

# Cornerstones of material Copyright Law in China

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## 1. Copyright or Author's Right

- Copyright law of China
  - Article 51 of 1990 law, Author's right and copyright have same meaning
  - Article 56 of 2001 law, Author's right is copyright
- China, choice between author's right and copyright
  - Qing dynasty, author's right law, from Japan, from Germany, from continental Europe
  - Republic of China, author's right law, Taiwan author's right Law

## 1. Copyright or Author's Right

- After 1949, two terms used exchangeable
- July 1984, “Copyright Regulation”, administrative one
- 1986, article 49, “Civil Code”, author's right or copyright
- 1985, “national copyright office”, to draft the copyright law; drafted as copyright law, passed as author's right law
- civil law system, no need to change
- use copyright or author's right, different background
- author's right, originally belongs to authors

## 2. Works

- Copyright is a right to a work, expression of ideas
  - To protect expression but not ideas, facts, concepts, procedures, mathematic concepts as such
- Literal work, fine art, drama, music, cinema, architecture, acrobat work, model work, computer program, etc.
- Originality
  - not the standard in Britain and US, not just labor, skill and judgment, not just originate from someone
  - Some kind of personality or morality in the work
- What is a work or the expression of idea?
  - Zhang Tielin v. Wang Xiaojing: a music group of 12 girls
  - Two paintings on Japanese bombing in Anti-Japanese war
  - Designs on textiles: works or design patent

### 3. Author's rights

- Personal rights
  - To publish one's work
  - Authorship
  - To protect the integrity of one's work
  - To amend one's work (half right to recall the work)
  - No right to recall the published work
- Property rights
  - A list about 12 items, including reproduction, distribution, derivation, performance, and network communication
- Personal right or moral right
- Property right or economic right
- Property right includes moral right and economic right

### 4. Related Rights

- Performer's right: performance
- Sound recorder's right: sound recordings
- Broadcaster's right: broadcasting, signals
- Video recorder's right
  - video recording and cinema work: MTV decisions, what is the originality
- Topographic design of a work: book or magazine, as such
- Right of network communication is not applied to broadcasting signals
  - WPPT, no "Broadcasting"
    - Spring festival TV gala, compilation, cinema work, or no protection
    - originality is a little bit high, but no "B", how about sports broadcasts
  - Information society directive of EC, 2001

## 5. Infringement and Remedies

- Dual tracks to enforce one's right
  - Judicial system: IP Tribunals in county level (basic, about 80), municipal level (intermediate), provincial high court, supreme court
    - 3-in-1, three kinds of cases in one IP tribunal, professional one: different judges in one tribunal, or in a specific panel
  - Administrative system: agencies in Municipal Cities, Provinces, and central government
    - can decide whether or not infringement, but no power to decide damages, let the parties to reach an agreement, or go to a court again
    - Can curb piracy for the interest of the public
- Limitation of statutory: two years
  - how to calculate: a painting used in a trademark, Wu Song stroke a tiger

## 5. Infringement and Remedies

- The violations in Article 46, only civil liability
- The violations in Article 47, civil liability, administrative liability, and may refer to criminal code
  - including violation of rights management information and technological measures
- The background of such division
  - Problems: to mention a specific right when put forward a litigation?
  - What is an infringement of copyright?
- Injunctions: preliminary, permanent
- Damages: right owner's lost, infringer's profit, and statutory damage, 10,000—500,000RMB

## 6. Other Questions

- The law Enacted in October 1990, went into force in June 1991; amended in October 2001; and again in Feb. 2010, to delete article 4.1
- Regulations
  - Implementing regulations, some detailed provisions
  - Regulations to protect computer program, no necessary
  - Regulations for collective licensing organizations
  - Regulations on the protection of network rights
- Folklore work or folklore
  - Snake years stamp: design and folklore work
  - A song of Wusuli River: no protection, moral right, economic right
  - Statutory licenses, and benefit sharing
  - A new regulation is coming

## Concluding remarks

- 2010 is a copyright year in China
  - 20 anniversaries for Copyright Law of PRC
  - 100 anniversaries for Copyright Law of Qing Dynasty
  - And 300 anniversaries for British Anne Act
  - China IP Law society annual conference on the amendments of the copyright law
  - Will start the process next year
  - For the first time, we are going to amend our copyright without the pressure abroad
  - So please help China as you can to the amendment of the law

Thank you for your attention!

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