

网络环境下的中国著作权保护

中欧网络环境中的版权保护研讨会

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The Copyright Protection on Line in China

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目次

- 一、概述
- 二、《信息网络传播权保护条例》

Catalogue

- **I. General**
- **II. Regulations on Protection of the Right of Communication through Information Network**

一、概述

- (一) 著作权法律法规
- (二) 著作权法
- (三) 著作权法实施条例
- (四) 计算机软件保护条例
- (五) 著作权集体管理条例
- (六) 刑法
- (七) 国际著作权条约

I. General

- **1. Copyright Law & Rules**
- **2. Copyright Law**
- **3. Regulations for the Implementation
of the Copyright Law**
- **4. Regulations on Computers Software Protection**
- **5. Regulations on Collective Administration of
Copyright**
- **6. Criminal Law**
- **7. International Copyright Treaties**

（一）著作权法律法规

- 著作权法1990年颁布，1991年生效，2001年10月修订**
- 著作权法实施条例1991年生效，2002年8月修订**
- 计算机软件保护条例1991年生效，2001年12月修订**

1. Copyright Law & Rules

- **Copyright Law 1990 promulgated, Oct. 2001 amended**
- **Regulations for the Implementation of the Copyright Law 1991 promulgated, Aug. 2002 amended**
- **Regulation to Protect Computer Soft-Ware 1991 promulgated, Dec. 2001 amended**

（一）著作权法律、法规

- 著作权集体管理条例—2004年12月22日通过，2005年3月1日生效**
- 信息网络传播权的保护条例—2006年5月10日通过，7月1日生效**
- 1997年刑法第217、218、220条**

Copyright Law & Rules

- **Regulations on Collective Administration of Copyright, adopted 22-12-2004, enforced 01-03-2005**
- **Regulation to Protect the Right of Communication through Information Network adopted 10-05-2006, enforced**
- **Art. 217, 218, 220 of Criminal Code 1997**

正在制定的法规

- 民间文学艺术保护条例
- 广播电台、电视台适用法定许可的付酬标准

The Regulations being formulated

- **The Regulation on the Protection of
Folklore**
- **The Statutory License Tariff for
Broadcasting Organizations**

(二) 著作权法

- 1、国民待遇问题
- 2、保护的客体
- 3、主体
- 4、权利内容
- 5、归属
- 6、继承与保护期
- 7、限制
- 8、邻接权
- 9、著作权合同
- 10、执法措施与法律责任
-

2. The Content of Copyright Law

- **(1) National Treatment**
- **(2) The Protected Subject Matter**
- **(3) The Copyright Owner**
- **(4) The Content of the Rights**
- **(5) Ownership of Copyright**

2. The Content of Copyright Law

- **(6)Term of Protection**
- **(7)Limitations**
- **(8)Neighboring Rights**
- **(9)Copyright Contract**
- **(10)Enforcement Measure & Legal Liabilities**

（三）著作权法实施条例

- 定义
- 合作作者间的权利关系
- 署名权的限制
- 电影作品保护作品完整权的限制
- 三步检验标准
- 专有权概念
- 对外国邻接权的保护
- 行政罚款的数额和管辖

Regulations for the Implementation of the Copyright Law

- **Definition**
- **Rights relationship between co-authors**
- **Limitation on the right of authorship**
- **Limitation on the integrity of
cinematographic work**

Regulations for the Implementation of the Copyright Law

- **3 steps test**
- **Concept of the exclusive right**
- **Foreign neighboring rights protection**
- **Fine standard and jurisdiction of the administrative punishment**

（四）计算机软件保护条例

- **定义**
- **软件可以登记，登记证明文件是登记事项的初步证明**
- **重复著作权法的规定**
- **软件终端用户的法律责任**

Regulation on Computer Software Protection

- **Definition**
- **A software may registered. A registration certificate is a preliminary proof of the registered items.**
- **Repeating the regulations of Copyright Law**
- **Liability of software-end-users**

