

# Regulations for the Protection of the Right of Communication through Information Network

**Article 1** These Regulations have been formulated under the Copyright Law of the People's Republic of China (hereinafter referred to as the Copyright Law) with a view to protecting the right of communication through information network enjoyed by copyright owners, performers and producers of sound recordings and video recordings (hereinafter collectively referred to as the right owners) and to encouraging creation and communication of works conducive to the building of a socialist society that is advanced ethically and materially.

**Article 2** The right of communication through information network enjoyed by a right owner shall be protected under the Copyright Law and these Regulations. Any organization or person that makes any other person's works, performances, sound recordings or video recordings available to the public through information network shall obtain permission from, and pay remuneration to, the right owner unless otherwise provided for in the laws or administrative regulations.

**Article 3** Works, performances, sound recordings or video recordings the provision of which is prohibited under the law shall not be protected under these Regulations.

In exercising the right of communication through information network, a copyright owner shall not contravene the Constitution, laws and administrative regulations, nor cause prejudice to the public interests.

**Article 4** A right owner may adopt technological measures to protect his right of communication through information network.

Any organization or person shall not intentionally circumvent or sabotage technological measures; nor shall it or he intentionally manufacture, import or offer to the public any device or part used primarily for circumventing or sabotaging technological measures; nor shall it or he intentionally provide others with any technical service designed for circumventing or sabotaging technological measures, except the circumvention permissible under the laws and adminis-

trative regulations.

**Article 5** Without the permission from the right owner, no organization or person shall do the following:

(1) intentionally removing or altering the electronic rights management information of works, performances, sound recordings or video recordings made available to the public through information network, except removal or alteration unavoidable for technical reasons; or

(2) making available to the public, through information network, works, performances, sound recordings or video recordings of which one knows or has reasonable grounds to know the rights management information has been removed or altered without the permission from the right owners.

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

(1) appropriate quotation from a published work in works made available to the public for the purpose of presenting or commenting on the work, or explaining a point;

(2) unavoidable representation of, or quotation from, a published work in works made available to the public for the purpose of reporting the current events;

(3) making available to a small number of teachers or scientific researchers a small number of published works for the purpose of classroom teaching or scientific research;

(4) making available to the public published works by a State organ within a justifiable scope for the purpose of performing its official duties;

(5) making available to an ethnic community within the territory of China of the translation of a published work of a Chinese citizen, legal entity or other organisation from Han language into the ethnic language;

(6) making available to the blind published works in a form perceivable to them for non-profit purposes;

(7) making available to the public articles published via the information network on current political or economic top-

ics; and

(8) making available to the public speeches delivered at public gatherings;

**Article 7** A library, archive, memorial hall, museum and art gallery may make available to their service recipients, through information network, on its premises a legitimately published digital work in their collection and any work reproduced according to law in a digital form for the purpose of display or preservation of the edition of the work, without the permission from, and without payment of the remuneration to, the copyright owner. These institutions shall not seek any direct or indirect financial benefits from such activity, unless the parties concerned have agreed otherwise.

The works reproduced in a digital form for the purpose of display or preservation of the edition thereof as provided for in the preceding paragraph shall be the works that have been damaged, are on the verge of damage, lost or stolen, or works the existing storage format of which has become obsolete, and works that are not available in the market or are available at a price markedly higher than the labeled price.

**Article 8** For the purpose of implementing the nine-year compulsory educational program or the national educational plan through information network, extracts of published works, short literary works, musical works, single works of fine art, or photographic works may be used for preparing courseware or a distant educational establishment that has prepared or legitimately obtained the courseware may make them accessible to the registered students through information network, without the permission from the copyright owners, provided that the copyright owners are paid the remuneration.

**Article 9** In order to alleviate poverty, a published work of a Chinese citizen, legal entity or any other organization on such topics as planting and breeding, disease prevention and elimination, disaster prevention and reduction and any work that meets the cultural needs may be made available free of charge to people in the rural areas through information network. The network service provider shall, before making available of these works, make public the works to be made available and the authors thereof and the standard of remuneration to be paid. The network service provider shall not make a work available if the copyright owner refuses to provide it within thirty days from the date of the publication; where the copyright owner has no objection after thirty days from the date of the publication, the network service

provider may make the work available, and pays the remuneration to the copyright owner according to the publicized standard. Where the copyright owner refuses to have his work made available after the network service provider has already made the work available, the the network service provider shall promptly remove the work of the copyright owner, and pays the copyright owner the remuneration for the period when the work was made available on the network according to the publicized standard of remuneration.

Anyone who makes a work available in accordance with the preceding paragraph shall not seek any financial benefit directly or indirectly therefrom.

