

Decree of the State Council of the People's Republic China

No.429

Regulations on Copyright Collective Administration, adopted at the 74th Executive Meeting of the State Council on December 22, 2004, are hereby Promulgated and shall be effective as of March 1, 2005.

Premier, Wen Jiabao

December 28, 2004

Regulations on Copyright Collective Administration

Chapter I General Provisions

Article 1 These Regulations are formulated for the purposes of regulating activities of copyright collective administration, and facilitating exercise of the rights by copyright owners and owners of rights related to copyright (hereinafter referred to as right owners) and use of works by users in accordance with the Copyright Law of the People's Republic of China (hereinafter referred to as the Copyright Law).

Article 2 The term “copyright collective administration” in these Regulations means centralized exercising of relevant rights of right owners by a copyright collective administration organization with the right owners' authorization and, in its own name, conducting of the following activities:

- (1) to conclude licensing contracts on copyright or rights related to copyright (hereinafter referred to as “licensing contracts”) with users;
- (2) to collect licensing fees from users;
- (3) to distribute licensing fees to the right owners; and
- (4) to participate in litigation or arbitration proceedings concerning copyright or rights related to copyright.

Article 3 The term “copyright collective administration organization” in these Regulations means an association which is established according to law for the benefit of right owners and which, with the right owners’ authorization, collectively administers their copyright or rights related to copyright.

Any copyright collective administration organization shall be registered as such and carry out its activities in accordance with the provisions of the administrative regulations on registration administration of associations and of these Regulations.

Article 4 Rights which are difficult for right owners to exercise effectively by themselves, such as those of performance, presentation, broadcasting, rental, communication through information network, and reproduction provided for in the Copyright Law, may be collectively administered by a copyright collective administration organization.

Article 5 The copyright administration department of the State Council shall take charge of the nationwide work of copyright collective administration.

Article 6 No organization or individual other than copyright collective administration organizations established in accordance with the provisions of these Regulations shall carry out activities of copyright collective administration.

Chapter II Establishment of Copyright Collective

Administration Organizations

Article 7 Chinese citizens, legal persons or other organizations that enjoy copyright or rights related to copyright according to law may sponsor establishment of a copyright collective administration organization.

Establishment of a copyright collective administration organization shall meet the following conditions:

(1) the number of the right owners who sponsor establishment of such an organization is not less than 50;

(2) the business scope of such an organization will not overlap or coincide with that of any copyright collective administration organization which has been registered according to law;

(3) such an organization will be able to represent the interests of relevant right owners nationwide;

(4) there are a draft of the articles of association, draft of the rates for collecting licensing fees, and draft of the methods for transferring licensing fees to the right owners (hereinafter referred to as the methods for transferring licensing fees) of such an organization.

Article 8 The articles of association of a copyright collective

administration organization shall include the following items:

- (1)its name and domicile;
- (2)the objectives of its establishment;
- (3)its business scope;
- (4)its organization structure and its functions and powers;
- (5)the minimum number of attendance at its members' general meeting ;
- (6)the functions and duties of its board of directors, as well as the qualifications for, and the procedures for appointing and removing of the responsible persons of the board;
- (7)the methods for deducting and spending of the administrative costs;
- (8)the conditions and procedures for joining and withdrawal from that organization;
- (9)the procedures for revising its articles of association;
- (10)the conditions and procedures for termination of that organization, as well as disposal of its assets after its termination.

Article 9 An applicant shall, when applying to establish a copyright collective administration organization, submit to the copyright administration department of the State Council the materials that prove that the conditions provided for in Article 7 of these Regulations are met. The copyright administration department of the State Council shall,

within 60 days from receiving such materials, decide whether to approve the application or not. If the application is approved, a license for copyright collective administration shall be issued to the applicant; if the application is not approved, the reasons for disapproval shall be given.

Article 10 The applicant shall, within 30 days from issuance of the license by the copyright administration department of the State Council, go through the procedures for registration with the civil affairs department of the State Council in accordance with the administrative regulations on registration administration of associations.

Article 11 A copyright collective administration organization registered according to law shall, within 30 days from issuance of a registration certificate by the civil affairs department of the State Council, send a copy of the certificate to the copyright administration department of the State Council for the record, and that department shall publish the copy of the certificate submitted for the record, as well as the articles of association, the rates for collecting licensing fees, and the methods for transferring licensing fees.

Article 12 Establishment of a branch by a copyright collective administration organization shall be subject to approval of the copyright administration department of the State Council, and the procedures for registration shall be gone through with the civil affairs department of the State Council in accordance with the administrative regulations on

registration administration of associations. Where its branch has been registered according to law, a copy of the registration certificate for that branch shall be submitted to the copyright administration department of the State Council for the record and be published by such department.

