

## Measures for Implementation of the Administrative Punishment of Copyright

Promulgated by the National Copyright Administration on 2003-7-24

### Chapter I General Provisions

**Article 1** (Objectives of legislation) In order to regulate the acts of the administrative punishment by the competent administration of copyrights and protect the legitimate rights and interests of citizens, legal persons and other organizations, the Measures have been formulated according to the Administrative Punishment Law of the PRC (hereinafter referred to as the Administrative Punishment Law, the Copyright Law of the PRC (hereinafter referred to as the Copyright Law and other relevant laws and administrative regulations.

**Article 2** (Enforcement subjects) The National Copyright Administration and the relevant department under the local people's government entitled to administrative enforcement of copyrights (hereinafter referred to as the local competent administration of copyrights) shall implement the administrative punishment with the misbehaviors listed in the Measures within their statutory authorities, provided that the laws and regulations shall apply if otherwise stipulated.

**Article 3** (Violation acts) The misbehaviors herein refer to:

(I) The tort acts listed in Article 47 of the Copyright Law, concurrently with damages to the public interests;

(II) The tort acts listed in Article 24 of the Regulations on Protection of Computer Software, concurrently with damages to the public interests;

(II) Other copyrights misbehaviors requiring administrative punishment in compliance with laws, regulations and stipulations.

**Article 4** (Categories of punishment) For the misbehaviors listed in the Measures, the competent administration of copyrights may impose the following administrative punishments by force of law:

(I) Order to stop the tort acts;

(II) Confiscation of the illegal incomes;

(III) Confiscation of infringing duplicates;

(IV) Fines;

(V)Confiscation of the materials, tools and devices mainly used for making the infringing duplicates; and

(VI)Other administrative punishment specified by laws, regulations and stipulations.

## **Chapter II Jurisdiction and Application**

**Article 5** (Territorial jurisdiction)The misbehaviors listed in the Measures will be investigated by competent administration of copyrights of the place where the tort acts are implemented, the tort results happen, the infringing duplicates are stored, or the where the forfeiture and detainment are carried out, provided that the administrative regulations shall apply if otherwise stipulated.

**Article 6** (Jurisdiction at different levels) The National Copyright Administration may investigate on the misbehaviors of material influences around the country, and other behaviors that it deems proper for its investigation. The local competent administration of copyrights shall be responsible for investigate on the misbehaviors occurred in their corresponding jurisdiction.

**Article 7** (Jurisdiction dispute and designated jurisdiction)In case the competent administration of copyrights of no less than two places are entitled to the jurisdiction over the same misbehaviors, the competent administration of copyrights filing the case first shall be responsible for investigation of the misbehaviors.

In case the local competent administration of copyrights is subject to jurisdiction dispute or unclear jurisdiction, both parties to the disputes shall reach settlement through consultations; and in case the no settlement has been reached through consultations, petition should be made to the common superior competent administration of copyrights for designation of the jurisdiction and their common superior the competent administration of copyrights may also directly designate the jurisdiction.

If necessary, the superior competent administration of copyrights may handled with the cases of material influence under the jurisdiction of its subordinate competent administration of copyrights, or transfer the case under its jurisdiction to its subordinate competent administration of copyrights. If believing the case under its jurisdiction is material and complex, which requires for treatment by the superior competent administration of copyrights, the subordinate competent administration of copyrights may petition for treatment by the superior the competent administration of copyrights.

**Article 8** (Transfer) In case the competent administration of copyrights finds that the misbehaviors under investigation is suspect of a crime according to the provisions of the criminal law of our country, the competent administration of copyrights shall transfer the case for treatment by the judicial department according to the Provisions on Transfer of the Suspected Criminal Cases by the Administrative Enforcement Agencies promulgated by the State Council.

**Article 9 (Limitation)** The limitation for according the administrative punishment by the competent administration of copyrights against misbehaviors is two years from the date of the occurrence of the misbehaviors. In case the misbehavior is continuous or in a sustaining status, such limitations will be calculated from the date of its termination. The infringing duplicate under issuance is deemed as continuance of the misbehaviors.

In case of failing to be found, any misbehavior will not be accorded with administrative punishment, unless otherwise stipulated by law.

### **Chapter III Punishment Procedures**

**Article 10 (General procedures)** Except for the circumstances requiring for summary procedures as specified by the Administrative Punishment Law, general procedures are applicable to the administrative punishment of copyrights according to the provisions of the Administrative Punishment Law.

**Article 11 (Filing)** When adopting the general procedures for investigation on the misbehaviors, the competent administration of copyrights shall keep filing the case.