**Article 10** Where works are made available to the public through information network without the permission from the copyright owners under these Regulations, the following provisions shall also be complied with:

(1) works which the author declares in advance that the making available thereof is not permitted shall not be made available except in the circumstances as provided for in Articles 6(1) to (6) and 7;

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

(3) remuneration shall be paid under these Regulations;

(4) technological measures shall be adopted to prevent a copyright owner's work from being made available to anyone other than the subscriber as provided for in Articles 7, 8 and 9 of these Regulations, and to prevent any reproducing act of the subscriber as provided for in Article 7 of these Regulations from substantially impairing the interests of copyright owner; and

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

**Article 11** Making available through information network others' performances, sound recordings or video recordings shall be in compliance with the provisions of Articles 6 to 10 of these Regulations.

**Article 12** Under any of the following circumstances, technological measures may be circumvented, provided that the technologies, devices, or parts used for circumventing the technological measures shall not be made available to any other person, and the circumvention shall not cause prejudice to the other rights enjoyed by the right owners under the law:

(1) making available through information network a published work, performance, sound or video recording to a small number of teachers or scientific researchers for the

purpose of classroom teaching or scientific research, provided that such work, performance, sound recording or video recording is accessible only on information network;

(2) making available to the blind through information network a published literary work, for non-profit purposes, in a particular form perceivable to them, provided that such work is accessible only on information network.

(3) a State organ's performing its official duty according to the administrative or judicial procedures; or

(4) testing for the security of a computer and a computer system or network on information network.

**Article 13** In order to investigate and handle an act infringing the right of making available through information network, the copyright administrative department may require the network service provider to provide such information as the name or appellation, means of contact, network address of the subscriber suspected of infringement.

**Article 14** Where a right owner believes that a work, performance, sound recording or video recording involved in the service provided by a network service provider of information storage space, searching or linking services has infringed his right of communication through information network, or that his electronic right management information on such work has been removed or altered, he may notify the network service provider in writing, requesting it to remove, or disconnect the link to, the work, performance, sound recording or video recording. The notification shall include the following:

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

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

(3) the primary proof of the infringement.

The right owner shall be accountable for the authenticity of the notification

**Article 15** The network service provider shall, upon receipt of the notification from a right owner, promptly removes, or disconnects the link to, the work, performance, sound recording or video recording suspected of infringement, and at the same time communicates the notification to the subscriber who provides the work, performance, sound recording or video recording; where the notification is impossible to be communicated due to the unclear network address, the network service provider shall also make known

the content of the notification on the information network.

**Article 16** The subscriber may, upon receipt of the notification from the network service provider, explain the case to the network service provider in writing, requesting it to replace, or restore the link to, the removed work, performance, sound recording or video recording if he considers that the work, performance, sound recording or video recording provided by him is non-infringing. Such written explanation shall include the following:

(1) the name (appellation), means of contact and address of the subscriber;

(2) the title and network address of the work, performance, sound recording or video recording the replacement of which has been requested; and

(3) the primary proof of non-infringement.

The subscriber shall be accountable for the authenticity of the explanation.

**Article 17** The network service provider shall, upon receipt of the written explanation from the subscriber, promptly replace, or may restore the link to, the removed work, performance, sound recording or video recording, and also communicate to the right owner a copy of the written explanation made by the subscriber. The right owner shall not notify the network service provider again to remove, or to disconnect the link to, the work, performance, sound recording or video recording.

**Article 18** Any organization or person which contravenes the provisions of these Regulations by committing any of the following acts of infringement shall, depending on the circumstances, be civilly liable for ceasing the infringement, eliminating the adverse effects, making apology, or paying for the damages; where prejudice is caused to the public interests, the copyright administrative department may order the person to cease the infringement, confiscate illegal income, and may also impose a fine of no more than RMB100,000 yuan; where the circumstances are serious, the said department may, in addition, confiscate the equipment, such as computers used mainly to provide the network services; and where a crime is constituted, the criminal liabilities shall be imposed under the law:

(1) making available, without the permission from the right owners, to the public through information network their works, performances, sound recordings or video recordings;

(2) intentionally circumventing or sabotaging technological measures;

(3) intentionally removing or altering, without the permis-

sion from the right owners, the electronic rights management information of their works, performances, sound recordings or video recordings made available to the public through information network; or making available to the public through information network work, performances, sound recordings or video recordings the electronic rights management information of which one knows, or has the reasonable grounds to know, has been removed or altered without the permission from the right owners;

(4) exceeding the prescribed scope when making available to the rural areas through information network works, performances, sound recordings or video recordings for the purpose of alleviating poverty, or failing to pay the remuneration according to the publicised standards, or failing to promptly remove the works, performances, sound recordings or video recordings when the right owners object to such use; or

(5) making available to the public through information network another person's works, performances, sound recordings or video recordings without indicating the titles of these works, performances, sound recordings or video recordings, or the name (appellation) of the author, performer or producer of the sound recordings or video recordings; or without paying the remuneration, or without adopting technological measures, according to these Regulations, to prevent those other than the subscribers from obtaining the works, performances, sound recordings or video recordings, or without preventing any reproducing acts of the subscriber from substantially impairing the rights owner's interests.

