



Country Report – China

Annual report to the IFLA CLM committee
Helsinki Finland 2012

Copyright

New Revision Draft to the Copyright Law Released

On March 31, 2012, the National Copyright Administration of the People's Republic of China published the Revision Draft of the Copyright Law of the People's Republic of China for soliciting publicly the views of all circles. The revision draft made no modification to the current provisions of the copyright law relating to library's reproduction which stipulates that the library can make a copy of the copyrighted works from its collection for the purposes of display or preservation of the work. It is noteworthy that the revision draft provides for the first time the use of orphan works in the article 25 which provides as follows:

For the following works of which the term of protection has not expired, users may apply to use the works with the State Council administrative copyright management department after storing use fees:

(1) those where the identity of the creator is unclear and the owner of the original copy cannot be found after thorough search;

(2) where the identity of the creator is clear but he cannot be found after thorough search.

Concrete matters for the above paragraph, are formulated separately by the State Council administrative copyright management department.

Two reference resources in English for the full-text of the revision draft and an explanation to it can be accessed respectively from websites

at <http://chinacopyrightandmedia.wordpress.com/2012/03/31/copyright-law-of-the-peoples-republic-of-china-revision-draft/>

and <http://www.mondaq.com/article.asp?articleid=175242&login=true&news=1>.

On April 19, 2012, the Library Society of China and National Science Library co-sponsored in Beijing a seminar attended by representatives from the various libraries nationwide and officials from the National Copyright Administration to discuss the revision draft of copyright law and copyright issues the libraries facing in their services to the public. On June 26-27 of the same year, the Commission of Ancient work of the China's Publishers Association also held a symposium probing into copyright protection of rare books in their use and preservation process, such as, digitalization.

Law case

The Zhaoqing digital cultural network copyright disputes case

On July 25, 2011, the Zhaoqing City Library in Guangdong Province received the paper of civil ruling issued by the Supreme People's Court (No. 686, 2011 civil petition) which confirms the outcome of the trial of the first instance and second instance courts and rejects the retrial petition of plaintiff. In January 2010, three ICP entered a lawsuit against the Bureau of Culture, Radio Film and Television of Zhaoqing City and Zhaoqing City Library for illegal link of plaintiffs' online copyrighted films. Both the first and second instance courts hold that, according to the provisions of the *Regulation on the Protection of the Right to Network Dissemination of Information*, the defendants only provide the linking service to the plaintiffs' works and then disconnected the link after receiving the court's summons and do not constitute an infringement upon the plaintiffs' copyright and shall not assume the tort liability. The relevant provisions of the *Regulation* reads as follows:

Where a network service provider provides any searching or linking service to its service objects or cuts off the link to any infringing work, performance, or audio-visual product after receiving a notice from the right owner according to the provisions of the present Ordinance, it is not required to assume the liabilities of compensation. However, when anyone is fully aware or should have known that any of the works, performance or audio-visual product it has linked to constitutes any infringement, it shall be subject to the liabilities of joint infringement.

Important Document

On 18 April 2012, the Supreme People's Court of the People's Republic of China issued an annual report on the trial work of intellectual property protection, the report titled “*Intellectual Property Protection by Chinese Courts in 2011*” gives an overall review and a summary of the adjudication of intellectual property cases by the people’s courts at all levels in year 2011. According to the report, in 2011, the number of first instance civil intellectual property cases accepted and disposed by local courts grew by 38.86% and 39.51% to 59612 and 58201 respectively, among which, 35185 were copyright cases, up 42.34% year-on-year.

The English Version of the report may be acquired from the website at <http://dffy.com/sifashijian/ziliao/201204/28379.html>

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