（四）计算机软件保护条例

- 为了学习和研究软件内含的设计思想和原理，通过安装、显示、传输或者存储软件等方式使用软件的，可以不经软件著作权人许可，不向其支付报酬（欧盟指令5.3）
- 由于可供选用的表达方式有限而与已经存在的软件相似的，不构成侵权
- 无过错的，不承担赔偿责任，但是，应当停止使用、销毁该侵权复制品，如果由此给使用人造成重大损失，使用人可以在支付合理费用后继续使用

Regulation on Computer Software Protection

- A software may be used by its installing, displaying, transmitting or storing for the purposes of studying or researching the design ideas or principles embodied therein, without permission from, and without payment of remuneration, to the software copyright owner (Art. 5.3. EC-Guild line).**

Regulation on Computer Software Protection

- **The development of a piece of software which is similar to a pre-existing one due to a limit of alternative forms of expression does not constitute an infringement of the copyright in the pre-existing one.**

Regulation on Computer Software Protection

- **Supposing no negligence, the user is not liable for compensation but shall stop the using and destroy the infringing copies. But, if a heavy losses to the user caused by this case, the user may, after paying reasonable remuneration, continue to use such copies.**

（五）著作权集体管理条例

- **立法目的，方便权利人与用户，一站式服务**
- **集体管理组织的权限**
- **建立集体管理组织的申请与批准**
- **集体管理组织与会员的关系**
- **与外国集体管理组织的关系**
- **法定许可收费标准由国家制订，其他由集体管理组织与用户的合同约定**

Regulations on Collective Administration of Copyright

- **Goal of legislation: to facilitate the copyright owners and the users, one-stop- shop service**
- **Competence of collective management societies**
- **Application and approving for establishment of a collective management society**

Regulations on Collective Administration of Copyright

- **Relationship between the members and the society**
- **Relationship with foreign societies**
- **Statutory license tariff is stated by the Government, other license tariffs are assumed by contract with the users**

(五) 著作权集体管理条例

- **收费与分配**
- **对集体管理组织的内部监督、社会监督和政府监督**
- **罚则**

Regulations on Collective Administration of Copyright

- **Collection and distribution of licensing fees**
- **Supervision from interior, public society and Government side over collective management societies**
- **Legal liabilities**

(六) 刑法

- 1997年10月1日执行**
- 第217、218、220条**
- 以营利为目的的盗版行为**
- 1-7年徒刑，并处罚金**

3.Criminal Code

- **October 1. 1997 in force**
- **Art. 217, 218, 220**
- **The piracy activities with commercial purpose**
- **1-7 years imprisonment and fine**

(七) 国际著作权条约

- 伯尔尼公约1971年巴黎文本
- 世界版权公约
- 录音制品公约
- TRIPS协议
- WCT和WPPT

7. International Copyright Treaties

- **Berne Convention-1971 Paris Act**
- **Universal Copyright Convention**
- **Phonograms Convention**
- **TRIPs Agreement**
- **WCT & WPPT**

二、信息网络传播权保护条例

- 1、基本原则
- 2、合理使用
- 3、法定许可
- 4、合法规避技术措施
- 5、避风港
- 6、通知—移除
- 7、反通知—恢复
- 8、法律责任

II. Regulations on Protection of the Right of Communication through Information Network

- **1. Basic Principles**
- **2. Fair Use**
- **3. Statutory License**
- **4. Legally Circumvention of the Technological Measures**
- **5. Save Harbour**
- **6. Notice- Remove**
- **7. Anti-notice Replace**
- **8. Legal Liabilities**

1、基本原则

- **第2条** 权利人享有的信息网络传播权受著作权法和本条例保护。除法律、行政法规另有规定的外，任何组织或者个人将他人的作品、表演、录音录像制品通过信息网络向公众提供，应当取得权利人许可，并支付报酬。

1. Basic Principles

- **Art. 2: The right of communication through information network enjoyed by right owners is protected by the Copyright Law and these Regulations. Any organization or individual that makes another person's work, performance, or sound or video recording available to the public through information network shall obtain permission from, and pay remuneration to, the right owner, except as otherwise provided for by laws or administrative regulations.**

1、基本原则

- **第4条 为了保护信息网络传播权，权利人可以采取技术措施。**

任何组织或者个人不得故意避开或者破坏技术措施，不得故意制造、进口或者向公众提供主要用于避开或者破坏技术措施的装置或者部件，不得故意为他人避开或者破坏技术措施提供技术服务。但是，法律、行政法规规定可以避开的除外。

