

## **Regulations on the Protection of the Right of Communication through Information Network(draft)**

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### **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 protecting the right of communication through information network of copyright owners and copyright-related right owners (hereinafter referred to as right owners) and encouraging the communication to the public of highly rated works, performances, and sound and video recordings.

### **Article 2**

For the purpose of these Regulations, (1) "information network" means an information system that is capable of making available to the public of works, performances, or sound and video recordings by wire or wireless means in such a way that members of the public may access these works, performances, or sound and video recordings from a place and at a time individually chosen by them;

(2) "technological measures" means effective devices or methods used by right owners or exclusive licensees for preventing or restricting unauthorized or unlawful access to, or communication to the public of, their works, performances, or sound and video recordings through information network;

(3) "electronic rights management information" means texts, numbers or codes that identify works, performances, or sound and video recordings as well as their right owners or exclusive licensees, or that specify the terms and conditions of use of the works, performances, or sound and video recordings, when any of these items of information appears in connection with the communication to the public through information network of works, performances, or sound and video recordings.

### **Article 3**

The right of communication through information network enjoyed by right owners in their works, performances, or sound and video recordings consists of both the right to communicate by themselves, and the right to authorize other persons to communicate, their works, performances, or sound and video recordings to the public through information network.

Anyone who uploads other persons' works, performances, or sound and video recordings to a network server for public access, reproduction or use in other means shall obtain authorization from, and pay remuneration to, the right owners, except where otherwise provided for in laws or regulations.

### **Article 4**

In the following cases, a work may be used without authorization from, and without payment of remuneration to, the copyright owner, provided that the name of the author as well as the title and source of the work are indicated, depending on the circumstances, and that the other rights enjoyed by the copyright owner are not prejudiced:

(1) re-pasting another person's remarks at a BBS to another BBS, except where the copyright owner declares that re-pasting is not permitted;

(2) unavoidable representation or quotation of another person's published work on information network for the purpose of reporting current events;

(3) communication to the public through information network of an article on current political, economic or religious topics published by other media, except where the copyright owner declares that communication in other means is not permitted;

(4) communication to the public through information network of a speech delivered at a public gathering, except where the copyright owner declares that communication in other means is not permitted;

(5) provision by a public library of a published work in its collection with its own network reading system for public reading within its premises, provided that the network reading system does not provide copy service and is able to effectively prevent further communication through information network of the work provided for network reading;

(6) reproduction of another person's webpage for the purpose of providing searching service, provided that the technological measures adopted by the right owner or exclusive licensee are not circumvented, and that no copy function is furnished;

(7) translation of a published work of a Chinese citizen, legal entity or any other organization from Han language into any of minority nationality languages, as well as communication of the translation to the public through information network;

(8) use of software for non-profit purposes in the course of repairing computers or other devices as well as systems or networks, or demonstrating their functions.

The first paragraph shall also be applicable to the limitations on rights of performers and producers of sound and video recordings.

## **Article 5**

Except where the copyright owner declares in advance that the use of his work is not permitted, a distance education institution which meets all of the following conditions, in providing network distance education for implementing the nine-year compulsory education and the national educational planning, may use passages of a work, a short written work or musical work, or a single work of fine art or photographic work which has been published to produce textbook software for network distance education, without permission from the

copyright owner, provided that the name of the author as well as the title and source of the work are indicated, that remuneration is paid according to regulations, and that the other rights enjoyed by the copyright owner according to law are not prejudiced:

(1) the textbook software is only provided to students registered with the said distance education institution;

(2) the distance education system is able to effectively prevent further communication through information network of the work used in the textbook software;

The first paragraph shall also be applicable to the limitations on the right of communication through information network of performers and producers of sound and video recordings.

#### **Article 6**

Except where the copyright owner declares in advance that the use of his work is not permitted, a public library which meets all of the following conditions may provide a published work in its collection with its own network reading system for public reading to registered readers outside its premises, without permission from the copyright owner, provided that the name of the author as well as the title and source of the work are indicated, that remuneration is paid according to regulations, and that the other rights enjoyed by the copyright owner according to law are not prejudiced:

(1) the work provided for network reading has been lawfully published for more than three years;

(2) the network reading system does not provide copy service;

(3) the network reading system is able to precisely record the times the work has been read and to effectively prevent further communication through information network of the work provided for network reading.

#### **Article 7**

Except where the copyright owner declares in advance that reproduction or excerpting is not permitted, a written work, work of fine art or photographic work, after being published in a newspaper or periodical or on information network, may be reproduced or used as excerpts or data in another newspaper or periodical or on information network, provided that the name of the author as well as the title and source of the work are indicated, that remuneration is paid according to regulations, and that the other rights enjoyed by the copyright owner according to law are not prejudiced.

