

# **E-Commerce Legal Framework Country Report: China**

**Meng Xia**

**APEC Study Center of Nankai University**

## **1 Development of E-commerce in China**

E-commerce, a kind of business activity carried out on the electronic network of information, is a fruit borne out of information technology revolution. As a main channel of business activity in a new historical background, E-commerce shows itself as a brand-new revolution. It will revolutionize the traditional commerce patterns, generate new service modes, and cultivate new markets. Besides, it will also exert far-reaching influences upon such economic aspects as competition rules, production costs and operation efficiency.

Aimed at sharpening the competitive edge, E-commerce can not be realized as easily as by carrying out commercial activities via networks. Without the prerequisites, the balance between the benefit and the cost will turn out negative. The development of E-commerce, therefore, requires a broad range of basic facilities. First of all, a solid foundation of the enterprise is essential. As the performer of the E-commerce activities, the enterprise must be equipped with appropriate technology, applicable business patterns, work flow and management systems for E-commerce. Through systematic and comprehensive training and further education, the enterprise should improve the capability of the staff members so that they can adapt themselves to the new working environment. Secondly, the macro technological environment is also important in the following two aspects: the performance and scale of the basic information equipment and the service and charge standard of the network dealers; the popularization of the application of IT in enterprises (E-commerce is as important to a given enterprise itself, but also to other enterprises which have business relationship with it.) Thirdly, the business environment, be it B-B or B-C, also plays a very important role. Various aspects related to it, such as the payment, materials circulation, safety, authentication, import and export. Fourthly, the legal environment exerts very great influence upon such a wide range of aspects as contracts, E-signature, password, taxation, privacy, intellectual asset, and the protection of consumers. The absence of a sound legal system will greatly hamper the development of E-commerce. Fifthly, the social environment, economy and the development of society will also exert great influence upon the development of E-commerce.

Though it was not long since Internet was put into use in China, it has undergone rapid development. By the end of June 2000, the number of computers linked to the Internet has reached 6,500,000 and the number of computer users online reached 16,900,000. The computer users getting online to do E-commerce or purchases account 15% of the total number of computer users online. An investigation reveals that 87% of the network users are eager to purchase things online. At the beginning of 1998, the first domestic E-commerce transaction on the Internet was closed in China, which was fulfilled jointly by Century Internet Communication Technology Co., Ltd. and Bank of China. This success served as a milestone indicating that E-commerce was already put into use in China. After that, the business-to-customer retail stations on the network (such as China's CD-ROM Supermarket, Shanghai Book City, Guangzhou Baisheng Fine Goods Shop) were put into operation one after another. Then, on the basis of the modern information network, business-to-business wholesale markets on the network (such as China's Commodity Trading Market, CCEC, COGS, and Stock Merchandise Adjustment Network) were also put into operation. In 1999, the turnover of the E-commerce purchase of consumption goods on line reached the amount of RMB 55,000,000 yuan. By the end of the first quarter of 2000, there had been over 1100 E-commerce (B2B/B2C) network stations and as many as 20.3% of the network users made purchase online. In 2000, about 90% of the network users were willing to do some E-commerce activity online. According to some survey, the turnover of the purchase online in 2000 was about RMB 800,000,000 yuan. It is estimated that the turnover in this aspect will very likely reach RMB 10,000,000,000 yuan.

As is testified by the development of E-commerce in China, although network economy and E-commerce may meet with various kinds of problems such as the construction of legal systems, their growth and survival capacity are beyond question. With the wide application of information technology in the areas of international trade and commerce, the internationalization and informatization of commercial activities with the help of computer technology, network communication technology and the internet have become a new trend of economic development in the 21st century. The E-commerce in China has only a very short history, and much work has to be done to improve the infrastructure of telecommunication, train the human resources and perfect relevant laws. Despite this problem, the development of E-commerce in China is very rapid. The Central government has already put forward a strategic decision –

to integrate industrialization with informatization, which will spur on the development of both and advantages of both will be brought into play. The execution of this policy will surely promote the development of both the network economy and E-commerce in China.

## **2 Current Legal System Concerning E-commerce in China**

E-commerce enables the communication of business information and business activities on the network. Compared with the traditional commerce, it has relieved the people of many troublesome business activities accompanied by the transfer and confirmation of notes. Therefore, it is required that the E-commerce should be much safer and more reliable than the traditional business patterns. To achieve this end, technology must be improved. For example, E-signature and electronic recognition technology should be adopted. On the other hand, the laws and regulations concerning the business online should also be established.

During the past few years, with the development of computer science and Internet, E-commerce has undergone unprecedented development in a wide range of aspects: as a transaction mode, a communication medium, and an enterprise organization pattern. China is no exception in this respect. At the same time, the environment, especially the legal environment, in which E-commerce undergoes development has attracted more and more attention from the people. On the one hand, all the procedures and problems of E-commerce have direct influence upon the establishment of relevant laws and regulations; on the other hand, every detail and measure regulated in the law affects the future of the E-commerce in return. At the Sixth APEC Economic Leaders Meeting held in 1998, President Jiang Zemin pointed out that E-commerce stands for the development trend of commerce in the future and its wide application will benefit the members with more trade opportunities. As to the development of E-commerce, not only should we attach importance to the influence exerted by the private industrial and commercial enterprises, but we should also enhance the government's ability to offer macro plan and guide for the development of E-commerce and we should provide sound political and legal environments for the development of E-commerce.

It is in view of such an environment that we write this report, in the hope that we can offer a comprehensive introduction to and analysis of the relevant legal environment for E-commerce in China, on the basis of which we can further probe into the issue of establishing relevant laws on E-commerce.