1. Basic Principles

- **Art. 4: Right owners may adopt technological measures in order to protect their right of communication through information network.**
- **No organization or individual may intentionally circumvent or sabotage technological measures, or intentionally manufacture, import, or make available to the public devices or components mainly used to circumvent or sabotage technological measures, or intentionally provide other persons with technical services to circumvent or sabotage technological measures, except where such circumvention is permitted by laws or administrative regulations.**

1、基本原则

- **第5条 未经权利人许可，任何组织和个人不得进行下列行为：**
 - （1）故意删除或者改变通过信息网络向公众提供的作品、表演、录音录像制品的权利管理电子信息，但由于技术上的原因无法避免删除或者改变的除外；**
 - （2）通过信息网络向公众提供明知或者应知未经权利人许可被删除或者改变权利管理电子信息的作品、表演、录音录像制品。**

1. Basic Principles

- **Art. 5: Without permission from a right owner, no organization or individual may commit any of the following acts:**
- **(1) to intentionally remove or alter any electronic rights management information attached to a work, performance, or sound or video recording made available to the public through information network, except that it is unavoidable for such information to be removed or altered because of any technical reason; or**
- **(2) to make available to the public through information network a work, performance, or sound or video recording, knowing or having reasonable grounds to know that the electronic rights management information thereof has been removed or altered without permission from the right owner.**

2、合理使用

- 第6条：适当引用
- 为报道时事新闻，不可避免地再现作品
- 为学校课堂教学，向教学人员提供少量作品
- 国家机关为执行公务
- 将汉语言文字翻译成少数民族语言文字
- 为盲人提供作品
- 政治、经济问题的时事性文章
- 公众集会上发表的讲话

2. Fair Use

- **Art. 6: Appropriately Quote**
- **Unavoidably publishing of a work for the purpose of reporting current events**
- **Provide a Few Quantity of Copies of a Work to a Few Number of Teachers for Classroom Teaching**
- **Making a Work Available to the State Organ for Official Duties;**

2. Fair Use

- **Translation of a Published Work of a Chinese Citizen from Han Language into a National Minority Language**
- **Making a Work Available to Blind Persons**
- **Making a Work on Current Political or Economic Topics Available to the Public over Information Network**
- **Making a Speech at a Public Gathering Available to the Public.**

2、合理使用

- **第7条：图书馆等可以通过网络向本馆馆舍内服务对象提供本馆收藏的数字作品和为陈列或者保存版本的需要以数字化形式复制的作品**
- **为陈列或者保存版本需要以数字化形式复制的作品，应当是已经损毁或者濒临损毁、丢失或者失窃，或者其存储格式已经过时，并且在市场上无法购买或者只能以明显高于标定的价格购买的作品。**

2. Fair Use

- **Art. 7: A library etc. may on its premises make a digital work in its collection available to its readers**
- **The work reproduced in digital form for display or preservation purpose, as referred to in the preceding paragraph, shall be a work of which a copy in the collection is on the brink of damage or is damaged, lost or stolen, or of which the storage format is outmoded, and which is unavailable or only available at a price obviously higher than the marked one on the market.**

3、法定许可

- **第8条** 为通过信息网络实施九年制义务教育或者国家教育规划，可以不经著作权人许可，使用其已经发表作品的片断或者短小的文字作品、音乐作品或者单幅的美术作品、摄影作品制作课件，由制作课件或者依法取得课件的远程教育机构通过信息网络向注册学生提供，但应当向著作权人支付报酬。

3. Statutory License

- **Art. 8: For the purpose of implementing the plan of nine-year compulsory education or the plan of national education through information network, excerpts from a work, a short written work or musical work, or a single work of fine arts or photographic work, if published, may be used to produce courseware which may be made available to registered students through information network by distance education institutions which have produced such courseware or have legally obtained a copy of such courseware, without permission from the copyright owner, provided that remuneration is paid to the copyright owner.**

3、法定许可

- **第9条：为扶助贫困，通过网络向农村免费提供中国人作品，事先应予公告。30日内著作权人不同意的，不得提供；提供后著作权人不同意的，应立即删除，并支付报酬**

