

Decree of the State Council of the People's Republic of China

No.468

Regulations on Protection of the Right of Communication through Information Network, adopted at the 135th Executive Meeting of the State Council on May 10, 2006, are hereby promulgated and shall be effective as of July 1, 2006.

Premier, Wen Jiabao

May 18, 2006

Regulations on Protection of the Right of Communication through Information Network

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 purpose of protecting the right of communication through information network enjoyed by copyright owners, performers, and producers of sound and video recordings (hereinafter collectively referred to as right owners), and encouraging the creation and communication of works conducive to the building of a socialist society which is advanced ethically and materially.

Article 2 The right of communication through information network enjoyed by right owners is protected by the Copyright Law and these Regulations. Any organization or individual that makes another person's work, performance, or sound or video recording available to the public through information network shall obtain permission from, and pay remuneration to, the right owner, except as otherwise provided for by laws or administrative regulations.

Article 3 Such works, performances, and sound and video recordings as are prohibited from being made available in accordance with law are not protected by these Regulations.

Right owners, in exercising their right of communication through information network, shall neither violate the Constitution, laws and administrative regulations nor impair public interests.

Article 4 Right owners may adopt technological measures in order to protect their right of communication through information network.

No organization or individual may intentionally circumvent or sabotage technological measures, or intentionally manufacture, import, or make available to the public devices or components mainly used to circumvent or sabotage technological measures, or intentionally provide other persons with technical services to circumvent or sabotage technological measures, except where such circumvention is permitted by laws or administrative regulations.

Article 5 Without permission from a right owner, no organization or individual may commit any of the following acts:

(1) to intentionally remove or alter any electronic rights management information attached to a work, performance, or sound or video recording made available to the public through information network, except that it is unavoidable for such information to be removed or altered because of any technical reason; or

(2) to make available to the public through information network a work, performance, or sound or video recording, knowing or having reasonable grounds to know that the electronic rights management

information thereof has been removed or altered without permission from the right owner.

Article 6 In any of the following cases, another person's work may be made available through information network without permission from, and without payment of remuneration to, the copyright owner:

(1) when a published work is appropriately quoted, for the purpose of introducing or commenting a certain work or explaining a certain point, in one's own work made available to the public;

(2) when a published work is unavoidably included or quoted, for the purpose of reporting current events, in one's own work made available to the public;

(3) when a small quantity of copies of a published work are made available to a small number of teachers or scientific researchers for the purpose of classroom teaching or scientific research;

(4) when a published work is made available to the public by a State organ to a justifiable extent for the purpose of fulfilling its official duties;

(5) when a translation of a published work of a Chinese citizen, legal entity or any other organization from Han language into a national minority language is made available to the people of the national minority in the territory of China;

(6) when a published written work is made available to blind persons for a non-profit purpose in such particular way that it is perceptible to

them;

(7) when an article published over information network on current political or economic topics is made available to the public; or

(8) when a speech delivered at a public gathering is made available to the public.

Article 7 A library, archive, memorial hall, museum, or art gallery, and so on may make available to the service recipients on its premises through information network a digital work in its collection which is legally published, or a work which is reproduced in digital form for the purpose of displaying, or preserving copies of, the same work in accordance with law, without permission from, and without payment of remuneration to, the copyright owner, provided that no direct or indirect financial benefit is gained therefrom, unless the parties have agreed otherwise.

The work reproduced in digital form for display or preservation purpose, as referred to in the preceding paragraph, shall be a work of which a copy in the collection is on the brink of damage or is damaged, lost or stolen, or of which the storage format is outmoded, and which is unavailable or only available at a price obviously higher than the marked one on the market.

Article 8 For the purpose of implementing the plan of nine-year compulsory education or the plan of national education through

information network, excerpts from a work, a short written work or musical work, or a single work of fine arts or photographic work, if published, may be used to produce courseware which may be made available to registered students through information network by distance education institutions which have produced such courseware or have legally obtained a copy of such courseware, without permission from the copyright owner, provided that remuneration is paid to the copyright owner.

Article 9 A network service provider, before making available, free of charge, to the public in rural areas through information network, for the purpose of aiding poverty-stricken areas, a published work of a Chinese citizen, legal entity or any other organization which deals with a topic of aiding poverty-stricken areas such as cultivation and breeding, prevention and treatment of diseases, or prevention and reduction of disasters, or which satisfies the basic needs for culture, shall announce the title of the work to be made available and the name of its author as well as the rates of remuneration to be paid. Where the copyright owner raises an objection to the making available of the said work within 30 days from the date on which the announcement is made, the network service provider shall not make the said work available. Where the copyright owner raises no objection upon expiration of 30 days from the date on which the announcement is made, the network service provider may

No financial benefit may be directly or indirectly gained from the making available of a work in accordance with the provisions of the preceding paragraph.