For the misbehaviors listed in the Measures, the competent administration of copyrights may decide to keep filing for investigation at its own discretion, or decide to keep filing for investigation based on the materials transferred by the relevant departments, or keep filing for investigation according to the complaints or petitions by the infringed, parties of interests or other persons knowing the cases.

**Article 12 (Complaint)** When applying for keeping filing for investigation on the misbehaviors listed in the Measures, the complainant shall submit the application, certification of ownership, the works infringed (or duplicates) and other evidences.

The application shall indicate the names of the parties concerned and address, as well as the main facts and reasons based on which the application are made for investigation.

In case the complainant authorizes an agent for the application, the agent shall present the power of attorney.

**Article 13 (Acceptance)** Within 15 days upon receipt of the all the complaint materials, the competent administration of copyrights shall determine whether or not accept the case and send a notice the complainant. In case of non-acceptance, a written notice should be given on the reasons thereof.

**Article 14 (Undertaking)** When filing the case, an examination and approval form should be filled in, attached with the appealing or petition materials, the materials designated by the superior competent administration of copyrights or the materials for transferring the case by the relevant departments, and the examination reports of the enforcement personnel, and the responsible person of the department concerned shall approve for filing of the case and assign two no less than two handling personnel for investigation

and treatment.

In case the case are of interests to the case-handling personnel, the personnel shall withdraw automatically, and in case of non-withdrawal, the parties concerned may take challenge for cause,. The withdrawal of the case-handling personnel will be approved by the responsible persons of the department, and the withdrawal of the responsible person shall be approved by the people's court of the same level.

**Article 15** (Emergency measures) In case of finding the pending misbehaviors during the enforcement when time is not sufficient for filing of the case, the enforcement personnel may adopt the following measures:

(I) Preventing or correcting the misbehaviors;

(II) Registering for preserving the infringing duplicates and the materials, tools and equipment mainly used for the misbehaviors in advance;

(III) Collecting and taking other relevant evidences.

The enforcement personnel shall timely submit the relevant circumstance and materials to the local competent administration of copyrights and handle with the formalities for filing of the case.

**Article 16** (Obtaining evidences) Upon filing of the case, the case-handling personnel shall timely carry out the investigation and require the statutory person with burden of proof to provide evidences within the time schedule specified by the competent administration of copyrights.

When obtaining evidences, the case-handling personnel may adopt the following means for collection and taking 5the relevant evidences:

(I) reading and copying the documents and archives, books and accounts and other written materials relating to the suspected misbehaviors;

(II) Sampling in taking evidence from the suspected infringing duplicates;

(III) Registering the suspected infringing duplicates for preservation in advance.

**Article 17** (Presentation of enforcement permits) During enforcement, the case-handling personnel shall present the enforcement permits to the parties concerned and the relevant personnel prepared and distributed according to the National Copyright Administration or other local people's government.

**Article 18** (Categories of evidences) The evidences collected during handling of the case include:

- (I)written evidence;
- (II)material evidence;
- (III)witness and attestation;
- (IV)audio-video materials;
- (V)statement of the parties concerned;
- (VI)conclusion of identification;
- (VII)Records of inspection and investigation.

**Article 19** (Evidences provide by the parties concerned) The evidence may cover the manuscripts relating to copyrights provided by the parties concerned, the originals thereof, legal publications, copyright registration, certification issued by the notary public, the contract for obtaining of the rights, as well as articles in kind and invoices for purchase of the infringing duplicates by ordering or spot transactions by the parties concerned or by agency.

**Article 20** (Preparation of list) In case of sampling in taking evidences and registering for preservation of the relevant evidence in advance by the case-handling personnel, the parties concerned shall be present. For the relevant articles, a list should be prepared in two copies, which shall be submitted for preservation by the local competent administration of copyrights of the case-handling personnel and the parties concerned respectively after signature and stamping by them. In case the parties concerned are not present or refuse to sign or stamp on the evidence, no less than two case-handling personnel present shall indicate the actual circumstances.

**Article 21** (Registration preservation in advance)In registering the relevant evidences for preservation in advance, the case-handling personnel shall obtain the approval of the responsible person of their department and send to the parties concerned the notice on registering the evidence for preservation in advance. During the preservation of the evidence, the parties concerned or the relevant personnel shall not move or destroy the relevant evidence.

For registering the evidence for preservation in advance, a sealing tape of the competent administration of copyrights for such purpose should be sealed. In case the evidence registered for preservation in advance are required to move to other places, it may be moved to the proper place for preservation. In emergency when it is not sufficient for handling with the relevant formalities, the case-handling personnel may teak measures in advance and make up for such formalities.

