

## Highlights Overview on the Latest Amendment to the Copyright Law of the PRC

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On November 11th, 2020, the latest amendment of the Copyright Law has been passed by the Standing Committee of the National People's Congress of the PRC (hereinafter the "**Amendment**"), which will come into force from June 1<sup>st</sup>, 2021. The Amendment is made in response to the major changes in the developments of technology, the dissemination channels of works and the cultural industries in the past decade. We would like to introduce several highlights of the Amendment as below:

### **1. Add punitive damages and increase the statutory damages**

It is provided in Article 54 of the Amendment that "as to the willful infringement upon the copyright or the rights relating to the copyright, if serious, a court may award 1-5 times damages based on the amount obtained in accordance with the aforesaid calculation methods". It means that the punitive damages system has comprehensively established in all major IP laws in China, including the trademark law, the patent law, the copyright law and the anti-unfair competition law.

In the meantime, the upper limit for the statutory damages for copyright compensation has been raised from CNY 500 thousand to CNY 5 million. As a result, a court is capable of awarding much higher damages in a copyright infringement case without concrete support of evidence.

The Amendment also set forth a bottom line for the statutory damages in amount of CNY 500. Such provision may be helpful in strengthening the full compensation for the so-called "small copyrights", such as pictures or font of typefaces.

### **2. Audiovisual work is provided to replace the cinematographic work and work created in a way similar to cinematography**

The concept of cinematographic work and work created in a way similar to cinematography has been totally changed to the term of "audiovisual work". This change is made in response to the challenge brought by the rapid developments in the copyright related industries. For example, the arisen industries of the online games, the live online games and the video games have grown to huge industries with hundreds of billions of market scale but still face great challenge to classify their types by its nature. All these invoked legislation on the audiovisual work.

However, the Amendment provided no express definition or specific requirements for the audiovisual work. There are no clear rules set forth to distinguish cinematographic works, TV drama works and audiovisual works. It requires more consensuses gradually reached along with more judicial practices.

### **3. Expand the right of broadcasting**

It is provided in Article 10.1(11) of the Amendment that “the right of broadcasting, that is, the right to publicly disseminate or rebroadcast works by **wired or wireless means**, and to disseminate broadcast works to the public by audio amplifier or other similar instruments for transmission of signs, sounds or images, excluding the right set forth in Article 10.1(12)”.

It is further provided in Article 10.1(12) that “the right of information network dissemination, that is, the right to provide the public by **wired or wireless means**, so as to make the public able to respectively obtain the work at the selected time and place”.

The amendment to the right of broadcasting and information network dissemination is made responding to the outstanding problem of copyright infringements frequently happened during the network lives. In recent years, it is a most disputable issue regarding the copyright protection for the live broadcast of the TV program via internet, in particular the sport events. In this Amendment, the initial broadcast of works will not be limited to wireless broadcasting so as to expand the dissemination via networks. Apparently, this is much beneficial to the copyright owners to prevent the real-time rebroadcasting and live broadcasting most frequently happened via networks using the right of broadcasting.

### **4. Keep the work types open**

According to Article 3.1(9) of the Amendment, the other intellectual creations with the features of work may also be recognized as work. That is an open definition to protect more types of intellectual creations with copyright law.

In the current judicial practice, there are two controversy viewpoints on this issue. Some believes that the work types must be strictly limited to those provided in relevant laws. The others believe that the work types may be extended under certain circumstances. The different viewpoints of judges caused uncertainty of the cases involving new types of intellectual creations.

This open definition will undoubtedly reduce the controversies arisen in this topic.

### **5. Improve the exploitation of a work of co-authorship**

It is provided in Article 14.2 of the Amendment that “the exploitation of a work of co-authorship shall be agreed among the co-authors; any of the co-authors may exploit the work excluding the rights of assignment, exclusive license to others and pledging; but the income shall be reasonably distributed among all the co-authors.”