As for the concept of E-commerce laws, according to the concept in the narrow sense, they fall into the range of commercial laws and international commercial laws. The E-commerce laws are mainly referred to define relevant parties' rights, duties, contracts, and relevant procedural elements (which may include e-signature laws and e-contract laws) in the E-commerce activities. However, the definition of E-commerce laws in the broad sense covers much more. Besides e-signature and e-contracts, the E-commerce laws in the broad sense also concerns the regulation and readjustment of such aspects as the fundamental environment, security authentication, consumer protection, information release, market access, and responsibility assumption. In this report, we refer mostly to the definition of E-commerce in the broad sense.

### **2.1. The Laws and Regulations on E-commerce of China**

With the coming wave of the E-commerce in 1999 and its increasing demands, there have been great improvements in the laws and regulations on the E-commerce. Especially around the year 2000, great progress has been made on the legislation in the field of E-commerce and the Internet. A series of laws and regulations have been successively enacted such as *Telecom Service Standards*, *Regulations on Telecom Management*, *Rules and Regulations on Information Service of Internet*, *Regulations on the Internet Billboards Service Management*, *The Resolution on Safeguarding the Internet*, *Regulations on Internet Commercial Cipher Codes*, *Interim Provisions on Inter-telecom Network*, *Interim Provisions on Management of Telecom Code Resources*, *Rules on Software Products*, *Provisional Measures on News Coverage by the Internet Websites*, a whole system of laws and regulations on the E-commerce has taken shape in China. Of course, we can still find more interpretation about the E-commerce in other related policies, laws and regulations such as *Policies on Promoting the Software Industry and Integrated Circuits Industry by the State Council*, and *Interpretations by the Supreme Court on the Infringement of Copyrights by the Internet* etc.

In summary, great progress has been made on the legislation in the fields of E-commerce and the Internet. The laws and regulations related to these fields have been successively enacted. So far, there have been dozens of them, including the related policies, local rules and judicial interpretations. These laws and regulations cover various aspects of the E-commerce and the Internet such as the security and coding process of the Internet, its infrastructure construction, financial leasing, advertising on

the Internet, license for operations on the Internet, news coverage etc. And now a sound system has taken shape, which can basically meet with the international standards.

On the whole, the main features of these laws and regulations and their guidelines are as follows.

- **To be in line with the international practices and standards**

When it comes to the supervision on the E-commerce, the commonly accepted international practices are as follows. The government should manage to reduce or even remove those unnecessary trade barriers in this industry. The guidance of the government in this field should be conducted in a checked, democratic, consistent and measurable way. The government should also foster an atmosphere of fair competition among all the players in the E-commerce, build up the confidence and trust among the consumers, adhere to the fundamental principles of establishing a digital market and give all the enterprises a full play in the market. All of these fundamental principles and guidelines have been fully displayed and interpreted in those concerning laws and regulations.

- **To make full use of the current judicial system and ensure its consistency and stability**

It is universally accepted that the current laws and statutes apply to all fields including the E-commerce unless the subject, object and contents of the legal cases are totally changed. In most cases, these laws and regulations will not be invalid even in this virtual world. Of course, some issues may arise in the field of the E-commerce and the Internet, which we can't find full interpretations in current laws and regulations. Then we could make some amendments to the current laws or release some new judicial interpretations over those issues. For example, revisions have made on the Law of Copyrights and the Law of Trademarks to cover the issues concerning the intellectual property rights in the field of E-commerce, on the Law of Tax to meet the needs of E-commerce as well as on the Law of Advertising to standardize the online advertising.

- **To allow the local governments and departments a full play in the legislative procedures in the field of E-commerce**

For one thing, the E-commerce itself covers a wide range of fields and needs coordination between different walks of life. For another, there have been always some emergencies in the field of E-commerce. And comparatively speaking, the local

government has some rather flexible rules and regulations. So it would be a good approach to solve the problems with these flexible rules.

- **To give a boost to the development of the E-commerce with some preferential policies in this industry**

In order to promote the development of the E-commerce and provide a comparatively flexible environment, preferential policies should be drawn up in such areas as fund-raising, taxation, investment and financing, technological innovations, introducing talents and equipment etc. So far, the government has formulated some policies to promote the development of software and integrated circuits industry. The local governments also put forward some corresponding policies in this industry.

- **To give full attention to the supervision on the Internet**

Great importance has been attached to the Internet security and supervision on the Internet. Besides such laws and regulations as *Interim Regulations on Safeguarding Internet*, *Regulation on Telecom Management*, *Decisions on Safeguarding Internet*, there are also a few related items in the Criminal Law of People's Republic of China. In addition, penal sanctions on the infringement of these laws and regulations have been stipulated. And the local administrative departments closely observe the enforcement of these laws. So in a word, great progress has been made on the legislative work on the Internet and E-commerce. The concerning departments of the industry and commerce as well as those in charge of copyrights have made considerable contributions as far as the supervision on the Internet or E-commerce is concerned.

As far as Internet security is concerned, a lot of measures have been taken such as to ensure the security and stability of the network by way of establishing the safety certification system, providing technical supports, legal sanctions, and self-discipline within the E-commerce, to develop security control products and techniques such as the automatic E-commerce security system, computerized auditing system, anti-attack system, and anti-virus system, to improve the legal system, to crack down on all kinds of illegal activities and to establish a sound network system. Other measures are also included such as to closely observe the safety regulations on the E-commerce operations, the state laws and regulations on the network security system, to tighten up the network control, provide operators with training programs, and enhance people's awareness of the security in the field of E-commerce.

