1. The Basic Situation of Seeking Comments

On March 31, 2012, the National Copyright Administration of China announced the opening of the “Copyright Law of the People’s Republic of China” (Draft Revision) to community comments and suggestions through the official website of the National Copyright Administration and the General Administration of Press and Publication. In early April, the leader of NCAC’s working group on copyright law draft revision, the GAPP director, the NCAC’s Secretary Mr. Liu, deputy head of working group, deputy director, and deputy secretary each sent a letter to the 35 relevant department leaders asking for comments. The Office of the NCAC also sent a letter to the 48 relevant ministries asking for advice.

The draft has elicited broad attention and heated discussion from many sections of society, relevant departments both domestic and foreign, right holder organizations, industry, and also academic and research institutions and these interested parties have expressed their attention regarding the copyright law amendment through a variety of ways and methods. After the commentary period expired on April 30, 2012, the NCAC continued to receive an unending stream of comments and suggestions on amending the law. According to the statistics, as of May 31, 2012, the NCAC has already received more than 1,600 suggestions and comments from all parts of society.

On May 11, 2012, the NCAC convened the members of the Committee of Law Amendment Experts and experts from related legislative and judicial branches in a third meeting. The NCAC informed them of the basic situation regarding the draft’s sought for comments and focused especially on the controversial provisions so that the experts can provide advice on the relevant draft provisions.

The NCAC comprehensively and diligently sorted and classified the comments of the various parts of society. After careful analysis of the reasonable and feasible suggestions, the NCAC combined the Committee’s specific suggestions and further modified and improved the draft version of the copyright law, which lead to the formation of the following text.

2. The Changes and Improvements to the Main Content

The revision of the original draft includes the deletion of three provisions (Articles 39, 46, and 47), the addition of three provisions (Articles 12, 35, and 62), a change to Article 48, a content change to Article 27, and a wording change to Article 21. In order to facilitate the community’s understanding of the relevant adjustments, a brief description of the various modifications is as follows:

(1) Content of Copyright
The changes will further simplify the rights content. For the purpose of simplifying the content of copyright, defining the boundary of rights and reducing the overlapping portion of different rights, the following changes were made to the copyright content: (1) considering the legislative practice of the majority of the world’s countries and regions, cancel the right of projection and incorporate it into performing rights; (2) taking into account the original draft’s broadcasting right and the information network transmission right and their foundation in the communication media rather than the mode of transmission, we cannot fully match the scientific and technological developments, especially with respect to the status and trend of “triple play,” and as such, the broadcast rights will apply to non-interactive communication and the information network transmission right will apply to interactive broadcasting although there will still be the problem of webcasting and broadcasting; (3) given that the draft has incorporate the right of modification into the right of integrity of works, and given that the right of modifying the computer program is now added as a part of the property rights, the draft now merges the right to modify computer program into the right of adaptation to avoid confusion and misunderstanding; (4) considering that the nature of the pursuit right (droit de suite) belongs to the remuneration right and that therefore, the pursuit right has a separate provision (Article 12) and simultaneously, considering the legislation of the other countries and regions in the world, the pursuit right’s scope will be limited to acts of resale through auction to increase feasibility.

(2) Audiovisual Works

Audiovisual works are a collective creation of works. Copyright protection mainly includes the clear attribution of audiovisual works in their own right and the protection of participation in creation of various types of authors’ two aspects. The current law does not provide that the authors of audiovisual work have “second-time remuneration right” (droit de suite) – namely the right to receive remuneration from the follow-up interest in audiovisual works. The revision has been modified in the following three aspects: (1) based on the actual situation of the industry and with reference to the legislative practice of the world’s major countries and regions, the overall ownership copyright for audiovisual works will be changed from the original agreed upon provisions to the provisions of the existing law where it is granted directly to the producer; (2) express provision that the original producer of the audiovisual work will enjoy right of authorship; (3) express provision that the five producers including the original author, screenwriter, director, and songwriter of an audiovisual work have the right to enjoy “second-time remuneration right.”