In practice, one of the co-authors may face difficulties to exploit or enforce the work because he/she cannot get in touch with the other co-authors or obtain their express consent. This provision is made to remove these obstacles during the common exploitation so as to achieve the value of work smoothly. Certain types of exploitation require consensuses of all co-authors because such acts will essentially undermine the exploitations and achievements of the other co-authors, or cause the other co-authors permanently losing control over the work of co-authorship.

## 6. Improve the limitations on rights

Currently, it is a close provision on the limitations on rights as stipulated in Article 22 of the Copyright Law. Generally, the scope of limitations cannot be expanded unless otherwise provided by laws. This strict provision has caused conflict with the ever changing judicial practice.

In this Amendment, it is additionally provided that “(such exploitations) shall neither impair the normal exploitation of the work nor unreasonably impair the legal rights and interests of the copyright owner”. It is further added an open scenario of limitations as “the other cases provided in the relevant laws and regulations”. It allows the State Council to expand limitations on rights by slight amendment to relevant regulations from time to time.

The “three-steps testing method” for limitations on rights is set forth in the Berne Convention, namely, 1) the limitation can only be expressly provided as exceptional cases; 2) the limitations shall not be conflict with the normal exploitations of the work; 3) the limitations shall not unreasonably impair the legal rights and interests of the copyright owner. Previously, the first step can be seen in Article 22 of the Copyright Law, while the latter two steps are provided in the Implementing Regulations of the Copyright Law. This time, both the general rules and the specified exceptional cases are set forth in Article 24 of the Amendment.

In the meantime, it is provided that the exceptional cases can be expanded with relevant laws and regulations, which may bring more flexibility along with the judicial practice.

## 7. Expand the rights of radio station and television station

In this Amendment, the radio station and television station are entitled to prohibit the acts without permission, including 1) rebroadcasting the radio or television **by wired or wireless means** which it has broadcasted; 2) recording or reproducing the radio or television which it has broadcasted; 3) disseminate the radio or television which it has broadcasted to the public **via information networks**.

Based on this improved provision, both the radio station and television station are capable of preventing the rebroadcasting and dissemination acts of malicious competitors using wired means or information networks. In the past years, such bad-faith acts have caused great troubles to the radio stations and television stations. Now, they are granted sharper weapon to resolve such problem.

## 8. Protect the technical measure of right owner

The concept of technical measures in the Amendment refers to the effect technology, device or component used to prevent or limit the acts of unauthorized browsing and appreciating a work, a performance, a sound recording, a video recording, or offering to the public a work, a performance, a sound recording, a video recording.

Without permission, none of organizations or individuals is allowed to willfully bypass or destroy the technical measure, to made, to import or to offering to the public the device or component used for bypassing or destroying that technical measure, or to willfully provide technical services for that purpose excluding the certain acts specifically authorized by relevant laws or regulations.

It is further provided in Article 50 of the Amendment that under certain cases (similar to those limitations on rights), the acts of bypassing technical measures are allowed but such technology, device or component shall not be provided to others, and such acts shall not infringe the other rights of the right owner.

Based on such provisions, the right owner is capable of preventing the bad-faith acts of bypassing or destroying the technical measures just based on the Copyright Law rather than the general rules stipulated in the Anti-unfair Competition Law. Apparently, it is good news for both the copyright owner and the other right owners who devote themselves to dissemination of works.

## Conclusion

The Amendment is made ten years after the previous amendment in 2010. In the past decade, the information network technology had experienced significant developments so that it has brought great commercial achievements to the copyright related industries, and also brought great challenges to the traditional theory of copyright law. Many right owners are facing much more troubles to protect its reasonable rights and interests.

We happily have witnessed many practical and promising solutions to these troubles, such as the expanded right of broadcasting, right of radio station and television station, and additional protection for technical measures. Definitely, these improvements would bring prosperous future for the copyright related industries and ultimately provoke the flourishing future of intellectual creation.

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