**Regulations for Protection of Computer Software**

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Chapter I General Provisions

Article 1 These Regulations are hereby formulated in accordance with the provisions of the Copyright Law of the People's Republic of China with a view to protecting the rights and interests of copyright owners of computer software, regulating the interests generated in the development, dissemination and use of computer software, encouraging the development and circulation of computer software and promoting the development of the software industry and informationisation of the national economy.

Article 2 Computer software (hereinafter referred to as software) as mentioned in these Regulations refers to computer programs and their relevant documents.

Article 3 The meanings of the following terms in these Regulations are:

(1) A computer program refers to a coded instruction sequence which is written for the purpose of obtaining a certain result and 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. The source program and object program of the same computer program are of one work.

(2) Documents refer to literal data and charts used to describe the contents, composition, design, function norms, state of development, test results and method of use, such as program design specifications, flowcharts, and users' manuals.

(3) Software developers refer to legal entities or other organisations actually organising and carrying out development work, and assuming responsibility for the developed software; or natural persons independently accomplishing software development by relying on their own facilities and assuming responsibility for the software.

(4) Software copyright owners refer to natural persons, legal entities or other organisations enjoying the copyright of software in accordance with the provisions of these Regulations.

Article 4 Software protected under these Regulations must be developed independently by the developers and already fixed on certain tangible objects.

Article 5 In respect of the software he or it has developed, regardless of whether or where the said software has been made public, a Chinese citizen, legal entity or any other organisation shall enjoy the copyright in accordance with these Regulations.

Where the software of a foreign person or stateless person is first made public in China, he shall enjoy the copyright in accordance with these Regulations.

The copyright of the software of foreign persons or stateless persons shall be protected under these Regulations in accordance with agreements concluded between the countries to which the developers belong or in which their have they habitual residence and China or according to international conventions China has acceded to.

Article 6 The protection of software under these Regulations shall not be extended to ideas, handling processes, operating methods or mathematical conceptions used in software development.

Article 7 Software copyright owners may register their software with a software registry organ designated by the Copyright Administration Department under the State Council. The certificates issued by the registry organs are the preliminary regulatory proof of the registration.

Registration of software requires payment of fees. The rate of fees for software registration shall be provided for by the Copyright Administration Department under the State Council in conjunction with the competent pricing department under the State Council.

Chapter II Copyright of Software

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

(1) The right of making public, i.e., the right to decide whether to make the software available to the public;

(2) The right of authorship, i.e., the right to make known his identity as developer and the right to have his name indicated on his software;

(3) The right of alteration, i.e., the right to make addition to, deletion from or modification of, instructions and/or statement sequence;

(4) The right of reproduction, i.e., the right to produce one or more copies of the software;

(5) The right of distribution, i.e., the right to make the original copy or reproductions of the software available to the public by virtue of sale or donation;

(6) The right of rental, i.e., the right to permit, with remuneration paid to the authoriser, others to temporarily use software unless the software is not the main subject matter of the rental;

(7) The right of communication on information networks, i.e., the right to communicate software to the public by wire or by wireless means in such a way that members of the public may access to the software at a time and from a place individually chosen by them;

(8) The right of translation, i.e., the right to translate the original software from one natural language and/or writing system into another natural language and/or writing system; and

(9) Other rights the software copyright owners are entitled to.

The software copyright owner may authorise others to exercise his software copyright and has the right to receive remuneration therefor.

The software copyright owner may wholly or partially assign his software copyright and has the right to receive remuneration therefor.

Article 9 The copyright of items of software shall be owned by the respective software developers, except that these Regulations provide otherwise for.

In the absence of evidence to the contrary, the natural person, legal entity or other organisation whose name is indicated on the software is the developer thereof.

Article 10 In respect of an item of software developed by two or more natural persons legal entities or other organisations in cooperation, the ownership of the copyright in the software shall be stipulated by the conclusion of a written agreement between the developers who have cooperated in the development of the software. Where there is no written agreement, nor is there explicit stipulation made in the agreement or where the software developed in cooperation may be partitioned and used, the developers may separately enjoy the copyright to the respective parts developed by them, but the exercise of such copyright may not be extended to the copyright of the jointly developed software as a whole. Where the software developed in cooperation cannot be partitioned and used in parts, the copyright shall be owned by the cooperating developers after reaching unanimity through consultation. Where unanimity cannot be reached through consultation, nor is there any justification, none of the parties shall prevent the other party or parties from exercising the rights except the right of assignment, but the proceeds shall be appropriately distributed to all cooperating developers.

