
**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

CHINA

Revision

The present document reproduces a corrected translation of the text¹ of the Regulations on Computer Software Protection, as notified by China under Article 63.2 of the Agreement (see document IP/N/1/CHN/1). This text replaces the one distributed in document IP/N/1/CHN/C/2.

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A LA
PROPRIETE INTELLECTUELLE NOTIFIEES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

CHINE

Révision

Le présent document contient une traduction corrigée du texte¹ du Règlement sur la protection des logiciels d'ordinateur, qui a été notifié par la Chine au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/CHN/1). Ce texte remplace celui qui a été distribué dans le document IP/N/1/CHN/C/2.

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELLECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

CHINA

Revisión

En el presente documento se reproduce una traducción revisada del texto¹ de los Reglamentos sobre protección de los soportes lógicos de ordenador, que China ha notificado en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/CHN/1). El presente texto sustituye al texto distribuido en el documento IP/N/1/CHN/C/2.

¹ In English only. The text in the original language will be available for consultation by interested Delegations at the WTO Secretariat./En anglais seulement. Les délégations intéressées pourront consulter le texte, dans sa langue d'origine, au Secrétariat de l'OMC./En inglés solamente. Las delegaciones interesadas podrán consultar en la Secretaría de la OMC el texto en su idioma original.

Regulations on Computers Software Protection

(Promulgated by Decree No. 339 of the State Council of the People's Republic of China on December 20, 2001, and effective as of January 1, 2002)

Chapter I General Provisions

Article 1 These Regulations are formulated in accordance with the Copyright Law of the People's Republic of China, for the purposes of protecting the rights and interests of copyright owners of computer software, regulating the relationship of interests generated in the development, dissemination and use of computer software, encouraging the development and application of computer software, and promoting the development of software industry and the informatization of national economy.

Article 2 For the purposes of these Regulations, the term "computer software" (hereinafter referred to as "software") means computer programs and relevant documents.

Article 3 For the purposes of these Regulations, the following definitions apply:

(1) "computer program" means a coded instruction sequence which may be executed by devices with information processing capabilities such as computers, or a symbolic instruction sequence or symbolic statement sequence which may be automatically converted into a coded instruction sequence for the purpose of obtaining certain expected results; the source program and object program of a computer program shall be deemed as one and the same work;

(2) "documents" means literal descriptions or charts used to describe the content, structure, design, functional performance, historical development, test results and usage, such as program design instructions, flowcharts, and user's manuals;

(3) "software developer" means a legal entity or other organization that actually organizes, or directly carries out, the development of a piece of software and assumes responsibility for the accomplished software, or a natural person who independently completes, relying on his own conditions, the development of a piece of software and assumes responsibility therefor;

(4) "software copyright owner" means a natural person, legal entity or other organization that enjoys software copyright in accordance with these Regulations.

Article 4 The software protected under these Regulations must be developed independently by the developer and fixed on tangible medium.

Article 5 Chinese citizens, legal entities or other organizations enjoy, in accordance with these Regulations, copyright in the software which they have developed, whether published or not.

Foreigners or stateless persons having software first published within the territory of the People's Republic of China enjoy copyright in accordance with these Regulations.

Software copyright enjoyed by foreigners or stateless persons under an agreement concluded between China and the country to which they belong to or in which they have their habitual residences, or, under an international treaty acceded to by China, is protected in accordance with these Regulations.

Article 6 The protection of software copyright under these Regulations shall not extend to the ideas, processing, operating methods, mathematical concepts or the like used in software development.

Article 7 A software copyright owner may register with the software registration institution recognized by the copyright administration department of the State Council. A registration certificate issued by the software registration institution is a preliminary proof of the registered items.

Fees shall be paid for software registration. The charging standards for software registration shall be provided for by the copyright administration department of the State Council jointly with the competent department for pricing of the State Council.

Chapter II Software Copyright

Article 8 A software copyright owner shall enjoy the following rights:

(1) the right of divulgation, that is, the right to decide whether to make the software available to the public;

(2) the right of developer-ship, that is, the right to claim developer's identity and to have the developer's name mentioned in connection with the software;

(3) the right of alteration, that is, the right to supplement or abridge the software, or to change the sequence of instructions or statements;

(4) the right of reproduction, that is, the right to produce one or more copies of the software;

(5) the right of distribution, that is, the right to provide the original copy or reproductions of the software to the public by selling or donating;

(6) the right of rental, that is, the right to authorize others to use temporarily and onerously the original copy or reproductions of the software, except where the software itself is not the essential object of the rental;

(7) the right of communication through information network, that is, the right to make the software available to the public by wire or wireless means so that members of the public may have access to the software from a place and at a time individually chosen by them;

(8) the right of translation, that is, the right to converse the natural language of the software into another natural language; and

(9) other rights which shall be enjoyed by software copyright owners.