**Article 22** (Consequential measures of registration preservation in advance) For the evidence registered for preservation in advance, decisions should be made on the

following treatment within 7 days upon delivery of the notice on registration of the evidence for preservation in advance:

(I) Submitting the evidence for identification if required;

(II) In case the facts are established for misbehaviors requiring for confiscation, the confiscation should be executed by statutory procedures;

(III) The case shall be moved to the relevant department together with the evidence if required to move to the relevant department for treatment;

(IV) In case the facts are not established for misbehaviors or the confiscation is not required by force of law, the registration for preservation measures shall be discharged;

(V) Other statutory measures.

**Article 23** (Entrusted investigation) In case of entrusting other competent administration of copyrights for investigation during investigation and treatment of the cases, the competent administration of copyrights shall issue the power of attorney. The entrusted competent administration of copyrights shall take initiatives to offer assistance.

**Article 24** (Expert identification) In terms of the professional issues during the investigation and treatment of the case, the competent administration of copyrights may entrust the special institution or engage the professionals to carry out identification.

**Article 25** (Investigation report) Upon the end of the investigation, the case-handling personnel shall submit the report on the investigation of the case, state whether or not the relevant acts are in violation of law, put forth the opinions on treatment and the facts, reasons and basis, attach all the evidential materials.

**Article 26** (Notification to the parties concerned) In case the competent administration of copyrights plans to make a decision on administrative punishment, the responsible persons of the department in charge shall issue pre-notice on administrative punishment and notify the parties concerned of the facts, reasons and basis based on which the decision is projected on administrative punishment and of their rights for statement, pleadings and other rights.

The pre-notice on the administrative punishment shall be served to the parties concerned by the competent administration of copyrights and the parties concerned shall sign and stamp on the receipt thereof. In case the parties concerned refuse to receive the notification, the service personnel may indicate the actual situation and report to the responsible person of the department in charge. The competent administration of copyrights may also adopt the mail for service of the notice to the parties concerned. In case the parties concerned may not be found, the notification may adopt the means of public announcement.

**Article 27** (Deadline for the statements and pleadings of the parties concerned) In case the parties concerned requires for statement or pleadings, the opinions of the statements or pleadings and the relevant facts, reasons and evidences thereof should be put forth to the competent administration of copyrights within 7 days upon the notification or within 30 days upon the public announcement. In case the parties concerned have not exercise their rights for statement and pleadings, it shall be deemed as a waiver thereof.

In case of the notification by direct service, the date when the parties concerned sign for receipt of the notice shall be the date of the notification, and in case of service by mail, the date indicated on the receipt shall be the date of the notification.

**Article 28** (Review) The case-handling personnel shall fully listen to the opinions of the statement and pleadings of the parties concerned, and review on the facts, reasons and evidences put forth by the parties concerned, with report of review submitted.

The competent administration of copyrights shall not impose higher punishment because of the pleadings of the parties concerned.

**Article 29** (Treatment decision) The responsible persons of the competent administration of copyrights shall examine and check the report on the investigation of the case and the review report, and make the following decisions on treatment according to the review results:

(I) In case the misbehaviors actually requires for administrative punishment, the punishment may be accorded according to the tort degree of the wrongdoers, the period of the infringement, the scope of the infringement and the consequential results of harms;

(II) in case of minor misbehaviors, there can be no administrative punishment;

(III) In case the facts based on which the misbehaviors are alleged do not hold water, there will be no administrative punishment;

(IV) In case the misbehaviors constitute suspected crimes, the case will be moved to the judicial department for treatment.

In case of complex or material misbehaviors to be accorded with pretty heavy administrative punishment, the decisions on such punishment should be made by the responsible persons of the competent administration of copyrights through collective discussion.

**Article 30** (Fines) When the competent administration of copyright made decisions on fines, the amount of the fines should be determined according to the provisions of Article 36 of the Implementation Rules of the Copyright Law of the PRC and Article 24 of the Regulations on Protection of Computer Software.

**Article 31** (Punishment for serious circumstances) In case of serious misbehaviors, the

competent administration of copyrights may confiscate the materials, tools and devices mainly used for making the infringing duplicates.

The serious circumstances herein refer:

(I)Illegal incomes of an individual reaching RMB5, 000 and those of a unit reaching RMB30, 000;

(II)The amount of illegal operations by an individual reaching RMB30, 000 and those by a unit reaching RMB100, 000;

(III)The infringing duplicates under the operation by an individual reaching two thousand copies (boxes) and those by a unit reaching five thousand copies;

(IV)Repeated infringement of copyrights after prosecution of criminal responsibilities for infringement of copyrights;

(V)Causing other serious consequences or results.