Article 11 The ownership of the copyright of an item of software developed on commission shall be stipulated by the conclusion of a written agreement between the commissioning party and the commissioned party. Where there is no written agreement, nor is an explicit stipulation made in the agreement, the copyright shall go to the commissioned party.

Article 12 The ownership and exercise of the copyright of an item of software developed in fulfilling a task assigned by a governmental department shall be stipulated by a letter of assignment or by a contract. Where no explicit stipulation is made in the letter of assignment or in the contract, the copyright of the software shall go to the legal entity or other organisation accepting the assignment.

Article 13 Where an item of software developed by a natural person during his service the legal entity or other organisation falls into any of the following provisions, the copyright of the software shall be owned by the legal entity or other organisation, and the legal entity or other organisation may reward the natural person who has developed the software:

(1) The software is developed in accordance with development objective explicitly assigned in line of duty;

(2) The developed software is a foreseeable or natural result of his carrying on activities in the line of duty; or

(3) The software is one that is developed mainly by utilising the fund, special equipment, undisclosed special information or other material and technical facilities of a legal entity or other organisation and for which the legal entity or other organisation is responsible for.

Article 14 The copyright in software is generated on the date of accomplishment of the development of the software.

The term of protection for a natural person's software copyright shall be the lifetime of the natural person and fifty years after his death, and expires on 31 December of the fiftieth year after the death of the natural person; in the case of software of joint development, such term shall expire on 31 December of the fiftieth year after the death of the last surviving natural person.

The term of protection for a legal entity or other organisation's software copyright shall be fifty years, and expires on 31 December of the fiftieth year after the software is made public for the first time. However, any item of software that has not been made public for fifty years since the date on which the development thereof is accomplished shall no longer be protected under these Regulations.

Article 15 Where the copyright of an item of software belongs to a natural person and the copyright is still within the term of protection after the death of the natural person, the successor to the software copyright shall succeed to the rights, except the right of authorship, as stipulated in Article 8 of these Regulations in accordance with the relevant provisions of the Law of Succession of the People's Republic of China.

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

Article 16 An owner of legitimate duplicates of an item of software enjoys the following rights:

(1) to load the software into a computer or device capable of information processing according to the need of use;

(2) to make backup duplicates for filing to prepare for damaged duplicates. However, such backup duplicates shall not be supplied in any way to others for their use. Once a holder loses its/his right to hold the software lawfully, he or it shall be responsible to destroy the said backup duplicates.

(3) to make necessary revisions of the software in order to use it in an actual environment of computer application or to improve its function and performance. However, except otherwise agreed, it or he shall not supply the revised version to any third party without the consent of the copyright owner of the software.

Article 17 Items of software may be used by way of installation, display, transmission or storage, etc. for the purposes of study and research of the concepts and principle underlying the design of the software without the consent of, or remuneration to, the copyright owner of the software.

Chapter III Licensing and Assignment of Software Copyright

Article 18 To license another person to exercise software copyright, a licensing contract shall be concluded.

The licensee shall not exercise the right the software copyright owner has not explicitly licensed in the licensing contract.

Article 19 To license another person to exclusively exercise software copyright, the interested parties shall conclude a licensing contract in writing.

Where no contract is concluded in writing, or where exclusive licensing is not explicitly agreed in the contract, the licensed right shall be deemed to be a non-exclusive right.

Article 20 Where a software copyright is to be assigned, the interested parties shall conclude a contract in writing.

Article 21 Any contract concluded for licensing another person to exclusively exercise software copyright, or for assigning a software copyright, may be registered with a registry organ designated by the Copyright Administrative Department under the State Council.

Article 22 Where a Chinese citizen, legal entity or other organisation licenses or assigns his or its software copyright, he or it shall comply with the relevant provisions of the Regulations of the People's Republic of China on Technology Import and Export Administration.

