

Measures for the Administrative Protection of Internet Copyright

(Promulgated by the National Copyright Administration, the Ministry of Information Industry on 2005-4-29)

Article 1 With a view to strengthening the administrative protection of the right of communication through information network in Internet information services and regulating the acts of administrative law enforcement, the present Measures are formulated in accordance with the "Copyright Law of the People's Republic of China" and other relevant laws and administrative regulations.

Article 2 The present Measures shall apply to acts of automatically providing such functions as uploading, storing, linking or searching works, audio or video products or other contents through Internet in Internet information services in light of the instructions of an Internet content provider without editing, modifying or selecting any stored or transmitted content.

The acts of directly providing Internet contents in Internet information services shall be subject to the administration of the Copyright Law.

An "Internet content provider" as mentioned in the present Measures shall refer to an Internet user who publishes relevant contents on Internet.

Article 3 The copyright administration departments at all levels shall, pursuant to the laws, administrative regulations and the present Measures, carry out administrative protection of the right of communication through information network in Internet information services. The competent department in charge of information industry under the State Council and the telecommunication administration department of each province, autonomous region, or municipality directly under the Central Government shall cooperate in relevant work according to law.

Article 4 The copyright administration department shall, when imposing administrative penalties on the acts infringing upon the right of communication through information network in Internet information services, apply the "Measures for Imposing Copyright Administrative Penalties".

Any act infringing upon the right of communication through information network in Internet information services shall be subject to the jurisdiction of the copyright administration department at the places where the act was conducted. The places where the act was conducted may include the place where such equipments as the server providing Internet information services listed in Article 2 of the present Measures are located.

Article 5 Where a copyright owner finds any content communicated through Internet infringes upon his/its copyright, and sends a notice to the Internet information service

provider or any other institution entrusted by it (hereinafter uniformly referred to as the "Internet information service provider"), the Internet information service provider shall immediately take measures to remove the relevant contents, and keep the copyright owner's notice for 6 months.

Article 6 The Internet information service provider shall, after the receipt of a copyright owner's notice, record the content of the provided information, the publishing time and the Internet address or domain name. And the Internet access service provider shall record the time of access by the Internet content provider, the user's name, the Internet address or domain name, the telephone number of the calling party and etc.

The records as mentioned in the preceding paragraph shall be preserved for 60 days, and shall be provided once inquired about by the copyright administration department.

Article 7 Where any Internet information service provider removes relevant contents in light of the notice of a copyright owner, the Internet content provider may send a counter-notice to both the Internet information service provider and the copyright owner, stating that the removed contents do not infringe upon the copyright. After the counter-notice is sent, the Internet information service provider may immediately reinstate the removed contents and need not assume administrative legal liabilities for the reinstatement.

Article 8 The notice of a copyright owner shall include the following contents:

- (1) the certification on the ownership of the copyright suspected to be infringed upon by the tortious content;
- (2) the clear identity certification, domicile, and methods for contact;
- (3) the position of the suspected tortious content on the information network;
- (4) the relevant evidences on the infringement upon the copyright; and
- (5) the statement on authenticity of the content in the notice.

Article 9 The counter-notice of an Internet content provider shall include the following contents:

- (1) the clear identity certification, domicile and methods for contact;
- (2) the certification on validity of the removed content;
- (3) the position of the removed content on Internet; and
- (4) the statement on authenticity of the content in the counter-notice.

Article 10 Both the notice of a copyright owner and the counter-notice of an Internet

content provider shall be in written form.

Where the notice of a copyright owner or the counter-notice of an Internet content provider does not contain the contents as prescribed in Article 8 or Article 9 of the present Measures, it shall be deemed as having not been sent out.

Article 11 Where an Internet information service provider clearly knows the tortious act of an Internet content provider infringing upon other's copyright through Internet, or, although it does not know it clearly, fails to take measures to remove relevant contents after receipt of the copyright owner's notice, and meanwhile damages the social public benefits, the copyright administration department may, according to Article 47 of the "Copyright Law of the People's Republic of China", charge the infringer to stop the tortious act and impose the following administrative penalties:

(1) confiscating the illegal proceeds; and

(2) imposing a fine of not more than 3 times of the illegal business amount; if the illegal business amount is difficult to be calculated, a fine of not more than 100,000 Yuan may be imposed.

Article 12 Where there is no evidence to prove that an Internet information service provider clearly knows the facts of tort, or the Internet information service provider has taken measures to remove relevant contents after receipt of the copyright owner's notice, the Internet information service provider shall not assume the administrative legal liabilities.

Article 13 When investigating into a case on the act infringing upon the right of communication through information network in Internet information services, a copyright administration department may, according to Article 12 of the "Measures for Imposing Copyright Administrative Penalties", require the copyright owner to submit the indispensable materials, the notice sent to the Internet information service provider and the certification proving that the Internet information service provider has failed to take measures to remove the relevant contents.

Article 14 Where an Internet information service provider is under the circumstances prescribed in Article 11 of the present Measures, and is legally ascertained by the copyright administration department as specially engaging in piracy activities, or is under any other severe circumstance, the competent department in charge of information industry under the State Council or the telecommunication administration department of the province, autonomous region, or municipality directly under the Central Government may punish the Internet information service provider according to relevant laws and administrative regulations. And the Internet access service provider shall, pursuant to the notice sent by the competent department in charge of information industry under the State Council or the telecommunication administration department of the province, autonomous region, or municipality directly under the Central Government, provides cooperation in implementing the corresponding punishment measures.

Article 15 Where an Internet information service provider fails to perform any obligation prescribed in Article 6 of the present Measures, he/it shall be warned by the competent department in charge of information industry under the State Council or the telecommunication administration department of the province, autonomous region or municipality directly under the Central Government, and may be fined not more than 30,000 Yuan in addition.

Article 16 Where a copyright administration department, in the process of investigating into a case on the acts infringing upon the right of communication through information network in Internet information services, finds that an Internet information service provider's act is suspected to constitute a crime, it shall transfer the case to the judicial organ in accordance with the "Provisions on Transfer of Cases of Suspected Crimes by Law Enforcement Administration Organs" promulgated by the State Council, so as to make the Internet information service provider subject to criminal liabilities according to law.

Article 17 The administrative protection of the rights of performers, producers of audio or video recordings and other right holders related to copyright who communicate their performance or audio and video products to the public through Internet shall be governed by these Measures.

Article 18 The power to interpret the present Measures shall be vested in the National Copyright Administration and the Ministry of Information Industry.

Article 19 The present Measures shall come into force as of May 30, 2005.

(Source: Invest in China)