Regulations on the Collective Administration of Copyright of China (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) for the purposes of regulating collective copyright administration activities, facilitating the exercise of rights by copyright owners and right holders related to copyright (hereinafter referred to as right holders) and the use of works by users.

Article 2 — For the purposes of these Regulations, "collective copyright administration" means the following activities carried out by a collective copyright administration organization, with the authorization of right

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holders, in which the relevant rights of the right holders are collectively exercised in the organization's own name:

(1) concluding licensing contracts for copyright or rights related to copyright with users (hereinafter referred to as licensing contracts);

(2) collecting usage fees from users;

(3) transferring usage fees to right holders; and

(4) conducting litigation, arbitration, and other activities concerning copyright or rights related to copyright.

Article 3 — For the purposes of these Regulations, "collective copyright administration organization" means a social organization established in accordance with law for the benefit of right holders that, with the authorization of right holders, carries out collective administration of the copyright or rights related to copyright of the right holders.

A collective copyright administration organization shall register and carry out its activities in accordance with the administrative regulations on the registration and administration of social organizations and these Regulations.

Article 4 — Rights prescribed by the Copyright Law, such as the right of performance, the right of projection, the right of broadcasting, the right of rental, the right of communication through information networks, and the right of reproduction, which right holders find difficult to exercise effectively by themselves, may be collectively administered by collective copyright administration organizations.

Article 5 — The copyright administration department of the State Council shall be in charge of collective copyright administration nationwide.

Article 6 — Except for collective copyright administration organizations established in accordance with these Regulations, no organization or individual shall engage in collective copyright administration activities.

Chapter II — Establishment of Collective Copyright Administration Organizations

Article 7 — Chinese citizens, legal persons, or other organizations lawfully enjoying copyright or rights related to copyright may initiate the establishment of a collective copyright administration organization.

The establishment of a collective copyright administration organization shall satisfy the following conditions:

(1) no fewer than 50 right holders initiate the establishment of the organization;

(2) its scope of business does not overlap or coincide with that of a collective copyright administration organization already registered in accordance with law;

(3) it is capable of representing the interests of the relevant right holders on a nationwide scale; and

(4) it has a draft charter of the collective copyright administration organization, a draft standard for the collection of usage fees, and a draft method for transferring usage fees to right holders (hereinafter referred to as the usage fee transfer method).

Article 8 — The charter of a collective copyright administration organization shall state the following matters:

(1) its name and domicile;

(2) the purpose of its establishment;

(3) its scope of business;

(4) its organizational structure and the functions and powers thereof;

(5) the minimum number of members of the members' assembly;

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(6) the duties of the board of directors and the conditions for, and the procedures for the election and removal of, the person in charge of the board of directors;

(7) the method for the withdrawal and use of administrative fees;

(8) the conditions and procedures for members to join and withdraw from the collective copyright administration organization;

(9) the procedures for amending the charter; and

(10) the conditions and procedures for the termination of the collective copyright administration organization and the disposition of its assets after termination.

Article 9 — An application for the establishment of a collective copyright administration organization shall be submitted to the copyright administration department of the State Council together with materials evidencing compliance with the conditions prescribed in Article 7 of these Regulations. The copyright administration department of the State Council shall, within 60 days from the date of receipt of the materials, make a decision to approve or not to approve. Where approval is granted, a collective copyright administration license shall be issued; where approval is not granted, the reasons shall be stated.

Article 10 — The applicant shall, within 30 days from the date the collective copyright administration license is issued by the copyright administration department of the State Council, complete the registration formalities with the civil affairs department of the State Council in accordance with the administrative regulations on the registration and administration of social organizations.

Article 11 — A collective copyright administration organization registered in accordance with law shall, within 30 days from the date the registration certificate is issued by the civil affairs department of the State Council, file a copy of its registration certificate with the copyright administration department of the State Council for record; the copyright administration department of the State Council shall announce the filed copy of the registration certificate, the charter of the collective copyright administration organization, the usage fee collection standards, and the usage fee transfer method.

Article 12 — The establishment of a branch by a collective copyright administration organization shall be subject to the approval of the copyright administration department of the State Council and shall be registered with the civil affairs department of the State Council in accordance with the administrative regulations on the registration and administration of social organizations. Where the branch is registered in accordance with law, a copy of its registration certificate shall be filed with the copyright administration department of the State Council for record and announced by the copyright administration department of the State Council.

Article 13 — A collective copyright administration organization shall formulate its usage fee collection standards according to the following factors:

(1) the time, manner, and territorial scope of the use of works, sound recordings, video recordings, and the like;

(2) the categories of rights; and

(3) the degree of complexity of the work of concluding licensing contracts and collecting usage fees.

Article 14 — A collective copyright administration organization shall formulate its usage fee transfer method according to the circumstances of the use of the works, sound recordings, video recordings, and the like of right holders.