The related laws and regulations include *Resolutions on Safeguarding the Internet*,

*Safety Regulations on Computer Information and Internet, Regulations on the Examination and Sales of the Exclusive Safety Products for the Network System, Regulations on the Prevention and Control of Computer Viruses, Regulations on the Internet Security, Interim Provisions on the Internet Security System etc.*

- **To foster a favorable environment for the development of E-commerce**

As far as the supervision on the E-commerce is concerned, the main measures to be taken include to bring the macro-control and supervision over the market by the government into full play, to enhance the coordination between each administrative department under the leadership of the State Council, to give full support to the E-commerce from various areas such as taxation, investment, certification, payment, intellectual property, customs, security, foreign trade, and consumers protection, to foster a better environment for the development of the E-commerce, and to standardize the market.

Other measures include to encourage those large-scaled and medium-sized state-owned enterprises to be computerized, to adopt the advanced information technology and management patterns, to help them establish the entire network with the combination of production procedures, manufacturing, products development and research, marketing and decision-making process and finally to direct them to develop their E-commerce.

In addition, we can launch an E-commerce demonstration program, choose some trial areas, and formulate some preferential and flexible policies for them. Thus finally some valuable lessons about the E-commerce can be learnt from those trial areas.

We should also enhance the leadership and the guidance of the government, quicken the pace of computerization process within the government departments, improve their efficiency and transparency, enhance the communication between the government and the public, and promote the E-commerce between the government and enterprises.

The related laws and regulations include *Contract Law, the Law of Standardization, Regulations on Business Coding, the Notice by the State Industrial and Commercial Bureau on the Trial Network Advertising etc.*

- **Strengthening the financial and taxation environment of E-commerce**

In order to satisfy the needs of E-commerce, the main measures and instructive strategies have been taken recently. They include to establish and improve China's E-commerce attestation system, to work out methods of approving and managing the

said system, to accelerate the financial information construction, to provide modern and safe means of e-payment and e-settlement, to develop convenient payment net, to realize the fund settlement between customer and bank and between banks, and to gradually make related laws and regulations suitable for e-payment and e-settlement.

It is very difficult for the current tax policies to be consistently implemented and to guarantee effective tax collection because of E-commerce' technical features which are different from those of traditional businesses, though the policies can, by and large, be applied to all kinds of E-commerce activities. Consequently, the taxes are likely to flow. On one hand, we will collect taxes from all E-commerce activities, which should be levied, according to the present tax policy; on the other hand, we are going to make necessary modification and supplementation to current tax policies.

The laws and regulations concerned include *Interim Regulation on Safeguarding Computer Information System of Financial Organizations*, and *Public Notice Issued by General Tax Bureau of China on Imposing Taxed on Electronic Publications as Software*, etc.

#### ● **E-commerce Infrastructure Construction**

Current measures and instructive strategies include strengthening E-commerce information infrastructure construction, improving the service level, promoting the co-sharing and integration of computer nets, communication nets, and mass media nets, encouraging the investment in developing E-commerce infrastructure, and further improving the levels of technological application to the said infrastructure.

Also encouraged are R & D and application of self-owned software and technology of intellectual property, grasp of know-how in the E-commerce, and technical innovation on the enterprises' basis.

The laws and regulations concerned in this field include Telecom Service Standards, Regulations on Telecom Management, Interim Provisions on Inter-telecom Network, and Interim Provisions on Management of Telecom Code Resources, etc.

#### ● **Technology Standard, Privacy Protection, Mass Communications and Education concerning to E-commerce**

The measures and instructive strategies include: perfecting telecommunications agreement and standards of net security and payment system, strengthening the E-commerce enterprise attestation, laboratory attestation and quality system attestation.

In accordance with e-payment features, specific laws shall be made, governing the legal use of personal information and transaction records of consumers as well as the

safety and the authorization of the use, and effectively protecting customer's such legal rights as privacy.

In order to pull domestic demand, the use of E-commerce shall be spread via mass media. People shall be guided to properly understand development stages of E-commerce and cultivate the sense of e-consumption, firms are actively involved in E-commerce, and electronic credit system shall be strengthened. The relevant courses about E-commerce shall be provided in colleges and universities (adult education included) where produce advanced and compound talents in E-commerce.

International cooperation shall be strengthened in the areas of advanced technology, multinational management, application, laws and standards, etc. So, the healthy atmosphere of E-commerce is further created and developed.

The laws and regulations are mainly found here and there, relevant.

## **2.2 Main E-commerce laws and regulations issued in China**

The related laws and regulations include: *Contract Law, Patent Law, Law of Standardization, items about intellectual property right and computer crime in the Criminal Law of China, Regulations on Safeguarding the Internet, Protective Principles on Computer Software, Protective Rules for Computer Information System Security of People's Republic of China, Interim Regulations on Safeguarding Internet, Regulations on Commercial Cipher Code, Regulations on Telecom Management, Rules and Regulations on Internet Information Services, Telecom Service Standards, Implementation Rules of Protective Rules for Computer Information System Security of People's Republic of China, Interim Regulations on Internet Domain Name Registration, Detailed Implementation Rules of Internet Domain Name Registration, Interim Regulations on Internet Chinese Domain Name Registration, Interim Provisions on Inter-telecom Network, Regulations on Telecommunication Market, Regulations on Wireless Communication, Rules on Software Products, Regulations on the Internet Billboard Service Management, Regulations on the Examination and Sales of the Exclusive Safety Products for the Network System, Provisions on Copyright of Digital Works, Public Notice on Copyright of Computer Software, Regulation on Electronic Publications, etc.*

These laws and regulations concern those issues as recognition and business safety, standards conformation and quality guaranty, intellectual property right, copyright, patent right, right of use of trademarks, taxation on E-commerce, Internet and

information safeguarding, etc.