(3) Works of Art of which there is a single medium of embodiment

In recent years, works of art on display in public areas have been damaged or removed. The copyright holder and original owner have taken these cases to court and the arts world and judiciary have called for the strengthening and improvement of legislation in this area. Therefore, in order to respond to these calls and resolve these issues, there have been changes made in Article 20 by adding a provision that will on the one hand, limit the original owner’s actual disposition activities and on the other, will have clearly defined exclusions – these apply only to works of arts displayed in public places (public display art) of which there is only a single medium of embodiment and in addition, if the parties have another agreement, that agreement will supersede.
(4) Orphan Works

In order to solve the digital environment, the use of the orphan work to obtain authorization is a difficult dilemma. The original draft added authorization system provisions for “orphan works.” Taking into account the relevant provisions of the “orphan works” that are being created in legislation, this draft’s revisions have drawn upon the community’s views and recommendations. The scope of “orphan works” applies to works in magazines and newspapers that are transferred into a digital copy or other users make a digital copy or transfer it across the information network to the public. At the same time, the designated agency will be adjusted by the Copyright Administration Department of the State Council and the cost of doing so will also be borne by them.

(5) Occupational Performance (Performance works for hire)

Considering the urgent need to resolve the issue of the relationship between performers and performance groups, there is a modification in provisions referring to created works. New regulations on occupational performance were added to Article 35. The rights of ownership for the performance will be arranged according to the agreement between the parties. If the parties do not have an agreement or if the agreement is not clear, the rights remain with the performers. However, for collective performances, such as theater performances, drama troupes, or choral groups and other similar performance types, the rights are attributed to the performance groups. Meanwhile, in order to ensure the rights of performance groups, the revisions also give performance groups the right to freely use their performance rights within their business scope.

(6) Audiovisual Performance Rights

In reference to the adoption of Article 12 of the “Audiovisual Beijing Treaty” at the June 26, 2012 WIPO Diplomatic Conference and consistent with the modifications of the aforementioned audiovisual copyright regulations, the changes include the performers’ rights given to the producer but at the same time, the performance’s main actors will enjoy authorship rights and second-time remuneration.

(7) Performers and Producers and Rights of Remuneration Relating to the Broadcast and Performance of Recordings

The changes in Article 39 further clarify the performers and producers’ rights of remuneration in two types of behavior: (1) broadcast behavior – wirelessly or wired public broadcasting of recordings or transmitting recording broadcasts and broadcasting recordings to the public through technical equipment; (2) performance behavior – disseminating works to the public of the recordings through technological equipment.

(8) Radio and Television Rights

The changes, from promoting transactions in the television broadcasting programs and promoting the development of broadcast radio and television stations in China, drew on relevant
international conventions and national legislation. The following adjustments were made to the radio and television rights: (1) radio and television stations have their right to ban changed to an exclusive right; (2) in accordance with the content modifications to the aforementioned broadcast rights and the internet network transmission rights and taking into account the non-interactive communication included in the scope of controlled broadcast rights, the first paragraph of Article 38’s fourth provision will be deleted.

(9) Copyright “Fair Use” System

The so-called “fair use” refers to the usage of others’ copyright protected work under certain circumstances. This usage can be done without the permission of the copyright holder but the user can receive no remuneration payment and must specify the works of origin or source. The “fair use” system is a fundamental system within relevant international treaties and copyright laws of various countries and regions. This draft’s main adjustments are as follows: (1) increase the “fair use” open provisions – the original Article 39 has become the new draft’s Article 42 and acts as a second limit on all 13 types of “fair use” situations; (2) can use others’ works in copying a part of the written work specifically for situations like individual learning or research; (3) a provision that increase of quotes of another’s work should not constitute the main or substantial part of their work; (4) in relevant circumstances, increase the provisions regarding the “information network” media; (5) a provision to increase the outcome of continued usage of copying, drawing, photographing, and video taping in outdoor art work.