Chapter IV Legal Liabilities

Article 23 Except otherwise provided for in the Copyright Law of the People's Republic of China or these Regulations, where any of the following acts of infringement occurs, the infringer shall, according to circumstances, bear such civil liabilities as stopping the infringement, eliminating the ill effects, making an apology and compensating for the damages:

(1) to make public or register an item of software without the consent of the software copyright owner;

(2) to make public or register, as one's own, an item of software developed by another person;

(3) to make public or register, as a work completed on one's own, an item of software developed in cooperation with others without the consent of the cooperators;

(4) to have one's own name indicated on an item of software developed by another person or to change the name indicated on an item of software developed by another person;

(5) to alter or translate an item of software without the consent of the software copyright owner; or

(6) to commit any other act of infringement of software copyright.

Article 24 Except otherwise provided for in the Copyright Law of the People's Republic of China, these Regulations or other laws and administrative regulations, where any of the following acts of infringement occurs, the infringer shall, according to circumstances, bear such civil liabilities as stopping the infringement, eliminating the ill effects, making an apology and compensating for the damages; where, meanwhile, the public interests are prejudiced, the Copyright Administrative Department shall order cessation of the infringing act, confiscate unlawful income from the act, confiscate and destroy infringing duplicates, and may impose a fine; if the circumstances are serious, the Copyright Administration Department may also confiscate the materials, tools and equipment mainly used for making the infringing duplicates; if the act violates the criminal law, the infringer shall be prosecuted for his or its criminal liabilities as imposed on the crime of copyright infringement or the crime of selling infringing duplicates under the Criminal Law:

(1) duplicating or partially duplicating the software of a copyright owner;

(2) distributing, renting, or communicating to the public on an information network, the software of a copyright owner;

(3) intentionally circumventing or destroying the technological measures taken by a copyright owner for protecting the copyright in his or its software;

(4) intentionally deleting or altering the electronic right management information of software; or

(5) assigning, or licensing others to exercise, the copyright in the software of a copyright owner.

Where the preceding act (1) or (2) is committed, a fine of RMB 100 yuan apiece, or of an amount no more than five times the amount of the value of the goods, may be imposed; where the preceding act (3), (4) or (5) is committed, a fine of no more than RMB 50,000 yuan may be imposed.

Article 25 The amount of damages for an infringement of software copyright shall be fixed in accordance with the provisions of Article 48 of the Copyright Law of the People's Republic of China.

Article 26 A software copyright owner who has evidence to establish that another person is committing or, will commit, an act of infringement of his right, which could cause irreparable injury to his legitimate rights and interests if the act is not stopped immediately may, according to the provision of Article 49 of the Copyright Law of the People's Republic of China, apply to the People's Court for ordering cessation of the related act and for tacking the measures for property preservation before instituting legal proceedings.Article 27 For the purpose of preventing an infringing act and under the circumstance where the evidence may be lost or is difficult to obtain afterwards, the software copyright owner may, according to the provision of Article 50 of the Copyright Law of the People's Republic of China, apply to the People's Court for evidence preservation before instituting legal proceedings.

Article 28 The publisher or producer of duplicates of an item of software cannot prove that his publication or production has been authorised, or the distributor or the renter of the reproduction of an item of software who cannot prove that the reproductions he or it has distributed or rented is from a legitimate source, shall bear legal liability.

Article 29 Software developed by a software developer is similar to an item of existing software due to limited alternatives of expression available does not constitute an infringement of the existing software copyright.

Article 30 The holder of duplicate of an item of software who does no know, nor has any reasonable ground to know, that the item of software is an infringing duplicate shall not be liable for damages. However, he or it shall stop using and destroy the infringing duplicate. If stopping the use of, or destroying, the infringing duplicate causes great losses to the user of the duplicate, the user of the duplicate may go on using it after paying the software copyright owner the appropriate fees.

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

The parties may apply to the arbitration organ for arbitration of a contractual dispute over software copyright in accordance with the arbitration clause in the contract or a written arbitration agreement subsequently concluded.

Where the parties have not inserted an arbitration clause in the contract, nor have they subsequently concluded a written arbitration agreement, either of the parties may directly institute proceedings in the People's Court.

Chapter V Supplementary Provisions

Article 32 Acts of infringement which occur before these Regulations enter into force shall be dealt with in accordance with the relevant State regulations in effect at the time said acts of infringement occur.

Article 33 These Regulations shall enter into force as of 1 January 2002. The Regulations on Computer Software Protection issued by the State Council on 4 June 1991 is simultaneously abrogated.