### **3. Specifics of Laws and Regulations for E-commerce in China**

#### **3.1 On the Protection of Consumers in E-commerce**

##### **● Information Right of E-Consumers**

Item Eight in the Law on the Protection of Consumers' Right and Interest stipulates that consumers own the right to acquire true information on products they buy and use or service they receive, therefore, it requires providers of goods or services to supply information like price, origin, producer, usage, performance, standard, main component, production date, expiry date, quality certificate, usage direction, after-sale service, or content, standard and fee of service. The implementation of consumers' information right should be coupled by a series of conduct, such as selecting, inquiry, test use, bargaining, trading and delivery etc. If it is in a virtual mode, it needs to be further improved and complemented.

A recent survey made by an American survey company shows that at least 77 out of over 200 investigated companies operating E-commerce websites have the record of fraud activity. Another study made last year by IMSN on more than 700 websites in the world suggests that most of the websites fail to provide enough information to their consumers, 62% of them offer no illustration on good replacement and reject matters, 75% establish no policies to protect consumers' privacy. All the study results that how important and how diversified the law on E-commerce should be in protecting consumers of E-commerce. It is an universal challenge facing all countries in the world, including China to safeguard consumers' rights and interests in the global E-commerce.

##### **● Consumers' Right to Return or Change Goods in E-commerce**

Item 23 in China's Law on Protecting Consumers' Rights and Interests regulates that goods or service providers who are obliged to guarantee change of article or refund, either according to national stipulations or agreements reached with consumers, should do so, with no deliberate postpone or unreasonable rejection allowed.

##### **● On Business Scope of E-shops in E-commerce**

To meet the end of boosting the sound development of E-commerce, it is necessary to set an overall definition on the business scope of e-shops, sided by endowing rights to consumers to protect their legitimate interests. The definition should take into account of technical security issues, as well as give full consideration to the features of E-

commerce, to ensure consumers' privacy protection, full implementation of after-sale service commitment and faithful advertisement etc..

### **3.2 Network Security and Computer Crime in E-commerce**

When the network security technology competes with hackers in technology, it is necessary to have interrelated laws and regulations enacted. The regulations and measures on network security are different in different countries. However, there is one thing in common that how to make the regulations as clear as possible in all aspects, and how to make it effective in deterring those from committing computer crimes are both the most important things the authorities have to confront. From Mr. Tang Park's view, the famous network security expert from US, that computer crimes should consist of 3 different kinds, which are computer abuse referring to all the actions using computers on purpose, computer crimes referring to the crimes using, and any other crimes related with computers. In our country, we have stipulated clearly in Item 286 and Item 287 of the *Criminal Law* about all the crimes related with computers. It covers the crimes whose objects are computer system, the crimes whose objects are information deposited in computers, the crimes aiming to making and spreading virus or destructive programs, and the financial crimes using computers. In addition, there are also *Protective Rules for Computer Information System Security*, *Safety Regulations of Computer Information and Internet*, *Interim Regulation on Safeguarding Computer Information System of Financial Organizations*, and *Regulations on Computer Information and Internet Privacy*. The establishment of the express regulations shows explicitly that the legal system in Internet security and computers crimes has been established completely.

According to the regulations in our *Criminal law*, the computer crimes regulated expressly include the following kinds.

- a) Crime of trespassing upon computer system.
- b) Crime of destroying computer system. The criminals make the computers run out of order through deleting, amending, adding, and jamming to the computer system. The criminals could enjoy economic benefits by this way, which is an incentive for those terrorists to illegality. The criminals sometimes even steal data or programs on the purpose of intimidating and threatening. According to the interpretation of accusation of China Supreme Court, the destructive action spreading through Internet is called "destroying computer system crime".

- c) Crime of making and spreading virus or destructive programs.
- d) Crime of Internet swindling.
- e) Crime of unauthorized theft. The unauthorized copying and spreading of software would result in enormous economic loss to the ownership holders of software. It is some kind tort to software. Though it has nothing to do with business, the people should also take criminal and civil punishments.
- f) Crime of computer system abuse. Some people input or spread illegal or false information and data, which will lead to very serious results. There are not any national boundaries in Internet. Whenever you log on the Internet, you could visit anywhere you want. Therefore, to announce any illegal or false information and data would affect the public much more than the traditional medium.

There are still much more crimes using computers. For example, someone will take the advantage of BBS to send and copy software free illegally. But we will stop our discussion in this area here.

### **3.3 Legal issues of domain names**

As E-commerce and Internet develop rapidly, the importance of domain name has been recognized more and more. The value of invisible assets comprised in domain names such as right of trademark and right to enterprise name has been accepted by more and more people. In our country, there have already been 50,000 domain names registered in Internet Center. Therefore, how to define the legal status of domain names, and how to define the relationship among domain names, trade marks and enterprise names have becoming more and more important. It is also necessary to normalize domain names. We have already established regulation of domain names, which is published as authority file of the department in charge.

### **3.4 Issues of legal responsibility of Website operators**

We have to say that it is a big and complicated problem. When we talk about the possible tort liability that Website operators may take (such as copyrights, trademark rights, and right of fame, and etc) consists of 2 kinds, which are direct tort liability and indirect tort liability. Just as its name implies, direct tort liability refer to the liability resulted from direct infringing acts. Furthermore, there is no preconditions imposed that whether people have any subjective faults or not for those who have to take the responsibility. For instance, publishers should be responsible for all their

publications. The precondition is that publishers not only are able to control such tort actions, but also share the same rights compared with the obligations they have to take. To talk about Website operators, if they do organize, write, and edit materials all by themselves, then they could be recognized as some kind of publishers or magazines. If so, they could hardly weasel out their direct tort liabilities. On the other hand, there is precondition imposed that whether the actions of infringers make it more convenient for the continuity of tort actions or any other tort actions or not when we talk about indirect tort liability. For instance, bookstores and newsstands are the most possible source of indirect tort liabilities. There is another precondition that whether infringers do it on purpose or not.