Article 15 — Where a collective copyright administration organization amends its charter, the amendment shall be subject to verification by the civil affairs department of the State Council in accordance with law, and shall then be announced by the copyright administration department of the State Council.

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Article 16 — Where the registration of a collective copyright administration organization is revoked in accordance with law, it shall no longer engage in collective copyright administration business activities from the date of revocation of its registration.

Chapter III — Organs of Collective Copyright Administration Organizations

Article 17 — The members' assembly of a collective copyright administration organization (hereinafter referred to as the members' assembly) shall be the organ of authority of the collective copyright administration organization.

The members' assembly shall be convened by the board of directors in accordance with these Regulations. The board of directors shall announce the time, place, and matters to be deliberated at the meeting 60 days before the meeting of the members' assembly is held; members attending the members' assembly shall register 30 days before the meeting is held. Where the number of members registering to attend the members' assembly is fewer than the minimum number prescribed by the charter, the board of directors shall announce the registration status for the members' assembly, and members may make supplementary registration 5 days before the meeting, and the members' assembly shall be held by all members who have registered to attend.

The members' assembly shall exercise the following functions and powers:

(1) formulating and amending the charter;

(2) formulating and amending the usage fee collection standards;

(3) formulating and amending the usage fee transfer method;

(4) electing and removing directors;

(5) deliberating and approving the work report and financial report of the board of directors;

(6) formulating internal management systems;

(7) deciding on the usage fee transfer plan and the proportion of administrative fees to be withdrawn by the collective copyright administration organization; and

(8) deciding on other major matters.

The members' assembly shall be held once a year; upon the proposal of 10 percent or more of the members or of the board of directors, an extraordinary members' assembly may be convened. Decisions of the members' assembly shall be adopted by a majority vote of the members attending the meeting.

Article 18 — A collective copyright administration organization shall establish a board of directors, which shall be responsible to the members' assembly and shall implement the decisions of the members' assembly. The board of directors shall have no fewer than 9 members.

The term of office of the board of directors shall be 4 years, and a general election shall be held upon the expiry of the term. The general election may be held earlier or postponed under special circumstances, but the postponement shall not exceed one year.

Chapter IV — Collective Copyright Administration Activities

Article 19 — A right holder may conclude a collective copyright administration contract with a collective copyright administration organization in writing, authorizing the organization to administer the copyright or rights related to copyright lawfully enjoyed by the right holder. Where a right holder meets the conditions for joining prescribed by the charter, the collective copyright administration organization shall conclude a collective copyright administration contract with the right holder and shall not refuse.

A right holder who concludes a collective copyright administration contract with a collective copyright administration organization and fulfills the corresponding formalities prescribed by the charter shall become a member of the collective copyright administration organization.

Article 20 — After concluding a collective copyright administration contract with a collective copyright administration organization, a right holder shall not, within the term agreed in the contract, exercise by himself or herself, or license another person to exercise, the rights agreed in the contract to be exercised by the collective copyright administration organization.

Article 21 — A right holder may, in accordance with the procedures prescribed by the charter, withdraw from the collective copyright administration organization and terminate the collective copyright administration contract. However, where the collective copyright administration organization has already concluded licensing contracts with others, those contracts shall remain effective until their expiry; during the period of validity of those contracts, the right holder shall have the right to obtain the corresponding usage fees and may consult the relevant business materials.

Article 22 — Foreigners and stateless persons may, through overseas organizations of the same type that have concluded mutual representation agreements with Chinese collective copyright administration organizations, authorize the Chinese collective copyright administration organizations to administer the copyright or rights related to copyright lawfully enjoyed by them within the territory of China.

For the purposes of the preceding paragraph, “mutual representation agreement” means an agreement between a Chinese collective copyright administration organization and an overseas organization of the same type under which each authorizes the other to carry out collective administration activities in the country or region where the other is located.

Mutual representation agreements concluded between a collective copyright administration organization and overseas organizations of the same type shall be filed with the copyright administration department of the State Council for record and announced by the copyright administration department of the State Council.

Article 23 — Where a collective copyright administration organization licenses another person to use the works, sound recordings, video recordings, and the like administered by it, it shall conclude a licensing contract with the user in writing.

A collective copyright administration organization shall not conclude an exclusive licensing contract with a user.

Where a user requests, on reasonable conditions, to conclude a licensing contract with a collective copyright administration organization, the collective copyright administration organization shall not refuse.

The term of a licensing contract shall not exceed 2 years; the contract may be renewed upon its expiry.

Article 24 — A collective copyright administration organization shall establish a rights information inquiry system for right holders and users to consult. The rights information inquiry system shall include the categories of rights administered by the collective copyright administration organization, the names of the works, sound recordings, video recordings, and the like, the names of the right holders, and the term of the authorization for administration.