Article 10 Where a work is made available to the public through information network without permission from the copyright owner in accordance with the provisions of these Regulations, the following provisions shall be observed:

(1) the work may not be made available if its author has declared in advance that the making available of the work is not permitted, except in the cases provided for in subparagraphs (1) to (6) of Article 6 and in Article 7 of these Regulations ;

(2) the title of the work and the name of its author shall be indicated;

(3) remuneration shall be paid in accordance with the provisions of these Regulations;

(4) technological measures shall be adopted to prevent any person

the interests

of the copyright owner; and

(5) the other rights enjoyed by the copyright owner in accordance with law shall not be infringed.

Article 11 Where another person's performance or sound or video recording is made available through information network, the provisions of Articles 6 to 10 of these Regulations shall be observed.

Article 12 In any of the following cases, technological measures may be circumvented, provided that technologies, devices or components used to circumvent technological measures are not made available to other persons, and that the other rights enjoyed by a right owner in accordance with law are not infringed:

(1) when a published work , performance or sound or video recording is made available to a small number of teachers or scientific researchers through information network for the purpose of classroom teaching or scientific research, and the said work , performance or sound or video recording is only accessible over information network;

(2) when a published written work is made available to blind persons through information network for a non-profit purpose in such particular

way that it is perceptible to them, and the said work is only accessible over information network;

(3) when a State organ fulfils its official duties in accordance with the administrative or judicial procedure; or

(4) when a safety test is carried out over information network on a computer and its system or on such network.

Article 13 In order to investigate and handle an act infringing on the right of communication through information network, the administrative department for copyright may request the network service provider to provide such data as the name, contact means and network address of a service recipient suspected of infringement.

Article 14 Where a right owner believes that a work, performance, or sound or video recording involved in the service of a network service provider who provides information storage space or provides searching or linking service has infringed on the right owner's right of communication through information network, or that the right owner's electronic rights management information attached to such work, performance, or sound or video recording has been removed or altered, the right owner may deliver a written notification to the network service provider, requesting it to remove the work, performance, or sound or video recording, or disconnect the link to such work, performance, or sound or video recording. The written notification shall contain the following particulars:

(1) the name, contact means and address of the right owner;

(2) the title and network address of the infringing work, performance, or sound or video recording which is requested to be removed or to which the link is requested to be disconnected; and

(3) the material constituting preliminary proof of infringement.

The right owner shall be responsible for the authenticity of the written notification.

Article 15 A network service provider shall, upon receiving a notification from a right owner, promptly remove the work, performance, or sound or video recording suspected of infringement, or disconnect the link to such work, performance, or sound or video recording, and shall, at the same time, transfer the notification to the service recipient who makes available the said work, performance, or sound or video recording. Where the notification cannot be transferred because the network address of the service recipient is unknown, the network service provider shall, at the same time, make the contents of the notification known to the public over information network.

Article 16 Where a service recipient, upon receiving a notification transferred from a network service provider, believes that the work, performance, or sound or video recording made available thereby does not infringe on the right of another person, the service recipient may deliver a written explanatory statement to the network service provider,

requesting it to replace the removed work, performance, or sound or video recording, or to replace the disconnected link to such work, performance, or sound or video recording. The written explanatory statement shall contain the following particulars:

- (1) the name, contact means and address of the service recipient;
- (2) the title and network address of the work, performance, or sound or video recording which is requested to be replaced; and
- (3) the material constituting preliminary proof of non-infringement.

The service recipient shall be responsible for the authenticity of the written explanatory statement.

Article 17 Upon receiving a written explanatory statement delivered by a service recipient, a network service provider shall promptly replace the removed work, performance, or sound or video recording, or may replace the disconnected link to such work, performance, or sound or video recording and, at the same time, transfer the written explanatory statement delivered by the service recipient to the right owner. The right owner shall not notify the network service provider anew to remove the work, performance, or sound or video recording, or to disconnect the link to such work, performance, or sound or video recording.

Article 18 Where, in violation of the provisions of these Regulations, an organization or individual commits any of the following acts of infringement, such organization or individual shall, depending on the

circumstances, bear such civil liability as ceasing the infringement, eliminating the bad effects of the act, making an apology, or paying compensation for losses. Where public interests are impaired, the administrative department for copyright may order cessation of the act of infringement, confiscate the illegal gain, and may impose a fine of not more than 100,000 yuan. If the circumstances are serious, the administrative department for copyright may confiscate the equipment such as computers mainly used to provide network service. If a crime is constituted, criminal liability shall be investigated for in accordance with law:

(1) to make available to the public through information network another person's work, performance, or sound or video recording without permission;

(2) to intentionally circumvent or sabotage technological measures;

(3) to intentionally remove or alter the electronic rights management information attached to a work, performance, or sound or video recording made available to the public through information network; or to make available to the public through information network a work, performance, or sound or video recording, knowing or having reasonable grounds to know that the electronic rights management information attached to such work, performance, or sound or video recording has been removed or altered without permission from the right owner;

(4) to make available to rural areas through information network a work, performance, or sound or video recording for the purpose of aiding poverty-stricken areas, beyond the limits as specified, or without paying remuneration according to the announced rates, or, after the copyright owner has raised an objection to the making available of the work, performance, or sound or video recording, without promptly having it removed; or

(5) to make available through information network another person's work, performance, or sound or video recording without indicating the title of the work, performance, or sound or video recording or the name of its author, performer or producer of the sound or video recording, or without paying remuneration, or without adopting technological measures in accordance with the provisions of these Regulations to prevent any person other than a service recipient from accessing the said work, performance, or sound or video recording, or without preventing any act of reproduction of a service recipient from substantially impairing the interests of the right owner.

