

Rue Joseph II, 9-13
B-1000 Brussels
Belgium

PRESIDENT
Rainer JUST

CHIEF EXECUTIVE & SECRETARY GENERAL
Olav STOKKMO

**Legislative Affairs Office of the State
Council**

**Postal Box 2067
Beijing 100035
PRC**

By e-mail: zzqf@chinalaw.gov.cn

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IFRRO OPINION ON THE REVISIONS TO THE CHINESE COPYRIGHT LAW

This submission is made by the International Federation of Reproduction Rights Organisations (IFRRO), based in Brussels (Belgium). IFRRO represents and links Reproduction Rights Organisations (RROs) worldwide. RROs administer reproduction and other relevant rights, including certain forms of digital uses, in copyright text- and image-based works on behalf of publishers and authors, including visual artists.

The 143 members of IFRRO in some 80 countries worldwide include national RROs, and national and international associations of creators and publishers. Our members in China are China Written Works Copyright Society (CWWCS) and Music Copyright Society of China (MCSC).

We take this opportunity to thank you for considering our comments to the revisions to the Chinese Copyright Law, which we do in consultation with our PRC members CWWCS and MCSC.

We suggest making minor amendments in the following articles: Articles 31, 43, 51, 63 and 66.

We submit our comments in English. In addition, in order to facilitate the assessment of our proposals, we have also ensured an unofficial translation into Chinese. To the extent there are conflicts between the two, we ask you to please consider the English version as our proposal.

Article 63: Collective Management of Copyright

We note that Article 63 creates an extended collective licence scheme for musical and audio visual works for karaoke bars. However, we are concerned that this specific provision may create a perception that karaoke licensing is the only way in which collective copyright licensing is to operate in China. It would be preferable if this part of the Law specifically acknowledged that the authority of the State Council to endorse and monitor collective management organisations (CMOs) includes CMOs representing all classes of works, not just the rights and works needed for karaoke licensing, under Article 63. We are aware that this might be addressed in regulations, and our concern may be misplaced. However, if this is not the case, we would suggest that Article 63 is modified as follows:

Where an organization for collective administration of copyright can represent the interests of relevant right owners throughout the country as authorized by the right owners, it may exercise the copyright or related rights on behalf of all the right owners when their published musical, audio & video or text- and image-based works are disseminated to the public through, for instance, self-service karaoke systems and when their works are otherwise used, except where the right owners have declared in writing that the collective administration is not authorized: (...)

Article 66: Collective Management of Copyright

In accordance with our previous comments regarding Article 63, we would suggest that Article 66 is slightly modified, and reads as follows:

The copyright administration department under the State Council shall be in charge of the collective administration of copyright throughout the country and be responsible for the examination, approval, supervision and administration of the establishment, business scope, hereunder the extension of Article 63 to other uses and sectors, change, deregistration and other registration particulars of organizations of copyright according to their respective responsibilities.

Article 31: Related Rights – Publisher

We note that the making available right is mentioned in Article 13(7) of the new Copyright Law. Nonetheless, it does not refer to it in Article 31, where only “reproduction” and “distribution” are mentioned in the current version. In order to comply with the international legal framework (in particular, WPPT and WCT), we would propose that “making available” is added, so that Article 31, first sentence, reads:

For the purpose of this Law, publication refers to reproduction, distribution and making available.

Article 43: Unremunerated Exceptions

Article 43(4): republication and broadcast of newspaper and periodical articles

Article 43(4) includes an unremunerated exception for press digests of articles on “political, economic or religious topics”, from which authors can opt out. Based on Article 9(2) of the Berne Convention, we are, however, of the opinion that this use is more appropriate for a remunerated exception. In addition, since foreign authors are unlikely to know they have to opt out of this exception, we think that this provision would better align with international copyright norms if it was deleted entirely (or, at least, restricted to works of Chinese authors only).

Article 43(6): exception for classroom teaching or scientific research

We are of the opinion that the exception in Article 43(6) would better satisfy China’s international treaty obligations if it was restricted to small quantities of short extracts, and if it prohibited distribution of copies to students. For the purpose of clarity, to ensure conformity with *inter alia* Article 9(2) of the Berne Convention, we would propose that Article 43(6) reads:

(6) To translate, or reproduce in a small quantity, short excerpts 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 to students;

Article 43(8): exception for libraries, archives and similar institutions

For the purpose of clarity, to ensure conformity with *inter alia* Article 9(2) of the Berne Convention, we would propose that Article 43(8) is modified and reads as follows:

(8) To reproduce a work in its collection by a library, an archives center, a memorial hall, a museum, an art gallery or a similar institution, for the purpose of display on dedicated terminals on the institutions’ premises, or preservation of a copy of the work;

Article 43(13): other circumstances

For the purpose of clarity, to ensure conformity with, in particular, Article 9(2) of the Berne Convention, we would propose that Article 43(8) reads:

(13) Other certain special cases.

3 step test

We note that the revisions of the Chinese Copyright Law include words at the foot of Article 43 which refer to components of the 3 step test, but do not include the test fully, as foreseen in Article 9(2) of the Berne Convention. We would therefore suggest that the last sentence of Article 43 is modified as follows:

Use of a work in any of the certain special cases mentioned above shall neither conflict with the normal exploitation of the work nor unreasonably prejudice the legitimate rights and interests of the copyright owner.

Article 51: Orphan works

For the purpose of clarity, we would suggest that Article 51 clarifies “due efforts”, for instance as outlined in the EU Directive 2012/28/EU on certain permitted uses of orphan works, Article 3¹:

Where a user, despite a diligent search, carried out prior to the use of the work in good faith in respect of each work or other protected subject-matter, is unsuccessful in finding the right owner of a published work whose term of copyright protection has not expired, and where any of the following conditions are satisfied, the user may use the published work in a digital format after applying to and depositing use fees with an institution designated by the copyright administration department under the State Council: (...)

We kindly ask that the points raised in this submission be considered in the further considerations on modifications of the Copyright Law of the People’s Republic of China. If required, we will be pleased to expand further on them.

Yours sincerely,



Olav Stokkmo
Chief Executive Officer

CC: China Written Works Copyright Society (CWWCS); Music Copyright Society of China (MCSC)

¹ See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:299:0005:0012:EN:PDF>