



The 3rd Amendment to China's Copyright Law Has Been Adopted

On November 11th, 2020, *The Decision of the Standing Committee of the National People's Congress to Amend the Copyright Law of the People's Republic of China* was adopted at the 23rd Session of the Standing Committee of the Thirteenth National People's Congress of the People's Republic of China, and was promulgated by Order No. 62 of the President of the People's Republic of China. This is the third amendment to the China's Copyright Law since it was firstly approved in 1990, which shall come into force on June 1st, 2021.

The third amendment to the Copyright Law of the People's Republic of China (hereinafter referred as the Amendment) mainly includes the following 9 aspects:

1. Definition of the Works

The Amendment uniformly amends the "cinematographic works and works created by a process analogous to cinematography" in the current Copyright Law to "audiovisual works", and modifies the definition and type of the "works", so that other types of visual works such as popular short visual works will be included.

Article 3 For purposes of this Law, the term "works" shall refer to intellectual achievements with originality in the fields of literature, art and science that can be expressed in a certain form, which includes:

- (1) written works;
- (2) oral works;
- (3) musical, dramatic, quyi, choreographic and acrobatic works;
- (4) works of the fine arts and architecture;
- (5) photographic works;

(6) audiovisual works;

(7) graphic works such as drawings of engineering designs and product designs, maps and sketches, and model works;

- (8) computer software; and
- (9) other intellectual achievements that meet the characteristics of works.

2. Ownership of the Right of Exhibition

Article 20 The transfer of ownership of the original copy of a work shall not change the ownership of the copyright of the work; however, the right to exhibit the original copy of the work of the fine arts and photographic work shall be possessed by the owner of the original copy.

Where an author transfers the ownership of the original copy of an unpublished work of the fine arts and photographic work to another person, the transferee's exhibition of the original work shall not constitute an infringement of the author's right of publication.

3. Work Created in the Course of Employment

Article 18 (1) (2) In any of the following cases, the author of a work created in the course of employment shall enjoy the right of authorship, while the legal entity or **unincorporated** organization shall enjoy the other rights included in the copyright and may reward the author:

- (1) drawings of engineering designs and product designs, maps, **sketches**, computer software and other works which are created in the course of employment mainly with the material and technical resources of the legal entity or **unincorporated** organization and for which the legal entity or **unincorporated** organization bears responsibility;
- (2) works created in the course of employment by the employees of a newspaper, periodical publisher, news agency, radio station and television station.

4. Performance in the Course of Employment

Article 40 The performance performed by a performer in the fulfillment of tasks assigned to the performer by a performing group is a performance in the course of employment. The performer shall enjoy the right to claim performership and protect the image inherent in his performance from distortion. The ownership of other rights shall be agreed upon by the parties concerned. If there is no agreement or the agreement is not explicit, the performing group shall enjoy the rights of performance in the course of employment.

Where the rights of performance in the course of employment are possessed by the performer, the performing group may use the performance free of charge within the scope of its business activities.

5. Exemption of Copyright Infringement

Article 24 Paragraph 1 (12) In the following cases, a work may be used without permission from, and without payment of remuneration to, the copyright owner, provided that the name <u>and pseudonym</u> of the author and the title of the work are mentioned and <u>it shall not affect the normal use of the work</u> or cause unreasonably harm to the legal rights and interests of the copyright owner:

(12) <u>providing the published works to the people with reading disabilities in an accessible way</u> that they can perceive.

6. Technological Measures

Article 49 For the purpose of protecting the copyright and the rights related to the copyright, the right owner may adopt the technological measures.

Any organization or person shall not intentionally circumvent or sabotage the technological measures, shall not manufacture, import or provide relevant devices or components to the public for the purpose of circumventing or sabotaging the technological measures, and shall not intentionally provide technological service to another person whose purpose is to circumvent or sabotage the technological measures, without permission of the right owner, except where the cases that can be circumvented in accordance with laws and administrative regulations.

The term technological measures as referred in this Law means effective techniques, devices or components used to prevent or restrict browse and appreciation of works, performances, sound recordings and video recordings or making works, performances, sound recordings and video recordings available to the public through information network, without permission of the right owner.

7. Fine for the Infringing Acts

Article 53 Paragraph 1 Anyone who commits any of the following acts of infringement shall, depending on the circumstances, bear civil liabilities prescribed in Article 52; where public rights and interests are impaired by the acts of infringement, the administrative department mainly in charge of copyright matters may order the person to discontinue the infringement, give a warning, confiscate his illegal earnings, confiscate or harmlessly destroy the copies, material, tools and instruments mainly used to produce copies through infringement; if the illegal revenue is more than RMB 50,000 Yuan, the infringer may be imposed a fine within the range from one to five times of his illegal revenue in parallel; if there is no illegal revenue, the illegal revenue is difficult to calculate or is less than RMB 50,000 Yuan, a fine of no more than RMB250,000 Yuan may be imposed in parallel. Where a crime is constituted, criminal liabilities shall be investigated in accordance with law.

8. Punitive Damages System

Article 54 Paragraph 1-3 Anyone who infringes upon the copyright or a right related to the copyright shall pay compensation for the actual losses suffered by the right owner or the amount of the illegal earnings of the infringer. Where the actual losses and the illegal earnings are difficult to calculate, the amount may be assessed by reference to the rates of remuneration for the exploitation of that right. For willful infringement of copyright or a right related to the copyright, if serious, the multiplied amount of compensation may be determined within the range from one to five times of the amount determined by the above-mentioned principles.

Where it is difficult to determine the actual losses of the right owner, the illegal earnings of the infringer <u>and the exploitation fee of that right</u>, the people's court shall, in light of the circumstances of the infringement, decide on a compensation of <u>not less than RMB500 Yuan and not more than RMB 5,000,000 Yuan</u>.

The compensation shall include the reasonable expenses that the right owner has paid for putting a stop to the infringement.

9. Evidence Proof

Article 54 Paragraph 4 In order to determine the amount of compensation, the people's court shall order the infringer to provide account books and material evidences related to the infringing facts when the right owner has tried his best to provide the proof, as the above-mentioned account books and material evidences are mainly in the possession of the infringer; if the infringer does not provide or provides false proof, the people's court may determine the amount of compensation by referring to the claims and proof provided by the right owner.

Article 56 Where a copyright owner or an owner of a right related to the copyright who can present evidence to prove that another person is committing or about to commit an infringement upon his right, and impeding the implementation of his right, which, unless prevented promptly, is likely to cause irreparable harm to his legal rights and interests, he may, before taking legal proceedings, apply to people's court in accordance with law to adopt the measures of property preservation, order of taking certain acts or preliminary injunction.

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