**Article 19** Where an organization or person that contravenes the provisions of these Regulations by committing any of the following acts of infringement, the copyright administrative department may give a warning, confiscate the illegal income and devices or parts used mainly for circumventing or sabotaging the technological measures; where the circumstances are serious, the said department may confiscate the equipment, such as computers used mainly to provide the network service, and may also impose a fine of no more than RMB100,000 yuan; and where a crime is constituted, criminal liabilities shall be imposed under the law:

(1) intentionally manufacturing, importing, or offering to the public devices or parts used mainly for circumventing or sabotaging technological measures; intentionally providing others with the technological services designed for circumventing or sabotaging the technological measures;

(2) seeking financial benefits from making others' works,

performances, sound recordings or video recordings available to the public through information network; or

(3) failing to make known to the public the titles of the works, performances, sound recordings or video recordings, the names (appellations) of the authors, the performers and failing to the producers of sound recordings or video recordings, and to publish the remuneration standard before making available to the rural areas through information network these works, performances, sound recordings or video recordings for the purpose of alleviating poverty.

**Article 20** A network service provider that provides network automatic access service at the direction of its subscribers, or provides service for automatic transmission of works, performances, sound recordings or video recordings provided by its subscribers, and meets the following conditions shall not be liable for damages:

(1) the network service provider neither chooses nor alters the transmitted works, performances, sound recordings or video recordings; and

(2) the network service provider makes the works, performances, sound recordings or video recordings available to the designated recipients, and prevents those other than the designated recipients from receiving them.

**Article 21** A network service provider that provides the service of automatic storage for works, performances, sound recordings or video recordings obtained from another network service provider in order to improve the efficiency of network transmission, and automatically provides them to its subscribers according to the technological arrangement, and meets the following conditions shall not be liable for damages:

(1) it does not alter the automatically stored works, performances, sound recordings or video recordings;

(2) such storage does not affect the access of the initial network service provider that provides the works, performances, sound recordings or video recordings to the information about the subscribers' access to the works, performances, sound recordings or video recordings;

(3) it alters, removes, or disables the access to, the works, performances, sound recordings and video recordings according to the technological arrangement when the initial network service provider alters, removes, or disables the access to them.

**Article 22** A network service provider that provides its subscribers with network storage space for them to make works, performances, sound recordings or video recordings

available to the public, and meets the following conditions shall not be liable for damages:

(1) it clearly indicates that the network storage space is provided to its subscribers and discloses the name, person to contact, and network address of the network service provider;

(2) it does not alter the works, performances, sound recordings or video recordings provided by its subscribers;

(3) it does not know or has no reasonable grounds to know that the works, performances, sound recordings or video recordings provided by its subscribers infringe any other persons' rights;

(4) it does not seek financial benefits directly from the works, performances, sound recordings or video recordings provided by its subscribers;

(5) it promptly removes, according to these Regulations, the works, performances, sound recordings or video recordings alleged of infringement by the right owner upon receipt of notification.

**Article 23** Where a network service provider that provides searching or linking service to its subscribers, disconnects the link to the infringing works, performances, sound recordings or video recordings upon receipt of the right owner's notification according to these Regulations, it shall not be liable for damages; where it knows or has reasonable grounds to know that the linked works, performances, sound recordings or video recordings infringe another person's right, it shall be jointly liable for the infringement.

**Article 24** Where a network service provider, by mistake, removes, or disconnect the link to, works, performances, sound recordings or video recordings due to notification from the right owner and thus causes injury to its subscribers, the right owner shall be liable for the damages.

**Article 25** Where a network service provider, without justifiable reasons, refuses to provide or delays providing, information, such as the name (appellation), means of contact or network address of a subscriber suspected of infringement, the copyright administrative department may give a warning; where the circumstances are serious, the said department may confiscate the equipment, such as computers used mainly for providing the network services.

**Article 26** For the purpose of these Regulations, the following expressions shall have the meanings hereunder assigned to them:

The "right of communication through information network" means a right of communicating a work, performance,

sound recording or video recording to the public, by wire or by wireless means in such a way that members of the public may access to these works from a place and at a time individually chosen by them.

The "technological measures" means the technologies, devices or parts that effectively prevent or restrict the activities of browsing and reading works, watching performances, enjoying sound recordings or video recordings, or making available to the public works, performances, sound recordings or video recordings through information network without the permission from the right owners.

The "electronic rights management information" means information which identifies works and authors of the works, performances and the performers, sound recordings or video recordings and the producers, or information about the ownership, terms and conditions for use of the works, performances, sound recordings or video recordings, and the numbers or codes that represent such information.

**Article 27** These Regulations shall enter into force on 1 July 2006. ■