A software copyright owner may authorize others to exploit his copyright, and has a right to receive remuneration.

A software copyright owner may transfer, wholly or in part, his copyright, and has a right to receive remuneration.

Article 9 Except where otherwise provided in these Regulations, the copyright in a piece of software belongs to its developer.

The natural person, legal entity or other organization whose name is mentioned in connection with a piece of software shall, in the absence of proof to the contrary, will be its developer.

Article 10 Where a piece of software is developed jointly by two or more natural persons, legal entities or other organizations, the copyright ownership shall be agreed upon in a written contract between the co-developers. Where, in the absence of a written contract or an explicit agreement in the contract, the joint software can be separated into independent parts and exploited separately, each co-developer may enjoy independent copyright in the part which he has developed, but the exploitation of such copyright shall not extend to the copyright in the joint software as a whole. Where the joint software cannot be separated into independent parts and exploited separately, its copyright is enjoyed jointly by those co-developers and exploited by agreement. In the absence of such an agreement, any co-developer shall not prevent, without justification, the other(s) from exploiting the copyright except the right of transfer; however, the profit received for exploiting the joint software shall be reasonably shared between all the co-developers.

Article 11 Where a piece of software is developed on commission, the copyright ownership shall be agreed upon in a written contract between the commissioning and the commissioned parties. In the absence of a written contract or an explicit agreement in the contract, the copyright shall be enjoyed by the commissioned party.

Article 12 Where a piece of software is developed under a task assigned by a State organ, the ownership and exploitation of its copyright shall be stipulated in a letter of project assignment or a contract. In the absence of an explicit stipulation in the letter of project assignment or the contract, the copyright shall be enjoyed by the legal entity or other organization that has accepted the task.

Article 13 Where a piece of software developed by a natural person working in a legal entity or other organization in the course of his service involves one of the following circumstances, the copyright therein shall be enjoyed by such legal entity or organization, which may reward the natural person for the development of the software:

(1) the software is developed based on the development objective explicitly designated in the line of his service duty;

(2) the software is a foreseeable or natural result of his work activities in the line of his service duty; or

(3) the software is developed mainly with the material and technical resources of the legal entity or other organization, such as funds, special equipment or unpublished special information, and the legal entity or other organization assumes the responsibility therefor.

Article 14 The software copyright shall exist from the date on which its development has been completed.

In the case of software copyright of a natural person, the term of protection shall be the lifetime of such person and fifty years after his death, expiring on December 31 of the fiftieth year after his death. In the case of a piece of joint software, the term of protection shall expire on December 31 of fiftieth year after the death of the last surviving developer.

In the case of software copyright a legal entity or other organization, the term of protection shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of such software; however, if any such software has not been published within fifty years from the date on which its development has been completed, it shall be no longer protected under these Regulations.

Article 15 Where software copyright belongs to a natural person, his successor(s) may, after his death, inherit the rights provided for in Article 8 of these Regulations except the right of developer-ship, during the term of protection provided for in these Regulations, in accordance with the succession Law of the People's Republic of China.

Where software copyright belongs to a legal entity or other organization, the copyright shall, after the change or the termination of the legal entity or other organization, be enjoyed, during the term of protection provided for in these Regulations, by the legal entity or other organization that has taken over the former's rights and obligations, or, in the absence of such entity or organization, by the State.

Article 16 Owners of lawful copies of a piece of software enjoy the following rights:

(1) to install and store the software in devices with information processing capabilities, such as computers, according to the need of their use;

(2) to make backup copies against damage, provided that such owners do not offer others in any way the backup copies for their use and that they destroy such copies once they lose the ownership thereof; and

(3) to make necessary alterations to the software in order to implement it in an actual environment of computer application or to improve its functions or performance, provided that such owners do not,

except otherwise agreed in the contract, offer any third party the altered software without permission from the software copyright owner.

Article 17 A piece of 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.

Chapter III Software Copyright Licensing and Transfer

Article 18 In the case of a license to exploit software copyright, the parties shall conclude a licensing contract.

The licensee shall not exploit any right that the software copyright owner has not expressly granted in the contract.

Article 19 In the case of an exclusive license to exploit software copyright, the parties shall conclude a written contract.

In the absence of a written contract or an explicit agreement upon exclusive license in the contract, the right that the licensee is authorized to exploit shall be deemed as a non-exclusive right.

Article 20 In the case of a transfer of software copyright, the parties shall conclude a written contract.

Article 21 Anyone that concludes an exclusive licensing contract or a transfer contract of software copyright may register with the software registration institution recognized by the copyright administration department of the State Council.