Article 13 A copyright collective administration organization shall set the rates for collecting licensing fees based on the following factors:

(1) the time, manner and territory of using works, sound or video recordings, etc.;

(2) the categories of the rights; and

(3) the degree of difficulty of activities to conclude licensing contracts and to collect licensing fees.

Article 14 A copyright collective administration organization shall draw up the methods for transferring licensing fees on the basis of the use of right owners' works, sound or video recordings, etc.

Article 15 A copyright collective administration organization which revises its articles of association shall submit the revised draft to the copyright administration department of the State Council for the approval, and that department will publish the revised draft after it is checked and approved by the civil affairs department of the State Council according to law.

Article 16 A copyright collective administration organization whose registration has been cancelled according to law shall not further carry

out activities of copyright collective administration from the date of the cancellation.

Chapter III Structure of Copyright Collective

Administration Organizations

Article 17 The members' general meeting of a copyright collective administration organization (hereinafter referred to as the members' general meeting) is the organ of power of that organization.

The members' general meeting shall, in accordance with the provisions of these Regulations, be convened by the board of directors, which shall announce the time and place of the meeting, as well as the matters to be reviewed 60 days before holding of the meeting. Members to attend the members' general meeting shall sign up 30 days before holding of the meeting. When the number of members who have signed up is less than the minimum number of attendance prescribed in the articles of association, the board of directors shall announce the situation of signing up of the meeting, and other members may still sign up five days before holding of the meeting, which shall be held by all of the members who have entered their names.

The members' general meeting shall exercise the following functions and powers:

- (1) to formulate and revise the articles of association;

- (2)to set and readjust the rates for collecting licensing fees;
- (3)to formulate and revise the methods for transferring licensing fees;
- (4)to elect and remove directors;
- (5)to review and approve work reports and finance reports of the board of directors;
- (6)to set up the internal administration system;
- (7)to decide schemes for transferring licensing fees and the proportion of administrative costs to be collected by that organization;
- (8)to decide on other major matters.

The members' general meeting shall be held once each year, but an interim meeting may be convened upon proposal made by the board of directors or by ten percent or more of its members. Any decision of the members' general meeting shall be adopted by the affirmative votes of more than half of the members who attend the meeting.

Article 18 A copyright collective administration organization shall establish a board of directors that is responsible to and implements decisions of the members' general meeting. The number of the members of the board shall be not less than nine.

The term of office of the board of directors shall be four years and board of directors shall be re-elected upon the expiry of the said term. The board of directors may, on account of special conditions, be

re-elected before or after the expiry of the said term, but not later than one year from the expiry of the said term.

Chapter IV Activities of Copyright Collective

Administration

Article 19 A right owner may conclude a written contract for copyright collective administration with a copyright collective administration organization, authorizing the organization to administer copyright or rights related to copyright which he enjoys according to law. Where any right owner meets the entrance conditions prescribed in the articles of association, the copyright collective administration organization shall conclude a contract for copyright collective administration with the right owner, and shall not refuse to do so.

Any right owner who has concluded a contract for copyright collective administration with a copyright collective administration organization and gone through the relevant procedures prescribed in the articles of association will become a member of that organization.

Article 20 Any right owner, after having concluded a contract for copyright collective administration with a copyright collective administration organization, shall not exercise, or authorize another person to exercise, the rights stipulated in the contract to be exercised by

that organization during the term agreed upon in the contract.

Article 21 Any right owner may, according to the procedures prescribed in the articles of association, withdraw from a copyright collective administration organization, thus terminating the contract for copyright collective administration. However, any licensing contract that has been concluded, at that time, between that organization and another person shall remain valid until it expires, and the right owner shall, during the term of validity of the contract, have the right to obtain the relevant licensing fees and to consult the relevant business material.

Article 22 A foreigner or stateless person may, through a like overseas organization that has concluded a reciprocal representation agreement with a Chinese copyright collective administration organization, authorize the Chinese organization to administer copyright or rights related to copyright which he enjoys in the territory of China according to law.

The term “reciprocal representation agreement” in the preceding paragraph means an agreement in which a Chinese copyright collective administration organization and a like overseas organization mutually authorize the other party to carry out activities of copyright collective administration in the country or region to which the other party belongs.

A copy of reciprocal representation agreements concluded between a Chinese copyright collective administration organization and a like

overseas organization shall be submitted to the copyright administration department of the State Council for the record and be published by such department.

Article 23 A copyright collective administration organization shall, when authorizing another person to use works, sound or video recordings, etc. which it administers, conclude a written licensing contract with the user.

A copyright collective administration organization shall not conclude exclusive licensing contracts with users.