### **3.5 Policy of protection of intellectual property right**

China have been kept working hard in the protection of intellectual property. Besides consummating the related laws, regulations, rules, and implementing rules continuously, we offer double protections to software including copy registration and patent authorization. The pirate software and its products are forbidden to sell. Those who deal with pirate software will be punished seriously. In addition, we also strengthen the education in protection of intellectual property, and establish a bi-directional system to both protect their own intellectual property and prevent from pirating others' intellectual property.

## Appendix

### COPYRIGHT LAW OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted at the Fifteenth Session of the Standing Committee of the Seventh National People's Congress on September 7, 1990)

#### Chapter 1 General Provisions

##### Article 1.

This Law is enacted in accordance with the Constitution for the purposes of protecting the copyright of authors in their literary, artistic and scientific works and rights related to copyright of encouraging the creation and dissemination of works which would contribute to the construction of socialist spiritual and material civilization, and of promoting the development and flourishing of socialist culture and sciences.

##### Article 2.

Works of Chinese citizens, legal entities or entities without legal personality, whether published or not, shall enjoy copyright in accordance with this Law. Works of foreigners first published in the territory of the People's Republic of China shall enjoy copyright in accordance with this Law.

Any work of a foreigner published outside the territory of the People's Republic of China which is eligible to enjoy copyright under an agreement concluded between the country to which the foreigner belongs and China, or under an international treaty to which both countries are party, shall be protected in accordance with this Law.

##### Article 3.

For the purpose of this Law, the term "works" includes works of literature, art, natural science, social science, engineering technology and the like which are expressed in the following forms:

- (1) written works;
- (2) oral works;
- (3) musical, dramatic, quyi\* and choreographic works;
- (4) works of fine art and photographic works;
- (5) cinematographic, television and videographic works;
- (6) drawings of engineering designs and product designs, and descriptions thereof;
- (7) maps, sketches and other graphic works;
- (8) computer software;
- (9) other works as provided for in laws and administrative regulations.

##### Article 4.

Works the publication or distribution of which is prohibited by law shall not be protected by this law. Copyright owners, in exercising their copyright, shall not violate the constitution or laws or prejudice the public interests.

##### Article 5.

This Law shall not be applicable to;

- (1) laws; regulations resolutions; decisions and orders of state organs; other documents of legislative, administrative and judicial nature; and their official translations;

- (2) news on current affairs;
- (3) calendars, numerical tables, forms of general use and formulas.

#### Article 6

.Regulations for the protection of copyright in expressions of folklore shall be established separately by the State Council.

#### Article 7.

Where any scientific or technological work is protected under the patent Law, the Law on Technology Contracts or similar laws, the provisions of those laws shall apply.

#### Article 8.

The copyright administration department under the State Council shall be responsible for the nationwide administration of copyright. The copyright administration department of the people's Government of each province, autonomous region and municipality directly under the central government shall be responsible for the administration of copyright in its administrative area.

### Chapter 2 Copyright

#### Section 1 Copyright Owners and Their Rights

#### Article 9.

The term "copyright owners" shall include:

- (1) authors;
- (2) other citizens, legal entities and entities without legal personality enjoying copyright in accordance with this Law.

#### Article 10.

The term "copyright" shall include the following personality rights and property rights:

- (1) the right of publication, that is ,the right to decide whether to make a work available to the public;
- (2) the right of authorship, that is ,the right to claim authorship and to have the author's name mentioned in connection with the work;
- (3) the right of alteration, that is ,the right to alter or authorize others to alter one's work;
- (4) the right of integrity, that is ,the right to protect one's work against distortion and mutilation;
- (5) the right of exploitation and the right to remuneration, that is ,the right of exploiting one's work by reproduction, performance, broadcasting, exhibition, distribution, making cinematographic, television, or videoproduction, adaptation, translation, annotation, compilation and the like, and the right of authorizing others to exploit one's work by the above mentioned means and of receiving remuneration therefor.

#### Section 2 Ownership of Copyright

#### Article 11.

Except where otherwise provided in this Law, the copyright in a work shall belong to its author.

The author of a work is the citizen who has created the work. Where a work is created according to the intention and under the supervision and responsibility of a legal entity or entity without legal personality, such legal entity or entity without legal personality shall be deemed to be the author of the work. The citizen, legal entity or entity without legal personality whose name is mentioned in connection with a work shall, in the absence of proof to the contrary, be deemed to be the author of the work.

#### Article 12.

Where a work is created by adaptation, translation, annotation or arrangement of a pre-existing work, the copyright in the work thus created shall be enjoyed by the adapter translator, annotator or arranger, provided that the copyright in the original work.

#### Article 13

.Where a work is created jointly by two or more co-authors, the copyright in the work shall be enjoyed jointly by those co-authors. Co-authorship may not be claimed by anyone who has not participated in the creation of the work.

If a work of joint authorship can be separated into independent parts and exploited separately, each co-author shall be entitled to independent copyright in the parts that he has created, provided that the exercise of such copyright shall not prejudice the copyright in the joint work as a whole.

#### Article 14.

The copyright in a work created by compilation shall be enjoyed by the compiler, provided that the exercise of such copyright shall not prejudice the copyright in the pre-existing works included in the compilation.

The authors of such works included in a compilation as can be exploited separately shall be entitled to exercise their copyright in their works independently.