3. Statutory License

- **Art, 9: An ISP, for the purpose of aiding poverty-stricken areas, may free of charge make a published work of a Chinese citizen available to the public in the countryside through information network and shall make an announcement. If the copyright owner raises an objection to that within 30 days from the date on which the announcement is made, the ISP shall not make the said work available and pay remuneration to the copyright owner, if the said work has been uploaded.**

4、合法规避技术措施

- **第12条：合法规避技术措施的，不得向他人提供技术、装置或者部件，不得侵犯权利人的其他权利**
- **为学校课堂教学或者科学研究，且只能通过网络获取的信息**
- **不以营利为目的，为盲人提供只能通过网络获取的作品**
- **国家机关执行公务**
- **对计算机系统或者网络的安全性能进行测试**

4. Legally Circumvention of the Technological Measures

- **Art. 12:** In following cases, technological measures may be circumvented, but technologies, devices or components used to circumvent technological measures may not be made available to others and the other rights of right owner may not be infringed:
 - (1) when an info. is made available to teachers or scientific researchers through information network for the purpose of classroom teaching or scientific research, and the said info. is only accessible over information network;

4. Legally Circumvention of the Technological Measures

- (2) when a published written work is made available to blind persons through information network for a non-profit purpose in such particular way that it is perceptible to them, and the said work is only accessible over information network;
- (3) when a State organ fulfils its official duties in accordance with the administrative or judicial procedure; or
- (4) when a safety test is carried out over information network on a computer and its system or on such network.

5、避风港

- **第20条：ISP根据用户指令提供自动接入服务，或者自动传输服务，并具备下列条件的，不承担赔偿责任：**
- **未选择并且未改变所传输的信息；**
- **向指定用户提供信息，并防止他人获得。**

5. Save Harbor

- **Art. 20:** A ISP according to the users provides the service of access and meets the following conditions, bears no liability for compensation:
 - No selection and modification to the work;
 - Providing the work to anticipated users only, and prevention others from accessing the said work.

5、避风港

- **第21条：ISP自动存储从其他ISP获得的信息，具备下列条件的，不承担赔偿责任：**
- **未改变自动存储的信息；**
- **不影响原ISP掌握用户的情况；**
- **在ISP更改信息时，自动予以更改。**

5. Save Harbor

- Art. 21: a ISP provides the service of automatic storage of a work from another ISP and meets the following conditions, bears no liability for compensation:
 - No modification to the work automatically stored;
 - No hindering the original ISP from keeping the info. the users;
 - automatically modification the info. in case the original ISP has changed.

5、避风港

- **第22条：ISP提供信息存储空间，具备下列条件的，不承担赔偿责任：**
- **明确标示该空间是为用户提供，并公开ISP名称、联系人、网络地址**
- **未改变用户所提供的信息**
- **不知道用户提供的信息侵权**
- **未从用户提供的信息直接获益**
- **接到权利人通知后，删除侵权信息**

5. Safe Harbor

- **Art. 22: An ISP provides an information storage space to users and meets the following conditions, bears no liability for compensation:**
- **it clearly indicates that such information storage space is provided for the users, and makes known to the public its name, the person to be contacted and its address;**
- **it does not modify the info. made available by the users;**
- **it does not know or has no reasonable grounds to know that the info. made available by the users is an infringement;**
- **it does not gain any direct financial benefit from the info. made available by the users;**
- **upon receiving a written notification of the right owner, it removes the suspected info..**

5、避风港

- **第23条：提供搜索或链接服务，接到权利人通知后，断开与侵权信息的链接，不承担赔偿责任；但是，明知或者应知链接的信息侵权的，应当承担共同侵权责任。**

5. Safe Harbor

- **Art. 23: An ISP provides searching or linking service to the users and upon receiving a written notification of the right owner disconnects the link to an infringing info. and bears no liability for compensation; however, if it knows or should know that the linked info. is an infringement, it shall bear the liability for common infringement.**

