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## Case Involving Copyright Infringement by Xu Chufeng et al.

*Citation: The Shanghai Pudong Xinqu District People's Court's Criminal Judgment No. Puxingchuzi 990/2008*

*Date of judgment: July 11, 2008*

### **Procedural history**

The Shanghai Pudong Xinqu District People's Procuratorate instituted public prosecution in the Shanghai Pudong Xinqu District People's Court, accusing Xu Chufeng and Jiang Haiyu of committing the crime of copyright infringement.

### **Issue**

Whether the act to alter the software licensing agreement fell with the circumstance of "without authorization of the copyright owner" as mentioned in the Criminal Law.

### **Facts**

Knowing that Yingte'er Nutrition Dairy Products Co., Ltd. (Yingte'er) wanted to buy seven pieces of Microsoft software, such as "Windows XP", Xu Chufeng and Jiang Haiyu, upon premeditating in July 2006, bought 67 sets of the Microsoft "Windows XP" software worth RMB 78,591 yuan in total, and accordingly obtained the non-exclusive license from Microsoft. Later, Xu Chufeng and Jiang Haiyu, added, without authorization from Microsoft, the copyright owner, six pieces of software, such as "Office 2003" to the licensing agreement, and resold said software to Yingte'er, and made the illicit profits amounting to RMB over 290,000 yuan in total.

### **Rule of law**

Article 217 (1) of the Criminal Law *Whoever, for the purpose of making profits, commits any of the following acts of infringement of copyright shall, if the amount of illegal gains is relatively*

large, or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall, also, or shall only, be fined; if the amount of illegal gains is huge or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined:

(1) Reproducing and distributing a literary work, musical work, motion picture, television program or other visual works, computer software or other works without authorization of the copyright owner;

Article 11 of the Interpretation by the Supreme People's Court and the Supreme People's Procuratorate of Several Issues Relating to Application of Specific Law to the Treatment of Criminal Cases of Intellectual Property Infringement ...*The phrase "without authorisation from the copyright owner" in Article 217 of the Criminal Law shall refer to the circumstances of lack of authorization by the copyright owner, or forging or altering copyright owner's authorization or licensing documents or acting in excess of the authorization or license.*

### **Reasoning**

Xu Chufeng and Jiang Haiyu, for the purpose of making profits, reproduced and distributed computer software without authorization from the copyright owner; the amount of their illegal gains was huge, and their act constituted a crime of copyright infringement. Xu Chufeng voluntarily delivered himself up to the justice. Both Xu Chufeng and Jiang Haiyu voluntarily admitted their guilt in a relatively honest manner, and returned on their own the illegal gains after their acts were made known, so they would be imposed lighter punishment according to the circumstance. Xu Chufeng and Jiang Haiyu voluntarily concluded a "trilateral agreement" with Microsoft and Yingte'er to properly treat the consequence of their act, which had lessened the harm done to the society in the present case. The circumstance should be taken into consideration when making conviction.

### **Holding**

Xu Chufeng and Jiang Haiyu, having committed the crime of copyright infringement, were respectively sentenced to fixed-term imprisonment of two years and six months, and three years (with a

reprieve of the same period of time respectively), should pay Microsoft RMB over 290,000 yuan, and were imposed a fine of RMB over 290,000 yuan.

***Additional remarks***

By way of judicial interpretation of the “without authorization of the copyright owner” as mentioned in Article 217 of the Criminal Law, the “circumstances of lack of authorization by the copyright owner or fabricating or altering a copyright owner’s licensing documents or acting in excess of authorization” have been incorporated in the circumstance of “without the authorization of the copyright owner”, which has provided a law basis for investigating the case, bringing a public suit and making a judgment in the case.