



CHINA LEGAL BRIEFING 113

W E N G E R & V I E L I B E I J I N G O F F I C E

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1. National

Regulations on Administrative Protection of Internet Copyright

互联网著作权行政保护办法

【Issued By】 National Copyright Administration, Ministry of Information Industry

【Subject】 Copyright Protection

【Promulgated on】 April 30, 2005

【Effective From】 May 30, 2005

【Source】 <http://www.law-star.com/>

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- TRANSACTIONS (MERGERS AND ACQUISITIONS, PRIVATE EQUITY AND CAPITAL MARKETS)
- LITIGATION/ARBITRATION
- COMPETITION LAW AND INTELLECTUAL PROPERTY LAW
- TAX

Whereas China's present copyright laws do not define responsibilities relating to copyright protection of Internet Content Providers (ICPs), with a view to taking measures to deal with Internet piracy and making efforts to fight piracy, the National Copyright Administration (NCA) and the Ministry of Information Industry (MII) jointly issued the May 30 implementation of "Regulations on Administrative Protection of Internet Copyright" on April 30, 2005, the first of its kind in the country.

The Regulations contain 19 Articles. They stipulate that once copyright owners notify the Internet Content Provider (ICP) that their copyrights have been violated, the provider should take measures to remove relevant copied content. ICPs that know about copyright violations but don't remove the violating content will face punishment themselves. All income from the illegal act will be confiscated, and a fine of up to three times the illegal income will be assessed. If the illegal income proves difficult to calculate, the maximum fine will be 100,000 RMB (US\$12,000).

The Regulations also apply to services including uploading, storing, connecting or searching online literary, audio and video products in accordance with the instructions of the Internet content provider, without any content revision.

China has adopted two ways to protect intellectual property rights – through administrative and judicial departments. Therefore, administrative rules and legal regulations will work in parallel.

Technical Guidelines for Export Goods

出口商品技术指南

【Issued By】 Ministry of Commerce

【Subject】 Export Goods

【Promulgated on】 May 10, 2005

【Sources】 <http://www.mofcom.gov.cn/>

The Ministry of Commerce released the first 10 technical guidelines for exports on May 10, 2005. The Ministry of Commerce has been working on the guidelines since 2003 with 14 ministries, 40 industrial associations, 6 imports and exports chambers, 50 research institutes and 10 local government departments.

Each guideline offers information on the technical regulations, standards, and evaluation process in the destination market, as well as comparison with the Chinese system. It also provides solutions and suggestions proposed by experts.

The guidelines deal with products ranging from honey, eel, leather and fur products, textiles and down-padded anorak, to aluminum section, air-conditioner, electric tools, computers and accessories, packaging for exports to EU. By the end of 2006, 100 guidelines will be available free.

Circular on Strengthening Approval Administration on Non-performing Loans Disposal with Foreign Funds

关于加强外商投资处置不良资产审批管理的通知

【 Issued By 】 Ministry of Commerce

【 Subject 】 Non-performing Loans (NPL)

【 Promulgated on 】 April 29, 2005

【 Effective From 】 April 29, 2005

【 Source 】 <http://www.mofcom.gov.cn/>

With the State Council's approval and encouragement, China has made steady development in absorbing foreign funds to dispose financial assets (creditor's assets), achieving good results since the issuance of "Provisional Regulations on Financial Asset Management Companies Absorbing Foreign Funds for Assets Reorganization and Assets Disposal". This Circular is released by the Ministry of Commerce to notify related matters on further standardizing absorbing foreign funds to reorganize and dispose China's non-performing loans, and maintaining health development of non-performing loans markets.

The Circular specifies that "For the purpose of speeding up non-performing loans disposal of China's state-owned banks and financial asset management companies, and eliminating loss of state assets, the State Council approved financial asset management companies to absorb foreign funds to reorganize and dispose assets, as well as to transfer non-performing loans such as stock ownership and creditor's rights to foreign investors in 2001. Financial asset management companies are also allowed to set up foreign invested enterprises to restructure debts and recover creditor's rights.

All above investing measures are policy-related, delicate and cover a wide range of subjects, therefore the examination and approval of which should be very strictly controlled. The setting up of foreign invested enterprises of this kind should be reported to Ministry of Commerce for approval, and administrative commercial sectors of different levels and national economic and technological development zones shall not make bold to approve the foundation of enterprises."

The Circular also provides that "State Economic and Trade Commission, Ministry of Public Security and State Administration of Industry and Commerce jointly issued the Circular No. 568, 2000 on Outlawing All Kinds of Debt-demanding Companies and Crack down on Illegal Debt-demanding Activities in 2000, giving a definite regulation to outlaw all kinds of debt-demanding companies and prohibit all kinds of units and personals from setting up debt-demanding companies in any form. All local administrative commercial sectors and national economic and technological development zones shall strictly implement in accordance with above regulations and not approve to establish foreign-invested debt-demanding companies in any form."

Article 3 of the Circular further stipulates that "All relevant units shall require enterprises to promise not to undertake business of non-performing loans disposal such as debt reorganization and recovery of creditor's right in written form while approving the setting up of enterprises of economic commitment, business agent, management consultation, financial consultation and asset consultation as well."

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