**Article 32** (One subject matter without double punishment)For the same misbehaviors by the parties concerned for which other administrative authorities have imposed fines, the competent administration of copyrights will no longer impose fines, but may still impose other categories of administrative punishment as specified by Article 4 of the Measures in consideration of the actual circumstances.

**Article 33** (Hearing criteria)Before deciding on imposing big amount of fines or other administrative punishment requiring for hearing according to the provisions of laws or administrative regulations, the competent administration of copyrights shall notify the parties concerned of the rights for requiring for a hearing.

The big amount of fine herein refers to fines no less than RMB20, 000 for individuals and fines no less than RMB100, 000 for unit, provided the local regulations and stipulations shall apply if otherwise specified.

**Article 34** (Hearing)In case the parties concerned require for a hearing, the competent administration of copyrights shall arrange the hearing according to the provision of Article 42 of the Administrative Punishment Law, for which the parties concerned shall not undertake any expenses for arrangement of such hearing.

**Article 35** (Legal documents) In case the competent administration of copyrights decides on imposition of administrative punishment, a resolution should be prepared on such administrative punishment.

In case the competent administration of copyrights decides on no imposition of administrative punishment for minor misbehaviors, a notice should be prepared on not imposing administrative punishment, indicating the facts, reasons and basis for not



imposing administrative punishment, which should be served to the parties concerned; in case the facts based on which the misbehaviors are alleged, a notice on the results of the investigation should be prepared, which should be served to the parties concerned.

For transferring the case to the judicial department for investigation and treatment, the competent administration of copyrights shall prepare a documents relating to transfer of the case of suspected crimes, which should be timely transferred to the judicial department of jurisdiction together with the relevant materials and evidences.

**Article 36** (Service) The resolution on administrative punishment should be delivered to the parties concerned directly after announcement by the competent administration of copyrights. In case the parties concerned are not present, the resolution should be served to the parties concerned within 7 days.

**Article 37** (Application for administrative reconsideration and petition for administrative proceedings) If objecting to the administrative punishment by the National Copyright Administration, the parties concerned may petitions for the National Copyright Administration to carry out administrative reconsideration; if objecting to the administrative punishment by the local competent administration of copyrights, the parties concerned may apply for administrative reconsideration with the people's government of the same level or the superior competent administration of copyrights.

If objecting to the administrative punishment or the decisions from the administrative reconsideration, the parties concerned may bring forth administrative proceedings by force of law.

#### **Chapter IV Enforcement Procedures**

**Article 38** (Performance of the findings of punishment) The parties concerned shall perform the administrative punishment within the time schedule specified by the decision on the administrative punishment upon receipt of such decision.

In case the parties concerned petition for administrative reconsideration or administrative proceedings, the enforcement of the administrative punishment shall not stop unless otherwise stipulated by law.

**Article 39** (Disposal of confiscated articles) The confiscated infringing duplicates shall be destroyed or be properly disposed with consent of the infringed.

When destroying the infringing duplicates, the competent administration of copyrights shall assign no less than two enforcement personnel for supervision over the destruction process, verify the results of the destruction and prepare the destruction records.

In terms of the confiscated materials, tools and devices mainly used for making the infringing duplicates, the competent administration of copyrights shall proceed by auction according to law or according to the relevant state provisions.

**Article 40** (Substitution performance) The decisions made by the superior competent administration of copyrights on imposing administrative punishment may be performed by the subordinate competent administration of copyrights entrusted. The entrusted subordinate competent administration of copyrights for substitution performance shall report the results of the substitution performance to the superior the competent administration of copyrights.

## **Chapter V Supplementary Provisions**

**Article 41** (Statistics of administrative punishment) The competent administration of copyrights shall establish the statistic system of administrative punishment of copyrights according to the state statistic law and submit to the superior the competent administration of copyrights the statistic report on the administrative punishment of copyrights once a year.

**Article 42** (Filing of docket and archive) Upon the completion of the enforcement of the decisions of the administrative punishment or administrative reconsideration, the competent administration of copyrights shall timely docket the case material on archive.

The materials to be filed on archive mainly include: decisions of administrative punishment, examination and approval of filing of the case, report on investigation of the case, review report, decision on the reconsideration, written records of the hearing, report on hearing, evidential materials, documents for treatment and disposal of property and Articles, and other relevant materials.

**Article 43** (Preparation of legal documents) The relevant legal documents involved in the Measures shall be prepared by reference with the document formats determined by the National Copyright Administration.

**Article 44** (Implementation) The Measures shall come into force on September 1, 2003, when the Measures for Implementation of the Administrative Punishment of Copyrights promulgated on January 28, 1997 will be repealed, and in case of any discrepancy between any other provisions promulgated prior to the Measures and the Measures, the Measures shall prevail.