

China Legal Report*

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New Copyright Law of the People's Republic of China

I. Introduction

On November 11, 2020, the Standing Committee of the National People's Congress passed the latest revision to the *Copyright Law of the People's Republic of China* ("CL"), which will take effect on June 1, 2021. The latest CL consists of 6 chapters and 67 articles. In this publication, we would like to outline some key amendments for you.

II. New Damage Calculation

One of the most remarkable changes made by the amendments to the CL relates to damage compensations for copyright infringements. In the past, the breaching party had to compensate the right holder for its actual losses. Such losses were often difficult to evidence, let alone to calculate. The new CL now stipulates that either the actual loss or the breaching party's illegal income can serve as basis for the calculation of damages, which means the right holder can freely choose the preferred mode of calculation. This, first and foremost, is an advantage for the right holder because it may lead to a higher compensation since often, the unlawfully obtained income may be higher than the actual losses suffered by the right holder.

III. Higher Statutory Compensation

However, both, actual losses as well as the so called illegal income are sometimes difficult to evidence for the right holder. In such cases, the courts – already based on the old CL – were able to apply the so called statutory compensation standards based on which the courts had discretion to award a compensation in the amount of up to RMB 50'000 without the right holder having evidenced the actual loss or the other party's illegal income in this amount. This threshold of the statutory damage is now lifted from RMB 50'000 to an astonishing amount of RMB 5'000'000, making it obviously much more worthwhile to actually persecute an infringing party.

In addition to this, the new CL will also allow to base damage calculations on royalties that the right holder may have received, thus facilitating the calculation of actual losses.

IV. Introduction of Punitive Damages

Another novelty is the introduction of punitive damages. With punitive damages, not only is the damage caused compensated, but the responsible party is also punished for its conduct. This especially applies if the conduct is willful and serious. According to the new CL, punitive damages can be set at up to five times the amount of the actually determined damage and has to be paid to the right holder in addition to the actual damage. Consequently, taking legal steps might become more appealing.

V. Shifting the Burden of Proof

A major obstacle in enforcing a right holder's right used to be that the burden of proof to evidence the infringement and the damage it caused lay with the right holder. Often, the necessary documentation to prove the relevant facts is, however, in the possession of the infringing party. The new CL provides that the court can order the infringing party to provide the respective materials, failing so will lead to the legal assumption that the content of the material corresponds indeed with the content as asserted by the right holder.

VI. Taking Steps in the New Era

This strengthening of the procedural rights of copy right holders is a clear response to the ongoing and unfortunately far too frequent violations of these rights in China. If you are a victim of such infringements, it may be worthwhile to finally do something about it under the new CL, i.e. from June 1, 2021.

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