A copyright collective administration organization shall not refuse any user's request to conclude with it a licensing contract on a reasonable basis.

The term of a licensing contract shall not exceed two years; however, a licensing contract may be renewed when it expires.

Article 24 A copyright collective administration organization shall develop a rights information inquiring system for right owners' and users' inquiry. Such system shall contain the categories of the rights administered by that organization, the titles of the works, sound or video recordings, etc., the names or titles of the right owners, and the periods of the authorized administration.

A copyright collective administration organization shall make a reply when a right owner or user inquires the information on rights which

the organization administers.

Article 25 A copyright collective administration organization shall, according to the rates for collecting licensing fees published by the copyright administration department of the State Council, agree with a user upon the exact amount of licensing fees, except those that shall be paid in accordance with Article 23, the second paragraph of Article 32, the third paragraph of Article 39, the second paragraph of Article 42, and Article 43 of the Copyright Law.

Article 26 Two or more copyright collective administration organizations that collect licensing fees from the same user in the same manner may, after consultation, decide that one of copyright collective administration organizations collects all the licensing fees unitarily. The licensing fees unitarily collected shall be divided by the copyright collective administration organizations concerned by agreement.

Article 27 A user shall, when paying licensing fees to a copyright collective administration organization, provide with that organization the information on specific use, such as the titles of the used works, sound or video recordings, etc., the names or titles of the right owners, as well as the manner, amount and time of the use; except otherwise stipulated in the licensing contract.

Where the information provided by the user involves his trade secrets, the copyright collective administration organization shall have

the obligation to maintain secrecy.

Article 28 A copyright collective administration organization may deduct a certain proportion of the licensing fees which it has collected, as administrative costs to maintain its regular business activities.

The proportion that a copyright collective administration organization may deduct as administrative costs shall gradually decrease with the increase of the amount of collected licensing fees.

Article 29 Licensing fees collected by a copyright collective administration organization shall, after the deduction of administrative costs, be completely transferred to the right owners, and shall not be diverted to any other purpose.

To transfer licensing fees, a copyright collective administration organization shall keep a transferring record, which shall contain such items as the total licensing fees collected, the amount of the administrative costs, the names or titles of the right owners, the titles and specific use of the works, sound or video recordings, etc., as well as the respective exact amount of licensing fees paid to each of the right owners, and which shall be preserved for more than 10 years.

Chapter V Supervision over Copyright Collective Administration Organizations

Article 30 A copyright collective administration organization shall establish a finance and accounting system as well as a system of asset management according to law, and shall set up accounting books in accordance with the relevant provisions.

Article 31 The asset use and the finance management of a copyright collective administration organization shall be supervised by both the copyright administrative department and the civil affairs department of the State Council.

A copyright collective administration organization shall, at the end of each accounting year, work out the finance and accounting reports, commission an accounting firm to conduct an audit according to law, and publish the audit result.

Article 32 A copyright collective administration organization shall record the following items for consultation by right owners and users:

- (1)the licensing use of works;
- (2)the collection and transference of licensing fees; and
- (3)the deduction and spending of administrative costs.

A right owner shall have the right to consult or to copy finance reports, work reports and other business materials of the copyright collective administration organization; and the organization shall provide the right owner with convenience therefor.

Article 33 A right owner may make an exposure to the copyright

administration department of the State Council where he deems that a copyright collective administration organization involves itself in one of the following circumstances:

(1) to refuse the right owner's request to join that organization if he meets the entrance conditions prescribed in its articles of association or the right owner's request to withdraw from that organization according to the procedures prescribed in its articles of association;

(2) to fail to collect or transfer licensing fees, or to fail to deduct or spend administrative costs in accordance with the relevant provisions; or

(3) to refuse the right owner's request to consult the record or other business materials provided for in Article 32 of these Regulations.

Article 34 A user may make an exposure to the copyright administration department of the State Council where he deems that such organization involves itself in one of the following circumstances:

(1) to refuse to conclude a licensing contract with the user in violation of Article 23 of these Regulations;

(2) to fail to collect the exact amount of licensing fees agreed upon according to the published rates for collecting licensing fees; or

(3) to refuse the user's request to consult the record provided for in Article 32 of these Regulations.

Article 35 Citizens, legal persons and other organizations other than right owners and users may inform to the copyright administration

department of the State Council if they deem that such organization commits an act violating any provision of these Regulations.

Article 36 The copyright administration department of the State Council shall, within 60 days after having received an exposure or information, investigate into the exposed or informed matter and deal with it according to law.

Article 37 The copyright administration department of the State Council may supervise a copyright collective administration organization in the following manners, and shall record its supervising activities:

(1) examining whether the organization's activities conform to the provisions of these Regulations and of the articles of association;

(2) checking the organization's accounting books, annual budget and final account reports, as well as other relevant business materials;

(3) sending a staff member, as a none-voting member, to attend the organization's major meetings, such as the members' general meeting or meeting of the board of directors.

