

Some Proposals for the Amendment of the Copyright Law of China

Intellectual Property Center

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A. Start of the Third Amendment of the Copyright Law of China

- On July 13, 2011, the National Copyright Administration of China announced to launch the third amendment of the Law
- To set up a leading committee, consisting of the representatives from different competent government agencies
- To set up an expert committee, consisting of experts from industry, government agencies, authors, composers, and scholars
 - 22 persons
- Entrust three scholars from IP Center of CASS, IP School of Renmin University, IP Center of Zhongnan University of Political Science and Law, to draft expert's proposals. They shall not communicate each other.

A. Start of the Third Amendment of the Copyright Law of China

- The development of our center
 - Had the first meeting to set up a group to draft the proposal
 - To ask every one to draft his or her own proposals, and collected 12 proposals before Aug. 15
 - Had the first workshop in Aug. 24
 - Now we are drafting the proposals
 - To have second workshop next month
 - Submit the proposal to NCAC at the end of the year
- NCAC prepare its proposals, then to ask for public opinion
- NCAC submit its proposal to State Council
- State Council submit its proposal to the Standing Committee of National People's Congress
- Then to review and pass, become the law

B. Principles to Draft the Proposals

- Current copyright regime in China
 - Copyright Law
 - Regulations for the Implementing Copyright Law
 - Regulations for the Protection of Computer Program
 - Regulations for the Organization of Collective License
 - Regulations for the Protection of Right of Communication in the Network
 - Regulations for the Protection of Folklore Work (not enacted yet)
- Whether to rearrange the system or not, combine all regulations into a Law?
 - No necessary, the key issue is to resolve problems, not a law that looks good but not good for use or to resolve problems

B. Principles to Draft the Proposals

- But the Regulations for the Protection of Computer Program may be repealed: a definition, a limitation, then apply all provisions in the copyright law
 - It is a special product in the specific
 - Copy the provisions from the Copyright Law
 - Only several special provisions for the computer program
- Author's right system or copyright system
 - Anglo-American system
 - Low standard for originality
 - No system for the related rights
 - Not emphasize author's spirit rights
 - China has accepted continental European system, including author's right system
 - There is no need to change

B. Principles to Draft the Proposals

- On the basis of the problems in practice
 - If some articles have not resulted any problem, shall not be amended
 - If some articles have had some problems, or should be clarified, then to amend
 - Total 60 articles, no necessary to amend all
 - Hope to be reflected in the final amendments

C. Some proposals

- About types of work
 - No need to change
 - US copyright law, 8 types; Germany, 7 types; France, 14 types, China, 9 types
 - To clarify expression not idea?
 - Typeface?
- About right system
 - Moral right, or personal right
 - right to claim authorship, to guarantee the integrity of the work
 - To delete: publication right; right of revise one's work
 - On the basis of Berne Convention

C. Some proposals

- Economic right or property right
 - Now 12 items, shall be rearranged as rights of;
 - Reproduction
 - distribution
 - Derivation
 - Communication or performance
 - The current law keep with Berne Convention
 - French copyright law: reproduction, performance
 - US: reproduction, distribution, derivation, performance, and display

C. Some proposals

- Related rights
 - Delete audiovisual recordings, not work
 - The differences between motion picture and audiovisual recordings
 - Delete the right of typographical design of the books, newspapers, and periodicals
 - Can be resolved by unfair competition law
 - Or not to delete
 - Clarify broadcasting organizations instead of radio station, television station
 - Including satellite broadcasting, cable broadcasting, internet broadcasting
 - The subject matter is broadcasting signals
 - To clarify sound recordings
 - Sound recordings and phonorecords

C. Some proposals

- The ownership of copyright
 - Use employed work, and commissioned work
 - The ownership of copyright shall be decided by contract
 - If there is no contract, or not clear in contract, belong to employer or commissioner
 - Or authors?
 - Motion pictures, belong to producers, no need to change
 - In favor of industry and commercialization
- Copyright term, no need to change
- Limitations and exceptions, be careful, sensitive balance of different interests
 - Fair use? No such term in the sense of US Copyright Law, article 107

C. Some proposals

- Infringement
 - Delete article 46 (only for civil remedies), 47 (civil, administrative, and criminal remedies)
 - It is a product in a special period
 - If a copyrighted work has been used without permission from the copyright owner, and the use is not within limitations and exceptions, it is an infringement
 - Some serious infringers shall be punished by criminal law
 - If the copyright owner put forward a litigation, it is not necessary to say which right or rights have been infringed

C. Some proposals

- Remedies
 - No change for preliminary injunction, permanent injunction, to secure evidence
 - Statutory damage, below 1,000,000 instead of below 500,000
 - Punishment damage?
- Copyright contract
 - No change statutory licenses
 - Collective license organizations
 - Music works, literature works, picture works, motion pictures
 - Contract for the works to be used in the internet

E. conclusions

- The copyright Law of China promulgated in September 1990, and went into effect in June 1991
- It was firstly amended in Oct. 2001 in light of TRIPS agreement
- It was secondly amended in Feb. 2010 to implement the panel decision of WTO, to delete article 4.1, and to add a provision about recording of copyright pledge
- Now we are amending it thirdly, on the basis of the problems that have happened in social and economic life
- The purpose is to resolve the problems not for academics

Thanks for your attention

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