6、通知—移除

- **第14条：权利人认为提供信息存储空间或提供搜索、链接的ISP的服务涉及侵权或删除、改变权利管理电子信息的，可以向ISP提交书面通知，要求删除侵权信息，或断开链接。通知书包含下列内容：**
- **权利人姓名、联系方式和地址**
- **侵权信息名称和网络地址**
- **构成侵权的初步证明材料**
- **权利人应当对通知书的真实性负责。**

6. Notice- Remove

- **Art. 14: If a right owner believes that an info. involved in the service of an ISP providing information storage space or searching or linking service has infringed its right or its electronic rights information management, may deliver a written notification to the ISP, requesting it to remove the info., or disconnect the link to such info.. The written notification shall contain the followings:**
 - **the name, contact means and address of the right owner;**
 - **the title and network address of the infringing info.;**
 - **the material constituting preliminary proof of infringement;**
 - **the right owner shall be responsible for the authenticity of the written notification.**

6、通知—移除

- **第15条** ISP接到权利人的通知书后，应当立即删除侵权信息，或断开链接，并同时将通知书转送提供信息的用户；用户地址不明、无法转送的，应当将通知在网络上公告。

6. Notice- Remove

- **Art. 15: An ISP shall, upon receiving a notification from a right owner, promptly remove the info. suspected of infringement, or disconnect the link to such info., and shall, at the same time, transfer the notification to the user who makes available the said info.; if the notification cannot be transferred because the user's network address is unknown, the ISP shall, at the same time, make the contents of the notification known to the public over information network.**

6、通知—移除

- **第24条：因权利人通知导致ISP错误删除，或错误断链，给用户造成损失的，权利人应当承担赔偿责任。**

6. Notice- Remove

- **Art. 24: If, as the result of the notification of a right owner, an ISP wrongly removes, or wrongly disconnects the link to, an info., and thereby causes losses to the users, the right owner shall bear the liability for compensation.**

7、反通知—恢复

- **第16条：用户接到通知后，可以向ISP提交反通知，要求恢复被删除的信息，或恢复链接，反通知应当包含以下内容：**
- **用户姓名、联系方式和地址**
- **要求恢复的信息的名称和网络地址**
- **不侵权的初步证明材料**
- **用户应当对书面说明的真实性负责。**

7. Anti- notice- Replace

- **Art. 16: If a user, upon receiving a notification transferred from an ISP, may deliver an anti-notice to the ISP, requesting it to replace the removed info. or to replace the disconnected link to such info.. The written statement shall contain the followings:**
 - **the name, contact means and address of the user;**
 - **the title and network address of the info. being requested to be replaced;**
 - **the material constituting preliminary proof of non-infringement;**
 - **the user shall be responsible for the authenticity of the written statement.**

7、反通知—恢复

- **第17条：ISP接到用户反通知后，应当立即恢复被删除的信息，或恢复链接，同时将用户反通知转送权利人。权利人不得再通知ISP删除该信息，或断开链接**

7. Anti-notice- Replace

- **Art. 17: Upon receiving a written statement by a user, an ISP shall promptly replace the removed info. or replace the disconnected link to such info. and, at the same time, transfer the written statement by the user to the right owner. The right owner shall not notify the ISP anew to remove the info., or to disconnect the link to such info..**

8、法律责任

- **第13条** 著作权行政管理部门为了查处侵犯信息网络传播权的行为，可以要求网络服务提供者提供涉嫌侵权的服务对象的姓名（名称）、联系方式、网络地址等资料。

8. Legal Liabilities

- **Art. 13: In order to investigate and handle an act infringing on the right of communication through information network, the administrative department for copyright may request the network service provider to provide such data as the name, contact means and network address of a service recipient suspected of infringement.**

8、法律责任

- **第18条：下列侵权行为承担停止侵害、消除影响、赔礼道歉、赔偿损失等民事责任**
- **同时损害公共利益的，由版权部门责令停止侵权行为，没收违法所得，并可处以10万元以下的罚款；情节严重的，可以没收主要用于提供网络服务的计算机等设备；构成犯罪的，依法追究刑事责任：**

8. Legal Liabilities

- **Art. 18: The following acts of infringement shall bear civil liability as ceasing the infringement, eliminating the bad effects of the act, making an apology, or paying compensation for losses. Where public interests are impaired, the copyright offices may order cessation of the act of infringement, confiscate the illegal gain, and may impose a fine of not more than 100,000 Yuan; and for serious cases confiscate the equipment such as computers mainly used to provide network service. If a crime is constituted, criminal liability shall be investigated for in accordance with law:**