#### Article 15.

The direct or, screen writer, lyricist, composer, cameraman and other authors of a cinematographic, television or videographic work shall enjoy the right of authorship in the work, while the other rights included in the copyright shall be enjoyed by the producer of the work.

The authors of the screenplay, musical works and other works that are included in a cinematographic, television or videographic work and can be exploited separately shall be entitled to exercise their copyright independently.

#### Article 16.

A work created by a citizen in the fulfillment of tasks assigned to him by a legal entity or entity without legal personality shall be deemed to be a work created in the course of employment. The copyright in such a work shall be enjoyed by the author, subject to the provisions of the second paragraph of this Article, provided that the legal entity or entity without legal personality shall have a priority right to exploit the work within the scope of its professional activities. During the two years after the completion of the work, the author shall authorize a third party to exploit the work in the same way as the legal entity or entity without legal personality does.

In the following cases the author of a work created in the course of employment shall enjoy the right of authorship, while the legal entity or entity without legal personality shall enjoy other rights included in the copyright and may reward the author:

(1) drawings of engineering designs and product designs and descriptions thereof; computer software; maps and other works created in the course of employment mainly with the material and technical resources of the legal entity or entity without legal personality and under its responsibility;

(2) works created in the course of employment where the copyright is, in accordance with laws, administrative regulations or contracts, enjoyed by the legal entity or entity with-out legal personality.

#### Article 17.

The ownership of copyright in a commissioned work shall be agreed upon in a contract between the commissioning and the commissioned parties. In the absence of a contract or of an explicit agreement in the contract, the copyright in such a work shall belong to the commissioned party.

#### Article 18.

The transfer of ownership of the original copy of a work of fine art, or other works, shall not be deemed to include the transfer of the copyright in such work, provided that the right to exhibit the original copy of a work of fine art shall be enjoyed by the owner of such original copy.

#### Article 19.

Where the copyright in a work belongs to a citizen, the right of exploitation and the right to remuneration in respect of the work shall, after his death, during the term of protection provided for in this Law, be transferred in accordance with the provisions of the Inheritance Law.

Where the copyright in work belongs to a legal entity or entity without legal personality, the right of exploitation and the right to remuneration shall, after the change or the termination of the status of the legal entity or entity without legal personality, during the term of protection provided for in this Law, be enjoyed by the succeeding legal entity or entity without legal personality which has taken over the former's rights and obligations, or, in the absence of such successor entity, by the State.

### Section 3 Term of Protection

#### Article 20

.The rights of authorship, alteration and integrity of an author shall be unlimited in time

#### Article 21.

The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a work of a citizen shall be the lifetime of the author and fifty years after his death, expiring on December 31 of the fiftieth year after his death. In the case of a work of joint authorship, such term shall expire on December 31 of the fiftieth year after the death of the last surviving author.

The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a work where the copyright belongs to a legal entity or entity without legal personality, or in respect of a work created in the course

of employment where the legal entity without legal personality enjoys the copyright (except the right of authorship), shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected under this Law.

The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a cinematographic, television, videographic or photographic work shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected under this Law.

#### Section 4 Limitations on Rights

##### Article 22.

In the following cases, a work may be used without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work shall be mentioned and the other rights enjoyed by the copy-right owner by virtue of this Law shall not be prejudiced:

- (1) use of a published work for the purposes of the user's own private study, research or self-entertainment;
- (2) appropriate quotation from a published work in one's own work for the purposes of introduction to, or comment on, a work, or demonstration of a point;
- (3) use of a published work in newspapers, periodicals, radio programs, television pro-grams or newsreels for the purpose of reporting current events;
- (4) reprinting by newspapers or periodicals, or rebroadcasting by radio stations or television stations, of editorials or commentators articles published by other newspapers, periodicals, radio stations or television stations;
- (5) publication in newspapers or periodicals, or broadcasting by radio stations or television stations, or a speech delivered at a public gathering, except where the author has declare that publication or broadcasting is not permitted;
- (6) translation, or reproduction in a small quality of copies, of a published work for use by teachers or scientific researchers, in classroom teaching or scientific research, provided that the translation or reproduction shall not be published or distributed;
- (7) use of a published work by a State organ for the purpose of fulfilling its official duties;
- (8) reproduction of a work in its collections by a library, archive, memorial hall, museum, art gallery or similar institution, for the purposes of the display, or preservation of a copy, of the work;
- (9) free of charge performance of a published work;
- (10) copying, drawing, photographing, or video recording of an artistic work located or on display in an outdoor public place;
- (11) translation of a published work from the Han language into minority nationality languages for publication and distribution within the country;
- (12) translation of a published work into Braille and publication of the work so transliterated;

The above limitations on rights shall be applicable also to the rights of publishers, performers, producers of sound recordings and video recordings, radio stations and television stations.

## Chapter 3 Copyright Licensing Contracts

### Article 23.

Subject to provisions in this Law according to which no permission is needed, anyone who exploits a work created by others shall conclude a contract with, or otherwise obtain permission from, the copyright owner.

### Article 24.

A contract shall include the following basic clauses;

- (1) the manner of exploitation of the work covered by the license;
- (2) the exclusive or non-exclusive nature of the right to exploit the work covered by the license;
- (3) the scope and term of the license;
- (4) the liability in the case of breach of the contract;
- (5) any other matter that the contracting parties consider necessary.

### Article 25.

The licensee shall not, without permission from the copyright owner, exercise any right that the copyright owner has not expressly licensed in the contract.

### Article 26.

The term of validity of a contract shall not exceed ten years. The contract may be renewed on expiration of that term.

### Article 27.

The tariffs for remuneration for the exploitation of works shall be established by the copyright administration department under the State Council in collaboration with other departments concerned.