Article 22 A Chinese citizen, legal entity or other organization that authorizes a foreigner's exploiting software copyright, or transfers it to a foreigner, shall comply with the Regulations of the People's Republic of China on Administration of Technology Import and Export.

Chapter IV Legal Liability

Article 23 Except where otherwise provided in the Copyright Law of the People's Republic of China or these Regulations, anyone who commits any of the following acts of infringement shall, in light of the circumstances, bear civil liability by means of ceasing infringements, eliminating ill effects, making an apology, or compensating for losses:

(1) to publish or register a piece of software without the authorization of the software copyright owner;

(2) to publish or register a piece of software developed by another person as one's own;

(3) to publish, or register, a piece of joint software as developed solely by oneself, without the authorization of the other co-developer(s);

(4) to have one's name mentioned in connection with, or alter the name on, a piece of software developed by another person;

(5) to alter or translate a piece of software without the authorization of the software copyright owner; or

(6) to commit other acts of infringing upon software copyright.

Article 24 Except where otherwise provided in the Copyright Law of the People's Republic of China, these Regulations, or other laws or administrative regulations, anyone who, without the authorization of the software copyright owner, commits any of the following acts of infringement shall, in light of the circumstances, bear civil liability by means of ceasing infringements, eliminating ill effects, making an apology, or compensating for losses; where such act also prejudices the public interest, the copyright administration department may order to cease infringements, confiscate illegal income, confiscate or destroy the infringing copies, and may impose a fine concurrently; where the circumstances are serious, the copyright administration department may confiscate the material, tools and equipment mainly used to produce infringing copies; and where the act violates the Criminal Law, criminal liability shall be investigated for the crime of infringing upon copyright or selling infringing copies in accordance with the provisions of the Criminal Law:

(1) to reproduce, wholly or in part, a piece of software of the copyright owner;

(2) to distribute, rent or communicate to the public through information network a piece of software of the copyright owner;

(3) to knowingly circumvent or sabotage technological measures used by the copyright owner for protecting the software copyright;

(4) to knowingly remove or alter any electronic rights management information attached to a copy of a piece of software; or

(5) to transfer, or authorize another person to exploit, the software copyright of the owner.

Whoever commits the act referred to in item (1) or (2) of the preceding paragraph may be concurrently fined 100 yuan for per copy or not more than 5 times of the value of the products; and, those who commits the act referred to in item (3), (4) or (5) of the preceding paragraph may be fined not more than 50,000 yuan concurrently.

Article 25 The compensation paid for infringing upon software copyright shall be determined in accordance with Article 48 of the Copyright Law of the People's Republic of China.

Article 26 A software copyright owner that can present evidence to prove that another person is committing, or is to commit, an infringement which, if not being prevented promptly, is likely to cause irreparable harm to him, may, before instituting legal proceedings, apply to a people's court, in

accordance with Article 49 of the Copyright Law of the People's Republic of China, for an order of a stop to relevant act and for measures of property preservation.

Article 27 In order to prevent infringement, a software copyright owner may, before instituting legal proceedings, apply to a people's court, in accordance with Article 50 of the Copyright Law of the People's Republic of China, for evidence preservation where the evidence is likely to be missing, or to be obtained difficultly later.

Article 28 A publisher or producer of copies of a piece of software that fails to prove that the legal authorization for the publication or production, or, a distributor or renter of copies of a piece of software that fails to prove the legal source of the copies which he distributes or rents, shall bear legal liability.

Article 29 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.

Article 30 A holder of copies of a piece of software that neither knows nor has reasonable grounds to know that such copies are infringing ones does not bear liability of compensation but shall cease the use of, and destroy, the infringing copies. Nevertheless, if the cease of use or the destruction of such copies is likely to cause heavy losses to him, the holder of such copies may, after paying reasonable remuneration to the software copyright owner, continue to use such copies.

Article 31 A dispute over software copyright infringement may be settled by mediation.

A dispute over a software copyright contract may be submitted to an arbitration institution for arbitration under an arbitration clause in the copyright contract or under a written arbitration agreement concluded later between the parties.

Any party may institute legal proceedings directly in a people's court in the absence of an arbitration clause in the contract or of a written arbitration agreement concluded afterwards between the parties.

Chapter V Supplementary Provisions

Article 32 Any act of infringing upon software copyright committed prior to the entry into force of these Regulations shall be dealt with under the relevant provisions of the State that are in force at the time when the act was committed.

Article 33 These Regulations shall be effective as of January 1, 2002. The Regulations on Computer Software Protection promulgated by the State Council on June 4, 1991 shall be repealed simultaneously.