8、法律责任

- **(1) 擅自将他人作品上载；**
- **(2) 故意规避技术措施；**
- **(3) 故意删除或改变权利管理电子信息，
或提供明知未经许可被删除权利管理电
子信息的信息；**

8. Legal Liabilities

- **(1) to upload info. of others without permission;**
- **(2) to intentionally circumvent technological measures;**
- **(3) to intentionally remove or alter the electronic rights management information attached to an info.; or to upload an info. for which he/she knows or should know that the electronic rights management information attached to such info. has been removed or altered without permission from the right owner;**
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8、法律责任

- **（4）向农村贫困地区超范围提供信息，或未支付报酬，或在权利人不同意提供后未立即删除；**
- **（5）未指明出处，或未支付报酬，或未采取技术措施防止他人获得信息，或未防止用户的复制行为对权利人利益造成实质性损害。**

8. Legal Liabilities

- **(4) to make available to rural areas through information network an info. for the purpose of aiding poverty-stricken areas, beyond the limits as specified, or without paying remuneration, or, after the copyright owner has raised an objection to the making available of the info., without promptly having it removed;**
- **(5) to make available through information network an info. of others without indicating the derivation, or without paying remuneration, or without adopting technological measures to prevent others from accessing the said info., or without preventing any act of reproduction of a user from substantially impairing the interests of the right owner.**

8、法律责任

- **第19条：下列行为由著作权管理部门予以警告，没收违法所得，没收主要用于规避技术措施的装置；情节严重的，没收主要用于网络服务的计算机，并可处以10万元以下的罚款；构成犯罪的，依法追究刑事责任：**
 - **（1）故意制造、进口或向他人提供主要用于规避技术措施的装置或服务；**
 - **（2）通过网络提供他人信息，获得经济利益的；**

8. Legal Liabilities

- **Art. 19:** The following acts shall be punished by the copyright offices as a warning, confiscating the illegal gain, and confiscating the devices or components mainly used to circumvent technological measures. For the serious cases the said department may confiscate the equipment such as computers mainly used to provide network service, and impose a fine of not more than 100,000 Yuan. If a crime is constituted, criminal liability shall be investigated for in accordance with law:
 - (1) to intentionally manufacture, import, or make available to others any devices or components or service mainly used to circumvent technological measures;
 - (2) to gain financial benefit from making available through information network other's info.;

8、法律责任

- **（3）为扶助贫困通过信息网络向农村地区提供作品、表演、录音录像制品，未在提供前公告作品、表演、录音录像制品的名称和作者、表演者、录音录像制作者的姓名（名称）以及报酬标准的。**

8. Legal Liabilities

- **(3) to fail to announce the title of a work, performance, or sound or video recording and the name of its author, performer or producer of the sound or video recording as well as the rates of remuneration to be paid before making available the said work, performance, or sound or video recording to rural areas through information network for the purpose of aiding poverty-stricken areas.**

8、法律责任

- **第25条** 网络服务提供者无正当理由拒绝提供或者拖延提供涉嫌侵权的服务对象的姓名（名称）、联系方式、网络地址等资料的，由著作权行政管理部门予以警告；情节严重的，没收主要用于提供网络服务的计算机等设备。

8. Legal Liabilities

- **Art. 25: Where, without just cause, an ISP refuses or delays the provision of such data as the name, contact means and network address of a user suspected of infringement, the copyright offices shall give a warning thereto and for the serious cases confiscate the equipment such as computers mainly used to provide network service.**

小结

- 中国的知识产权保护历史只有10多年
- 中国是最大的发展中国家
- 中国政府为保护知识产权付出的努力，是世界上任何政府不能比拟的
- 中国保护知识产权的决心是坚定不移的

Conclusion

- **The history of IP in China only 10 years**
- **China is the biggest developing country in the world**
- **It's no Government in the world as the Chinese Government paying so much to protect IP**
- **The decision of China to protect IP is constant**

谢谢

Thank you