

# Guide to Copyright Administrative Complaints

## Full text

### Judicial Protection and Administrative Protection

China's copyright protection system provides both the judicial protection and the administrative protection for right owners.

Under the judicial protection system, the judicial authority will investigate according to law the infringer's civil liability after the right owner conducts a civil litigation, or, where the infringement is suspected to be a crime, the infringer's criminal liability after the public prosecutor or the right owner conducts a criminal litigation. A civil or criminal litigation should be conducted under the procedures provided in the Civil Procedure Law of the People's Republic of China or in the Criminal Procedure Law of the People's Republic of China.

Under the administrative protection system, the administrative authority will investigate according to law the infringer's administrative liability after the right owner files a complaint or another person knowing of the fact informs on the infringer, or after the administrative department takes the initiative in placing the case on file, where the infringing act impairs the public interest.

### Administrative Authorities Accepting Complaints

The authorities accepting copyright administrative complaints are the copyright administrative departments at all levels. When a right owner finds out an infringement, he or she may file a complaint with the copyright administrative department at the place where the infringing act is committed or where the consequence of the infringement arises, including the place where the infringing copies are stored, the seizure is made according to law, the server of the infringing website is located, the owner of the infringing website domiciles, or the business is mainly carried on. In some cases, a copyright administrative department with which the complainant files a complaint may, according to law, refer the complaint to another copyright administrative department for handling.

### Complainants

A complainant should be a Chinese citizen, legal entity or organization other than a legal entity, or a foreigner or stateless person, who enjoys copyright or a right related to copyright in accordance with the Copyright Law of the People's Republic of China, or a user who enjoys an exclusive right of exploitation according to law, or an interested party. A person knowing of the fact may inform the copyright administrative department on the infringer.

### Scope of Complaints

An infringing act involved in a complaint should be one of those listed in Article 47 of the Copyright Law

of the People's Republic of China or in Article 24 of the Regulations for the Protection of Computer Software and impairing the public interest.

Even if a right owner does not know whether an infringing act impairs the public interest or not, he or she may file a complaint with the copyright administrative department, which will make an examination and reach a judgment.

#### Prescription of Complaints

A complaint should be filed with the copyright administrative department within 2 years from the date when the infringement is committed. A complaint filed beyond the period of prescription will not be accepted by the copyright administrative department. If an infringing act is in a continuous or continual way, the limitation of 2 years starts from the date when the infringement is terminated.

#### Material for Complaints

When filing a complaint with the copyright administrative department, the complainant should present the following material: (a) a written application for investigation, in which the names and addresses of both the complainant and the complained person, as well as the date when the complaint is filed should be indicated, and in which the main facts and reasons as the basis of the application should be stated; (b) the certificate of identification of the complainant, as well as the power of attorney and the certificate of identification of the agent if the complainant entrusts an agent with the complaint; (c) the preliminary proof of the ownership, such as the manuscript of the work, a copy of the published work with the name of the complainant as the author, a registration certificate for the work, a contract under which the complainant acquires a right, a certificate issued by an authentication organ, etc.; and (d) the infringement evidence, including the infringing copies, the accounts, contracts or processing or producing documents involved in the infringement, the notaries deed proving the infringement, the relevant photos, etc.

Material for complaints may be presented to copyright administrative departments directly or delivered by mail. If possible, a copyright administrative department may accept material for complaints presented through the Internet.

If the text of the material for complaint is written in a foreign language, a corresponding translation in Chinese should also be presented.

#### Results of Complaints

After a complainant files a complaint, the copyright administrative department will notify him or her of whether the complaint has been accepted within 15 days from the date when it receives the material for complaint, if it regards the material for complaint as having complied with the requirements. In the case where the copyright administrative department notifies the complainant of not accepting the complaint, the reasons should be given in the notification.

The copyright administrative department accepting the complaint will, after investigating the infringement,

make one of the following handling decisions according to the gravity of the infringement: (a) to impose administrative penalties on the infringer; (b) to exempt the infringer from administrative penalties if the infringing act is a minor one; (c) not to impose administrative penalties on the infringer if the alleged infringement is not established; or (d) to remove the case to the judicial authority if the infringement is suspected to be a crime.

A copyright administrative department may impose on the infringer the following administrative penalties: (a) to order him to discontinue the infringing act; (b) to confiscate the unlawful gains;(c) to confiscate or destroy the infringing copies;(d) to impose a fine on him; (e) to confiscate the material, tools, equipments, etc mainly used to produce infringing copies if the circumstances are serious; and (f) to impose other administrative penalties provided in laws or regulations.

If the complainant refuses the handling decision made by the copyright administrative department, he or she may, according to law, apply for administrative reconsideration or conduct an administrative litigation. An administrative reconsideration should be applied for under the procedures provided in the Administrative Reconsideration Law of the People's Republic of China, while an administrative litigation should be conducted under the procedures provided in the Administrative Procedure Law of the People's Republic of China.

#### Other Administrative Protection

A right owner who finds that infringing copies will be imported from abroad or exported out of China may request the customs to take relevant protective measures in accordance with the Regulations of the People's Republic of China on the Customs' Protection of Intellectual Property Right.