of the employer’s material and technical resources not available to the public and the software is the employer’s responsibility; or

(3) The software is developed under the circumstances as provided by laws, administrative regulations, or contracts.

Article 14 — The term of protection of software copyright shall start from the date on which the development of software is completed. Where the software copyright belongs to a natural person, the term of protection shall be the lifetime of the natural person plus 50 years after his or her death, expiring on December 31 of the 50th year after his or her death. Where the software is developed in cooperation, the term of protection shall expire on December 31 of the 50th year after the death of the last surviving natural person. Where the

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software copyright belongs to a legal person or unincorporated organization, the term of protection shall be 50 years, expiring on December 31 of the 50th year after the first publication of the software; provided that where the software has not been published within 50 years after the completion of the development, it shall no longer be protected under these Regulations.

Chapter III — Licensing, Transfer, and Pledge of Software Copyright

Article 15 — Where a software copyright is licensed, the parties shall enter into a licensing contract. Where the licensing contract does not explicitly stipulate that the license is an exclusive license, it shall be deemed a non-exclusive license. In the absence of a written contract or an explicit stipulation in the contract, the licensee may not transfer the license to a third party or authorize a third party to use the software.

Article 16 — Where a software copyright is transferred, the parties shall enter into a written contract. The transfer of software copyright may be registered with the software copyright registration authority recognized by the copyright administrative department of the State Council.

Article 17 — Where a software copyright is pledged, the pledgor and the pledgee shall handle the pledge registration with the software copyright registration authority recognized by the copyright administrative department of the State Council.

Chapter IV — Legal Liability

Article 18 — Where a person commits any act of infringement of software copyright, he or she shall, depending on the circumstances, bear civil liabilities such as ceasing the infringement, eliminating the effects, making an apology, or compensating for losses; where the act simultaneously prejudices the public interest, the copyright administrative department may order the infringer to cease the infringement, issue a warning, confiscate the illegal gains, confiscate, destroy the infringing copies, and may concurrently impose a fine; where the circumstances are serious, the copyright administrative department may also confiscate the materials, tools, equipment, and other articles mainly used for making the infringing copies; where the case constitutes a crime, criminal liability shall be pursued in accordance with the law:

(1) Reproducing, in whole or in part, the software of the copyright owner;

(2) Distributing, renting, or communicating the software of the copyright owner to the public through information networks;

(3) Intentionally circumventing or destroying the technical measures taken by the copyright owner for protecting the software copyright;

(4) Intentionally removing or altering the electronic rights management information attached to the software; or

(5) Transferring or licensing another person to exercise the software copyright of the copyright owner.

Article 19 — Where any of the following acts is committed in the infringement of software copyright, and a crime is constituted, criminal liability shall be pursued in accordance with the law:

(1) Reproducing or distributing the software of the copyright owner without the permission of the copyright owner, with a relatively large amount of illegal gains or under other serious circumstances; or

(2) Reproducing or distributing the software of the copyright owner without the permission of the copyright owner, with a huge amount of illegal gains or under other particularly serious circumstances.

Article 20 — The publisher or producer of software who fails to prove that the publication or production of the software is legally authorized, or the distributor or renter of copies of software who fails to prove the legal source of the copies under distribution or rental, shall bear legal liability.

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Article 21 — Where a holder of a software copy, without knowing and without reasonable grounds to know that the software is an infringing copy, does not bear the liability for compensation; but shall cease the use and destroy the infringing copy. Where the cessation of use and destruction of the infringing copy would cause significant losses to the holder of the copy, the holder of the copy may continue to use the copy after paying a reasonable fee to the software copyright owner.

Chapter V — Supplementary Provisions

Article 22 — These Regulations shall be effective as of January 1, 2002. The Regulations on the Protection of Computer Software promulgated by the State Council on June 4, 1991 shall be repealed simultaneously.

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