Article 38 Any copyright collective administration organization shall, according to law, subject itself to supervision by the civil affairs department or other relevant departments of the State Council.

Chapter VI Legal Liability

Article 39 Where a copyright collective administration organization involves itself in one of the following circumstances, it shall be ordered by the copyright administration department of the State Council to make a correction within a specified time limit:

(1) in violation of Article 22 of these Regulations, to fail to send a copy of the reciprocal representation agreement concluded with a like overseas organization to the copyright administration department of the State Council for the record;

(2) in violation of Article 24 of these Regulations, to fail to develop a rights information inquiry system; or

(3) to fail to collect licensing fees in conformity with the agreed amount on the basis of the published rates for collecting licensing fees.

A copyright collective administration organization which administers right owners' rights beyond its proper business scope shall be ordered by the copyright administration department of the State Council to make a correction within a specified time limit, and licensing contracts concluded in such a case between that organization and users shall be invalid. Where damage has been caused on the right owners or users, the organization shall also bear civil liability according to law.

Article 40 If a copyright collective administration organization involves itself in one of the following circumstances, it shall be ordered by the copyright administration department of the State Council to make

a correction within a specified time limit. Where that organization fails to make a correction within the time limit, its members' general meeting or its board of directors shall be ordered to remove or dismiss, according to the competence as provided in these Regulations, the persons in charge directly responsible:

(1) to refuse to conclude a contract for copyright collective administration with a right owner, or to refuse a member's request to withdraw from that organization in violation of Article 19 or 21 of these Regulations;

(2) to refuse to conclude a licensing contract with a user in violation of Article 23 of these Regulations;

(3) to deduct administrative costs in violation of Article 28;

(4) to transfer licensing fees in violation of Article 29; or

(5) to refuse to offer or offer falsely its accounting books, annual budget, final account reports and other relevant business material.

Article 41 If, without justification, a copyright collective administration organization has not carried out or has suspended activities of copyright collective administration for more than six consecutive months after the civil affairs department of the State Council issued to it the registration certificate, its license for copyright collective administration shall be revoked by the administrative department for copyright, and its registration shall be cancelled by the civil affairs

department of the State Council.

Article 42 If a copyright collective administration organization is engaged in activities for profit purposes, it shall be banned, and its illegal income shall be confiscated according to law by the administrative department for industry and commerce. Where a crime is constituted, criminal liability shall be investigated according to law.

Article 43 If, in violation of Article 27 of these Regulations, a user refuses to provide the relevant use information although he can do so, or practice fraud when providing such information, he shall be ordered by the copyright administration department of the State Council to make corrections, and the relevant copyright collective administration organization may suspend the licensing contract concluded with him.

Article 44 If, without authorization, copyright collective administration organizations or their branches are established, or activities of copyright collective administration are carried out, they shall be banned, and the illegal income confiscated by the copyright administrative department or the civil affairs department of the State Council on the basis of the division of functions and duties. Criminal liability shall be investigated according to law if a crime is constituted.

Article 45 If a staff member of the State administrative organ, in his work of examining and approving copyright collective administration organizations or of supervising their activities, neglects his duty, or

abuses his power, or commit illegalities for personal gains or by fraudulent means, if a crime is constituted, he shall, according to law, be investigated for criminal liability. If his act does not constitute a crime, he shall be given administrative sanctions according to law.

Chapter VI Supplementary Provisions

Article 46 Any copyright collective administration organization established before these Regulations become effective shall, within three months from the effective date of these Regulations, submit its articles of association, rates for collecting licensing fees, methods for transferring licensing fees, as well as other relevant materials to the copyright administration department of the State Council for the examination, and send copies of the reciprocal representation agreement which it has concluded with like overseas organizations to that department for the record.

Article 47 A user who has used others' works in accordance with Article 23, the second paragraph of Article 32, or the third paragraph of Article 39 of the Copyright Law but fails to pay licensing fees to the right owners according to Article 32 of the Regulations for the Implementation of the Copyright Law, shall deliver the licensing fees, together with the postage, as well as the information concerning the specific use, to the

copyright collective administration organization which administers the relevant right which shall transfer such fees to the right owners.

A copyright collective administration organization which is responsible for transferring licensing fees shall develop a use information inquiry system for right owners' and users' inquiry.

A copyright collective administration organization which is responsible for transferring licensing fees may collect, by half of the proportion determined by its members' general meeting, the administrative costs, but not any other costs, from the licensing fees collected.

Article 48 These Regulations shall be effective as of March 1, 2005.