(10) Copyright Statutory License System

The revisions of the copyright statutory licensing system are as follows: (1) in accordance with the views of right holders, copyright collective management organizations, and other relevant agencies, the copyright statutory licensing system will further limit the textbook statutory license and reproduced newspapers and periodicals statutory license will have two types of cases. It will also eliminate the original Article 46 that refers to recordings statutory license and the provisions of Article 47 related to radio and broadcast television stations statutory license. The exclusive right will revert to the author; (2) in regards to the statutory license of reproduced newspapers, the parties are allowed to have an agreement on the exclusive copyright. When a newspaper enjoys the exclusive copyright, other newspapers may not reproduce the copyrighted work. According to the regulation in Article 51, if the exclusive copyright deadline is not agreed to or if the agreement is not clear, then the presumption is that the exclusive copyright period is 1 year; (3) before the user uses his work for the first time, he can go through a one-time filing. The filing agency will adjust to the appropriate copyright collective management organization; (4) a provision to increase the user’s ability to directly pay the rights holder remuneration within the statutory period.

(11) The Extended Collective Management in Copyright Collective Management Organizations

The amendments further restrict the applied scope of the extension of collective management in copyright collective management organization: (1) radio and broadcast television stations that have already published articles, music, art, or photography; (2) automatic VOD operators that go
through automatic VOD systems to disseminate already published music or audiovisual works to
the public. At the same time, the amendments retain the right holder’s written statement to not
extend the collective management provisions and they also strengthen the equal treatment of all
rights holders by the copyright collective management organization.

(12) Technological Protective Measures and Rights Management Information

According to the relevant provisions of the WIPO Copyright Treaty and the WIPO Performance
and Recordings Treaty, the technological protective measures and rights management
information only applies to works, performances, and recordings. As the WIPO Broadcasting
Organizations Treaty has not yet been agreed upon, the technological protective measures and
rights management information currently does not apply to radio and television programs.
However, from the WIPO consultation process, it seems there is little dispute from the WIPO
member states. Therefore, the revision to Article 64 will expand the technological protective
measures and rights management information to apply to radio and television programs, and the
corresponding provisions were modified.

(13) Civil Liability

The revision of the civil liability section made the following adjustments: (1) in Article 69, if the
IISP aids or abets infringement, the IISP will bear joint and several liabilities along with the
infringer; (2) in Article 70, to further clarify the civil liabilities that arise from the use of rights of
right holder who is not a member of the collective management organization in the situation
where the users that use the right that it is difficult for copyright holders to exercise or control
and are willing to go through legitimate channels to obtain authorization. In respect of damages,
if the user has already signed an agreement with the copyright collective management
organization, non-member rights holders must receive a standard compensation for losses in
accordance with the copyright collective management fee. If the user has not signed a contract
with an appropriate collective management organization, the non-member right holders will be
compensated for damages in accordance with general tort damages rules. At the same time, the
loss of the second provision where the three cases of users maliciously using others’ works does
not apply to the collective management fee standard compensation damages and instead, the
general tort damages principle should apply. (3) In Article 72, a provision on the pre-conditions
for statutory compensation was canceled – processing copyright or related rights registration,
exclusive licensing contract, or transfer contract registration requirements.

(14) Other Content

The revision was done through reference to the community’s comments and suggestions. Some
of the provisions were further clarified or improved such as the foreign reciprocal protection
principles scattered regulations or related provisions. These include positions employed in the
newspapers and magazines or the news agency creative works limited to the reporter for the
completion of reporting tasks. Performers will be clearly recognized as natural person. Authors,
performers, and sound producers will have a unified representation with the information network
transmission right. The revisions clarify that copyright registration and other matters will be
charged by the standards-setting agency. They also clarify that copyright collective management
organizations shall be for non-profit social organizations and that the State Council and relevant departments will have regulatory responsibilities over copyright collective management organizations.

The revisions are described above for the reader’s reference.