Article 19 Where, in violation of the provisions of these Regulations, an organization or individual commits any of the following acts, the administrative department for copyright shall give a warning, confiscate the illegal gain, and confiscate the devices or components mainly used to circumvent or sabotage technological measures. If the circumstances are

serious, the said department may confiscate the equipment such as computers mainly used to provide network service, and may impose a fine of not more than 100,000 yuan. If a crime is constituted, criminal liability shall be investigated for in accordance with law:

(1) to intentionally manufacture, import, or make available to another person any devices or components mainly used to circumvent or sabotage technological measures; or to intentionally provide another person with technical service to circumvent or sabotage technological measures;

(2) to gain financial benefit from making available through information network another person's work, performance, or sound or video recording; or

(3) to fail to announce the title of a work, performance, or sound or video recording and the name of its author, performer or producer of the sound or video recording as well as the rates of remuneration to be paid before making available the said work, performance, or sound or video recording to rural areas through information network for the purpose of aiding poverty-stricken areas.

Article 20 A network service provider which, at the direction of a service recipient, provides the service of automatic network access, or the service of automatic transmission of a work, performance, or sound or video recording made available by the service recipient, and which meets

the following conditions, bears no liability for compensation:

(1) it does not make any selection of and modification to the work, performance, or sound or video recording transmitted thereby; and

(2) it makes available the work, performance, or sound or video recording to anticipated service recipients only, and has prevented any person other than the anticipated service recipients from accessing the said work, performance, or sound or video recording.

Article 21 A network service provider which, in order to increase the efficiency of network transmission, provides the service of automatic storage of a work, performance, or sound or video recording accessible from another network service provider, and of automatic making available of the work, performance, or sound or video recording to service recipients through a technical process, and which meets the following conditions, bears no liability for compensation:

(1) it does not make any modification to the work, performance, or sound or video recording automatically stored;

(2) it does not hinder the original network service provider which makes available the work, performance, or sound or video recording from keeping abreast of the information concerning the access by service recipients to such work, performance, or sound or video recording; and

(3) it automatically modifies, removes, or disables access to the work, performance, or sound or video recording through a technical process

when the original network service provider modifies, removes, or disables access to the same work, performance, or sound or video recording.

Article 22 A network service provider which provides an information storage space to a service recipient, thus enabling the service recipient to make available to the public through information network a work, performance, or sound or video recording, and which meets the following conditions, bears no liability for compensation:

(1) it clearly indicates that such information storage space is provided for the service recipient, and it makes known to the public its name, the person to be contacted and network address of the network service provider;

(2) it does not make any modification to the work, performance, or sound or video recording made available by the service recipient;

(3) it does not know or has no reasonable grounds to know that the work, performance, or sound or video recording made available by the service recipient is an infringement;

(4) it does not gain any direct financial benefit from the service recipient making available the work, performance, or sound or video recording; and

(5) upon receiving a written notification of the right owner, it removes, in accordance with the provisions of these Regulations, the work,

performance, or sound or video recording which the right owner believes to be an infringement.

Article 23 A network service provider which provides searching or linking service to a service recipient and which, upon receiving a written notification of the right owner, disconnects the link to an infringing work, performance, or sound or video recording in accordance with the provisions of these Regulations bears no liability for compensation; however, if it knows or has reasonable grounds to know that the linked work, performance, or sound or video recording is an infringement, it shall bear the liability for contributory infringement.

Article 24 Where, as the result of the notification of a right owner, a network service provider wrongly removes, or wrongly disconnects the link to, a work, performance, or sound or video recording, and thereby causes losses to service recipients, the right owner shall bear the liability for compensation.

Article 25 Where, without just cause, a network service provider refuses or delays the provision of such data as the name, contact means and network address of a service recipient suspected of infringement, the administrative department for copyright shall give a warning thereto and, if the circumstances are serious, confiscate the equipment such as computers mainly used to provide network service.

Article 26 As used in these Regulations:

The term “right of communication through information network” means the right to make available to the public a work, performance, or sound or video recording, by wire or by wireless means, in such a way that members of the public may access the said work, performance, or sound or video recording from a place and at a time individually chosen by them.

The term “technological measures” means effective technologies, devices or components used to prevent or restrict browsing or appreciating a work, performance, or sound or video recording, or making available to the public through information network a work, performance, or sound or video recording without permission from the right owner.

The term “electronic rights management information” means information which identifies a work, performance, or sound or video recording and its author, performer or producer or its right owner, or information concerning the terms and conditions of use of the work, performance, or sound or video recording, or any numbers or codes which represent such information.

Article 27 These Regulations shall be effective as of July 1, 2006.