When right holders and users make inquiries about the information on the rights administered by the collective copyright administration organization, the organization shall provide replies.

Article 25 — Except for the usage fees required to be paid under Article 23, Article 33(2), Article 40(3), Article 43(2), and Article 44 of the Copyright Law, a collective copyright administration organization shall, according to the usage fee collection standards announced by the copyright administration department of the State Council, agree with users on the specific amount of usage fees to be collected.

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Article 26 — Where two or more collective copyright administration organizations collect usage fees from the same user for the same mode of use, they may agree in advance that one of the collective copyright administration organizations shall collect the fees uniformly. The uniformly collected usage fees shall be distributed among the relevant collective copyright administration organizations through consultation.

Article 27 — When a user pays usage fees to a collective copyright administration organization, it shall provide the names of the works, sound recordings, video recordings, and the like it uses, the names of the right holders, and the mode, quantity, time, and other relevant circumstances of use; except where the licensing contract provides otherwise.

Where the relevant circumstances of use provided by the user involve the user's trade secrets, the collective copyright administration organization shall bear the obligation of confidentiality.

Article 28 — A collective copyright administration organization may withdraw a certain proportion of the usage fees it collects as administrative fees to maintain its normal business activities.

The proportion of administrative fees withdrawn by a collective copyright administration organization shall be gradually reduced as its usage fee income increases.

Article 29 — After withdrawing administrative fees, a collective copyright administration organization shall transfer all of the usage fees it collects to the right holders and shall not divert them to other uses.

When transferring usage fees, a collective copyright administration organization shall prepare usage fee transfer records. The usage fee transfer records shall state the total amount of usage fees, the amount of administrative fees, the names of the right holders, the names of the works or sound recordings, video recordings, and the like, the relevant circumstances of use, the specific amount of usage fees transferred to each right holder, and other matters, and shall be preserved for 10 years or more.

Chapter V — Supervision of Collective Copyright Administration Organizations

Article 30 — A collective copyright administration organization shall establish financial and accounting systems and an asset management system in accordance with law, and shall set up accounting books in accordance with State provisions.

Article 31 — The use of assets and the financial management of a collective copyright administration organization shall be subject to the supervision of the copyright administration department of the State Council and the civil affairs department.

A collective copyright administration organization shall prepare financial accounting reports at the end of each accounting year, entrust an accounting firm to conduct an audit in accordance with law, and publish the audit results.

Article 32 — A collective copyright administration organization shall keep records of the following matters for consultation by right holders and users:

(1) the circumstances of the licensing of the use of works;

(2) the circumstances of the collection and transfer of usage fees; and

(3) the circumstances of the withdrawal and use of administrative fees.

Right holders shall have the right to consult and copy the financial reports, work reports, and other business materials of the collective copyright administration organization; the collective copyright administration organization shall provide convenience.

Article 33 — Where a right holder considers that a collective copyright administration organization falls under any of the following circumstances, he or she may report it to the copyright administration department of the State Council:

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(1) a right holder who meets the joining conditions prescribed by the charter requests to join the collective copyright administration organization, or a member requests to withdraw from the collective copyright administration organization in accordance with the procedures prescribed by the charter, and the collective copyright administration organization refuses;

(2) the collective copyright administration organization fails to collect or transfer usage fees in accordance with provisions, or fails to withdraw or use administrative fees in accordance with provisions; or

(3) a right holder requests to consult the records and business materials prescribed in Article 32 of these Regulations and the collective copyright administration organization refuses to provide them.

Article 34 — Where a user considers that a collective copyright administration organization falls under any of the following circumstances, it may report it to the copyright administration department of the State Council:

(1) the collective copyright administration organization refuses to conclude a licensing contract with the user in violation of Article 23 of these Regulations;

(2) the collective copyright administration organization fails to agree on the specific amount of usage fees to be collected according to the announced usage fee collection standards; or

(3) a user requests to consult the records prescribed in Article 32 of these Regulations and the collective copyright administration organization refuses to provide them.

Article 35 — Citizens, legal persons, or other organizations other than right holders and users that consider that a collective copyright administration organization has committed acts in violation of these Regulations may report such acts to the copyright administration department of the State Council.

Article 36 — The copyright administration department of the State Council shall, within 60 days from the date of receipt of a report or complaint, investigate the reported or complained matters and handle them in accordance with law.

Article 37 — The copyright administration department of the State Council may supervise a collective copyright administration organization by the following means and shall keep records of its supervision activities:

(1) inspecting whether the business activities of the collective copyright administration organization comply with these Regulations and its charter;

(2) verifying the accounting books, annual budget and final accounts reports, and other relevant business materials of the collective copyright administration organization; and

(3) sending personnel to attend important meetings such as the members' assembly and board of directors meetings of the collective copyright administration organization as observers.