Where otherwise agreed to in a contract, remuneration may also be paid in accordance with the terms of the said contract.

### Article 28.

Publishers, performers, producers of sound recordings and video recordings, radio stations, television stations and other entities who or which have obtained, pursuant to this Law, the right to exploit the copyright of others, shall not infringe the author's rights of authorship, alteration or integrity, or their right to remuneration.

## Chapter 4 Publication Performance Sound Recording Video Recording And Broadcasting

### Section 1 publication of Books Newspapers And Periodicals

#### Article 29

.a book publisher who publishes a book shall conclude a publishing contract with, and pay remuneration to ,the copyright owner.

#### Article 30.

during the term of the contract, a book publisher shall have an exclusive right to publish the work delivered to him by the publisher as specified in the contract, shall

not exceed ten years. the contract may be renewed on expiration.  
During the term specified in the contract, the exclusive right to publish a work enjoyed by the book publisher shall be protected by law, and the work may not be published by others.

#### Article 31

.the copyright owner shall deliver the work within the term specified in the contract. the book publisher shall publish the work in accordance with the quality requirements and within the term specified in the contract.

The book publisher shall bear the civil liability specified in article 47 of this law if he fails to publish the work within the term specified in the contract.

The book publisher shall notify, and pay remuneration to ,the copyright owner when the work is to be reprinted or republished. if the publisher refuses to reprint or republish the work when stocks of the book are exhausted, the copyright owner shall have the right to terminate the contract.

#### Article 32.

where a copyright owner has submitted the manuscript of his work to a newspaper or a periodical publisher for publication and has not received ,within fifteen days from the newspaper publisher or within thirty days from the periodical publisher, counted from the date of submission of the manuscript, any notification of the said publisher's decision to publish the work, the copyright owner may submit the manuscript of the same work to another newspaper or periodical publisher for publication, unless the two parties have a-greed otherwise.

Except where the copyright owner has declared that reprinting or excerpting is not permitted, other newspaper or periodical publishers may ,after the publication of the work by a newspaper of periodical, reprint the work or print an abstract of it or print it as reference material, but such other publishers shall pay remuneration to the copyright owner as prescribed in regulations.

#### Article 33

.A book publisher may alter or abridge a work with the permission of the copyright owner.

A newspaper or periodical publisher may make editorial modifications and abridgments in a work, but shall not make modifications in the comment of the work unless permission has teen obtained from the author.

#### Article 34.

When publishing works created by adaptation, translation, annotation, arrangement or compilation of per-existing works, the publisher shall pay remuneration both to the owners of the copyright in the works created by means of adaptation, translation, annotation, arrangement or compilation, and to the owners of the copyright in the original work.

### Section 2 Performance

#### Article 35

.A performer(an individual performer or a performing group)who for a performance exploits an unpublished work created by another shall obtain permission from, and pay remuneration to, the copyright owner.

A performer who for a commercial performance exploits a published work created by another does not need permission from, but shall, as prescribed by regulations, pay remuneration to the copyright owner; such work shall not be exploited where the copyright owner has declared that such exploitation is not permitted.

A performer who for a commercial performance exploits a work created by adaptation, translation, annotation or arrangement of a pre-existing work shall pay remuneration both to the owner of the copyright in the work created by adaptation, translation, annotation or arrangement and to the owner of the copyright in the original work.

Where a performer performs a work created by another and that performance is exploited for the production of a sound recording, video recording radio program or television program, Articles 37 and 40 shall apply.

Article 36.

A performer shall, in relation to his performance, enjoy the right:

- (1) to claim performership;
- (2) to protect the image inherent in his performance from distortion;
- (3) to authorize others to make live broadcasts;
- (4) to authorize others to make sound recordings and video recordings for commercial purposes, and to receive remuneration therefor.

### Section 3 Sound Recording And Video Recording

Article 37.

A producer of sound recordings who, for the production of a sound recording, exploits an unpublished work created by another, shall obtain permission from, and pay remuneration to, the copyright owner. A producer of a sound recording who, for the production of a sound recording, exploits a published work created by another, does not need permission from, but shall, as prescribed by regulations, pay remuneration to, the copyright owner; such work shall not be exploited where the copyright owner has declared that such exploitation is not permitted.

A producer of video recordings who, for the production of a video recording, exploits a work created by another shall obtain permission from, and pay remuneration to, the copyright owner.

A producer of sound recordings or video recordings who exploits a work created by adaptation, translation, annotation or arrangement of a pre-existing work shall pay remuneration both to the owner of the copyright in the work created by adaptation, translation, annotation or arrangement and to the owner of copyright in the original work.

Article 38

.When producing a sound recording or video recording, the producer shall conclude a contract with, and pay remuneration to, the performers.

Article 39.

A producer of sound recordings or video recordings shall have the right to authorize others to reproduce and distribute such sound recordings or video recordings and the right to receive remuneration therefor. The term of protection of such rights shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of the recording.

A producer of sound recordings or video recordings who is authorized to reproduce and distribute a sound recording or video recording shall also pay remuneration to the copyright owner and to the performer as prescribed by regulations.

#### Section 4 Broadcasting By A Radio Station Or Television Station

##### Article 40.

A radio station or television station that exploits, for the production of a radio or television program, an unpublished work created by another, shall obtain permission from, and pay remuneration to, the copyright owner.

A radio station or television station that exploits, for the production of a radio or television program, a published work created by another does not need a permission from the copyright owner, but such a work shall not be exploited where the copyright owner has declared that such exploitation is not permitted. In addition, remuneration shall be paid as pre-scribed by regulations unless this Law provides that no remuneration need to be paid.