#### **Article 8**

No one shall circumvent technological measures adopted by right owners or exclusive licensees without their permission to weaken or disable the effect of their technological measures, except where otherwise provided for in these Regulations.

#### **Article 9**

In any of the following cases, those who circumvent technological measures without permission of the right owner or exclusive licensee shall not bear legal liabilities:

(1) for the use permitted by law of works, performances, or sound and video recordings communicated through information network;

(2) for the research concerning encryption on information network for non-commercial purposes;

(3) for technical testing to identify or rectify security defects of information network for non-commercial purposes;

(4) for the research concerning browser filtering technologies for non-commercial purposes;

(5) for investigation of illegal or criminal activities on information network.

#### **Article 10**

Right owners or exclusive licensees, in adopting technological measures, shall not disrupt or harm other persons' computers or other devices or systems, nor shall they threaten network security or information security.

With regard to the technological measures that may still affect normal access to or use of works, performances, or sound and video recordings after their lawful circumvention, the right owners or exclusive licensees shall specify their uses and features in an explicit form.

#### **Article 11**

No one shall remove or alter electronic rights management information of works, performances, or sound and video recordings without permission of the right owners or exclusive licensees, except where otherwise provided for in these Regulations.

The following acts shall not be performed without permission of the right owners or exclusive licensees:

(1) communicating to the public through information network false electronic rights management information;

(2) communicating to the public through information network works, performances, or sound and video recordings whose electronic rights management information has been removed or altered without permission of the right owners or exclusive licensees.

#### **Article 12**

Where it is impossible for a radio station or television station to avoid removing or altering the electronic rights management information in broadcasting works, performances, or sound and video recording by way of analogue signals, due to technical or financial difficulties, the said radio station or television station shall not

bear legal liabilities.

### **Article 13**

Anyone who illegally uploads other persons' works, performances, or sound and video recordings to a network server for public access, reproduction or use in other means, or who commits any other illegal act prohibited by these Regulations, shall bear civil liability, depending on the circumstances. Where public interests are impaired, the copyright administrative department may order the person to discontinue the infringing or illegal act, confiscate his unlawful gains and impose a fine. If the circumstances are serious, the copyright administration department may also confiscate the instrument mainly used for the infringing or illegal activities. Where the act constitutes a crime, criminal liability shall be investigated according to law.

### **Article 14**

Anyone who provides the service for storing network content only through automatic technological process shall not bear compensatory liability for storing infringing or illegal network content if one of the following conditions is met:

- (1) the service provider does not know that the network content which he stores is infringing or illegal;
- (2) the service provider takes down the network content within five days from the time he knows or he ought to know that the specific network content which he stores is infringing or illegal.

The first paragraph shall also be applicable to searching service providers of network content.

### **Article 15**

A right owner, when finding infringing or illegal network content, may send a notification that meets all of the following conditions to the storage service provider or searching service provider of such content, asking for its take-down:

- (1) the notification is in a written or printed form, or sent in an email;
- (2) the notification indicates the name and address of the right owner or exclusive licensee;
- (3) the notification requests a take-down of the infringing or illegal network content and specifies its URL address;
- (4) the notification is signed by, or affixed with a seal of, the right owner.

In the absence of proof to the contrary, it shall be presumed that the storage service provider or searching service provider ought to know that the content he stores is infringing or illegal once receiving from the right owner a notification that meets all of the conditions specified in the first paragraph.

## **Article 16**

A storage service provider, who takes down specific network content after receiving the notification provided for in the first paragraph of Article 15, shall not be held liable for breach of contract if one of the following conditions is met:

(1) the service provider notifies the content provider in three days after taking down the specific network content;

(2) the service provider recovers the specific network content that has been taken down in seven days after knowing of the withdrawal of the notification by the right owner or of a ruling by the people's court that the specific network content is not infringing or illegal.

## **Article 17**

The right owner or exclusive licensee may, for the purpose of litigation or application for provisional measures, apply to the people's court for requesting the network service provider to offer necessary network registration information. The network service provider who refuses to offer such information without reasonable ground shall bear corresponding legal liabilities.

## **Article 18**

When finding an infringing or illegal act that impairs public interest, the right owner or exclusive licensee may apply to the copyright administrative department for investigation and administrative sanction.

In order to investigate and handle infringing or illegal cases that impair public interest, the copyright administrative department may request the network service provider to offer necessary network registration information. The network service provider who refuses to offer such information without reasonable ground shall bear corresponding legal liabilities.

## **Article 19**

Anyone who suffers a loss because of a wrong take-down of specific network content according to the notification from the right owner may request the right owner to bear the compensatory liability.

## **Article 20**

The right owner or exclusive licensee who violates the provisions in Article 10 of these Regulations shall bear corresponding legal liabilities.

## **Article 21**

These Regulations shall be effective on 2006.