Article 38 — A collective copyright administration organization shall accept the supervision of the civil affairs department of the State Council and other relevant departments in accordance with law.

Chapter VI — Legal Liability

Article 39 — Where a collective copyright administration organization falls under any of the following circumstances, the copyright administration department of the State Council shall order it to rectify within a prescribed time limit:

(1) failing to file the mutual representation agreement concluded with an overseas organization of the same type with the copyright administration department of the State Council for record in violation of Article 22 of these Regulations;

(2) failing to establish a rights information inquiry system in violation of Article 24 of these Regulations; or

(3) failing to agree on the specific amount of usage fees to be collected according to the announced usage fee collection standards.

Where a collective copyright administration organization administers the rights of right holders beyond its scope of business, the copyright administration department of the State Council shall order it to rectify within a prescribed time limit, and the licensing contracts it has concluded with users shall be void; where damage is caused to right holders or users, civil liability shall be borne in accordance with law.

Article 40 — Where a collective copyright administration organization falls under any of the following circumstances, the copyright administration department of the State Council shall order it to rectify within a prescribed time limit; where it fails to rectify within the time limit, the members' assembly or the board of directors shall be ordered to remove or dismiss the directly responsible person in charge in accordance with the functions and powers prescribed by these Regulations:

(1) refusing to conclude a collective copyright administration contract with a right holder in violation of Article 19 of these Regulations, or refusing a member's request to withdraw from the organization in violation of Article 21 of these Regulations;

(2) refusing to conclude a licensing contract with a user in violation of Article 23 of these Regulations;

(3) withdrawing administrative fees in violation of Article 28 of these Regulations;

(4) transferring usage fees in violation of Article 29 of these Regulations; or

(5) refusing to provide, or providing false, accounting books, annual budget and final accounts reports, or other relevant business materials.

Article 41 — Where a collective copyright administration organization has, for more than 6 months from the date the registration certificate is issued by the civil affairs department of the State Council, failed to carry out collective copyright administration activities without justifiable reasons, or has continuously suspended collective copyright administration activities for more than 6 months, the copyright administration department of the State Council shall revoke its collective copyright administration license, and the civil affairs department of the State Council shall revoke its registration.

Article 42 — Where a collective copyright administration organization engages in profit-making business activities, the administration for industry and commerce shall ban it in accordance with law and confiscate its illegal gains; where a crime is constituted, criminal liability shall be pursued in accordance with law.

Article 43 — Where a user who is able to provide the relevant circumstances of use refuses to provide them, or resorts to deception in providing the relevant circumstances of use, in violation of Article 27 of these Regulations, the copyright administration department of the State Council shall order rectification; the collective copyright administration organization may suspend the licensing contract.

Article 44 — Where a party establishes a collective copyright administration organization or a branch without authorization, or engages in collective copyright administration activities without authorization, the copyright administration department of the State Council or the civil affairs department shall, in accordance with the division of duties, ban it and confiscate its illegal gains; where a crime is constituted, criminal liability shall be pursued in accordance with law.

Article 45 — Where a staff member of a State administrative organ engaged in the approval and supervision of collective copyright administration organizations in accordance with these Regulations neglects his or her duties, abuses his or her power, or engages in malpractice for personal gain, and a crime is constituted, criminal liability shall be pursued in accordance with law; where a crime is not constituted, administrative sanctions shall be imposed in accordance with law.

Chapter VII — Supplementary Provisions

Article 46 — A collective copyright administration organization already established before the implementation of these Regulations shall, within 3 months from the effective date of these Regulations, submit its charter, usage fee collection standards, usage fee transfer method, and other relevant materials to the copyright administration department of the State Council for examination, and file the mutual representation agreements it has concluded with overseas organizations of the same type with the copyright administration department of the State Council for record.

Article 47 — Where a party uses the works of another person in accordance with Article 23, Article 33(2), or Article 40(3) of the Copyright Law but fails to pay usage fees to the right holder in accordance with Article 32 of the Regulations for the Implementation of the Copyright Law of the People's Republic of China, it shall deliver the usage fees, together with postage and the relevant circumstances of use of the works, to the collective copyright administration organization administering the relevant rights, and that organization shall transfer the usage fees to the right holder.

The collective copyright administration organization responsible for transferring usage fees shall establish a work use information inquiry system for right holders and users to consult.

The collective copyright administration organization responsible for transferring usage fees may withdraw administrative fees from the usage fees it receives, at half of the proportion of administrative fees of that collective administration organization as decided by the members' assembly. Apart from administrative fees, the collective copyright administration organization shall not withdraw any other fees from the usage fees it receives.

Article 48 — These Regulations shall be effective from March 1, 2005.

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