A radio station or television station that exploits, for the production of a radio or television program work created by adaptation, translation, annotation or arrangement of a pre-existing work, shall pay remuneration both to the owner of the copyright in the work created by adaptation, translation, annotation or arrangement and to the owner of the copyright in the original work.

##### Article 41.

When producing a radio program or television program, the radio station or television station shall conclude a contract with, and pay remuneration to, the performers.

##### Article 42.

A radio station or television station shall, in respect of a program produced by it, enjoy the right:

- (1) to broadcast the program;
- (2) to authorize others to broadcast the program. and to receive remuneration therefor;
- (3) to authorize others to reproduce and distribute the radio or television programs, and to receive remuneration therefor.

The term of protection of the rights specified in the preceding paragraph shall be fifty years, expiring on December 31 of the fiftieth year after the first broadcasting of the program.

A producer of sound recordings or video recordings who is authorized to reproduce and distribute a radio or television program shall also pay remuneration to the copyright owner and the performer as prescribed by regulations.

##### Article 43

A radio station or television station that broadcasts, for non-commercial purposes, a published sound recording needs not obtain permission from, or pay remuneration to, the copyright owner, performer or producer of the sound recording.

##### Article 44

A television station that broadcasts a cinematographic, television or video-graphic work produced by another shall obtain permission from, and pay remuneration to, the producer of the cinematographic, television or videographic work.

## Chapter 5 Legal Liabilities

### Article 45.

Anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, elimination the effects of the act, making a public apology or paying compensation for damages, depending on the circumstances:

- (1) publishing a work without the consent of the copyright owner;
- (2) publishing a work of joint authorship as a work created solely by oneself, without the consent of the other co-authors;
- (3) having one's name mentioned in connection with a work created by another, in order to seek personal fame and gain, where one has not taken part in the creation of the work;
- (4) distorting or mutilating a work created by another;
- (5) exploiting a work by performance, broadcasting, exhibition, distribution, making cinematographic, television, video productions, adaptation, translation, annotation, compilation, or by other means, without the consent of the copy right owner, unless otherwise provided in this Law;
- (6) exploiting a work created by another without paying remuneration as prescribed by regulations;
- (7) broadcasting a live performance without the consent of the per former;
- (8) committing other acts of infringement of copyright and of other rights related to copyright.

### Article 46

.Anyone who commits any of the following acts of infringement shall bear civil ;liability for such remedies as ceasing the infringing act, eliminating the effects of the act, making a public apology or paying compensation for damages, depending on the circumstances, and may, in addition, be subjected by a copyright administration department to such administrative penalties as confiscation of unlawful income from the act or imposition of a fine:

- (1) plagiarizing a work created by another;
- (2) reproducing and distributing a work for commercial purposes without the consent of the copyright owner;
- (3) publishing a book where the exclusive right of publication belongs to another;
- (4) reproducing and publishing a sound recording or video recording of a performance without the consent of the performer;
- (5) reproducing and distributing a sound recording or video recording produced by another, without the consent of the producer;
- (6) reproducing and distributing a radio or television program produced by a radio station or television station without the consent of the radio station or television station;
- (7) producing or selling a work of fine art where the signature of an artist is counterfeit-ed.

### Article 47

.A party who fails to fulfill his contractual obligations, or executes them in a manner that is not in conformity with the agreed conditions of the contract, shall bear civil liability in accordance with the relevant provisions of the General Principles of the

Civil Code.

Article 48

.A dispute over copyright infringement may be settled by mediation, If mediation is unsuccessful, or if one of the parties fails to carry out an agreement reached by mediation, proceedings may be instituted in a people's court. Proceedings may also be instituted directly in a people's court if the parties do not wish to settle dispute by mediation.

Article 49.

a dispute over a copyright contract may be settled by mediation. It may also be submitted for arbitration to a copyright arbitration body under the arbitration clause in the contract, or under a written arbitration agreement concluded after the contract has been signed.

The parties shall implement the arbitration award. If one of the parties fails to implement the award unlawful, it shall have the right to refuse the enforcement. If a people's court refuses to enforce an arbitration award, the parties may institute proceedings concerning the contractual dispute in a people's court.

Any party may institute proceedings directly in a people's court in the absence of an arbitration clause in the contract or in the absence of a written arbitration agreement concluded after the contract has been signed.

Article 50.

Any party who objects to an administrative penalty may institute proceedings in a people's court within three months of having received the written decision on the penalty. If a party neither institutes proceedings nor implements the decision within the above time limit, the copyright administration department concerned may apply to a people's court for enforcement.

## Chapter 6 Supplementary Provisions

Article 51

.For the purpose of this Law, the terms"(author's right)and" banquan"(copyright)are synonymous.

Article 52.

The term "reproduction" as used in this Law shall mean the act of producing one or more copies of a work by printing ,photocopying, copying, lithographing, duplicating a recording, or duplicating a photographic work, or by other means.

The term reproduction as used in this Law shall not cover the construction or the manufacture of industrial products on the basis of drawings of engineering designs and product designs ,and descriptions thereof.

Article 53.

Regulations for the protection of computer software shall be established separately by the State Council.

Article 54.

The implementing regulations of this Law shall be drawn up by the copy-right administration department under the State Council and implemented on approval by

the State Council.

Article 55

.The rights of copyright owners, publishers, performers, producers of sound recordings and video recordings, radio stations and television stations as provided for in this Law, of which the term of protection specified in this Law has not yet expired on the date of this Law's entry into force, shall be protected in accordance with this Law.

Any infringements of copyright and the rights related to copyright or breaches of contract committed prior to the entry into force of this Law shall be dealt with under the relevant regulations or policies in force at the time when the infringement was committed.

Article 56

.This Law shall enter into force on June 1,1991.