

**Interpretation of the Supreme People's Court Concerning the Application of Laws in the Trial of Civil Disputes  
Copyright[Effective]**

最高人民法院关于审理著作权民事纠纷案件适用法律若干问题的解释 [现行有效]

**Authority:** Supreme People's Court  
**Id:** 10-12-2002  
**Area:** Civil Litigation,Copyright

**Document Number:** No. 31 [2002] of Legal Interpretation  
**Level of Authority:** Judicial Interpretation

Announcement of the People's Supreme Court

The Interpretation of the People's Supreme Court Concerning the Application of Laws to the Trial of Civil Disputes of Copyright have been adopted by the Judicial Committee of the Supreme People's Court on October 12, 2002 and are hereby promulgated for implementation as of October 15, 2002.

The Interpretation of the Supreme People's Court Concerning the Application of Laws in the Trial of Civil Disputes over Copyright

was adopted at the 1246th Session of the Judicial Committee of the Supreme People's Court on October 12, 2002. Docket No. 31 [2002] of Legal Interpretation is hereby promulgated to correctly trial the cases of civil dispute over copyright, some issues concerning the application of laws are hereby interpreted on the basis of provisions including the [General Principles of the Civil Law of the People's Republic of China](#), the [Contract Law of the People's Republic of China](#), the [Law of the People's Republic of China](#) and the [Civil Procedure Law of the People's Republic of China](#).

The people's courts accept the civil cases of dispute over copyright as mentioned below:

Cases of dispute over the possession, infringement and contract of copyright or copyright-related rights and interests;

Cases of plead for stopping the infringement upon copyright or copyright-related rights and interests before the institution of an action or for attaching or evidences before the institution of an action;

Cases of dispute over copyright or copyright-related rights and interests.

A civil case of dispute over copyright shall be subject to the jurisdiction of the intermediate people's court or above.

Higher people's court may, by taking the practical situations of their respective jurisdictions into consideration, determine some of the basic-level people's court as the first-instance court for trying civil cases of dispute over copyright.

As for the acts infringing upon copyright as found out by the administrative departments of copyright, if any of the parties concerned lodges an action for the civil liabilities of the actor, such case shall be accepted by the people's court.

When filing a civil case of dispute over the infringement of copyright that has already been handled by the administrative department of copyright, the people's court shall examine the case facts in a comprehensive way.

A civil action instituted on the ground of infringing upon copyright shall be subject to the jurisdiction of the people's court where the infringing act occurred or where the infringing reproductions were stored or detained and sealed up or where the defendant dwells as provided for in [Article 46](#) and [47](#) of the [Copyright Law of the People's Republic of China](#).

where the infringing reproductions were stored as mentioned in the preceding paragraph refers to the place where large quantities of infringing reproductions were stored or infringing reproductions were stored or concealed for business purposes. The place of detention and sealing up refers to the place where infringing reproductions were lawfully sealed up or detained by the administrative departments of customs, copyright, administrations for industry and trade, etc.

For the joint actions instituted by several defendants of the place where different infringing acts are involved, the plaintiff may select the people's court of the place where the infringing act of either of the defendants occurred as the jurisdictional people's court. Where an action is instituted against only one of the defendants, the people's court of the place where the infringing act of the defendant shall have jurisdiction.

Where an action is instituted by an organization lawfully established for the collective management of copyright in its own name upon the written authorization of the copyright holder, the people's court shall accept.

The manuscripts, original scripts, lawful publications, copyright registration certificates, attestations issued by authentication institutions, contracts for copyright, etc. as submitted by the parties concerned may be adopted as evidences.

Natural persons, legal persons or other organizations which appear on a work or production as authors shall be deemed as the holder of copyright or other rights and interests unless there are evidences that prove the opposite.

Where any party concerned purchases infringing reproductions by ordering or on-the-spot dealing by himself or authorizing any other person, the invoices, etc. obtained thereby may be adopted as evidences.

Statements issued by any notary public, without disclosing his own identity to the party that is suspicious of infringement, concerning the evidences obtained in the ways as mentioned in the preceding paragraph or concerning the process of obtaining the evidences shall be adopted as evidences unless there are evidences that can prove the opposite.

The phrase "making known to the public" as mentioned in [Article 10](#), Item 1 of the [Copyright Law](#) refers to that a work is made to be known to the public by the holder of copyright or with the permission of the copyright holder. However, it shall not be based on the condition that the general public has not known the work.

In the case of a "work" as mentioned in [Article 15](#), Paragraph 2 of the [Copyright Law](#), if the copyright holder is a natural person, the provisions of Paragraph 1 of the [Copyright Law](#) shall be applicable to the term of protection thereof; while in that the copyright holder is a legal person or any other person, the provisions of [Article 21](#), Paragraph 2 of the [Copyright Law](#) shall be applicable to the term of protection thereof.

Where a dispute arises from the sequence of authorship to a work, the people's court shall handle the case according to the following principles: an agreement concerning the sequence of authorship, such agreement shall apply; if there is no agreement, the sequence of authorship may be determined according to how much labor one had paid to the creation of the work or the sequence of the content of the work or the number and sequence of the stroke order of the characters for the surnames of the authors, etc.

According to [Article 17](#) of the [Copyright Law](#) which provides that the copyright to an entrusted work, the trustor has the right to use the work within the scope of use. If both parties fail to agree upon the scope of use of the work, the trustor may gratuitously use the work within the scope of the specified use or creating the work.

Apart from the situation as provided in [Article 11](#), Item 3 of the [Copyright Law](#), works such as reports and speeches which are written by other people, finalized and delivered in one's own name, the copyright shall be held by the person who makes the report or speech. The copyright holder may pay remuneration to the writers.

Where the parties concerned agree to create an autobiographical work on the basis of the experiences of a particular person and if they have co-

agreement concerning the possession of copyright, such agreement shall apply. If they have not come to any agreement, the copyright thereof shall be held by the original person. If the writer of the work has made efforts to the work, the copyright holder may pay appropriate remunerations to him.

With regards to a work created by different authors on the basis of a same topic, the authors shall enjoy independent copyright if the expression is completed independently and is creative.

The purely factual news which is disseminated through mass media are the news of current affairs as provided in [Article 5](#), Item 2 of the [Copyright Law](#). Disseminating the news of current affairs as written by other persons, the source of the news shall be marked.

The word "reprint" as mentioned in [Article 32](#), Paragraph 2 of the [Copyright Law](#) refers to the publishing of works by a newspaper or magazine that have been published by other newspapers or magazines. Any one who reprints a work without marking the authors or the newspaper or magazine that first published the work shall assume the civil liabilities of clearing up ill effects and making apologies, etc.

The term "artistic work in out-door public places" as mentioned in [Article 22](#), Item 10 of the [Copyright Law](#) refers to such artistic works as sculptures, calligraphy works, etc. that are located or displayed in out-door places for social public activities.

Any one who copies, paints, takes photographs or video tapes of the artistic works as mentioned in the preceding paragraph may further use his products in the same ways and scopes without constituting an infringement.

Publishers and producers shall bear the burden of proof concerning the lawful authorization of its publication or production. Issuers and lessors shall bear the burden of proof concerning the lawful source of the reproductions issued or leased. Any one who fails to produce evidences shall assume the legal liability in [Articles 46](#) and [47](#) of the [Copyright Law](#).

In case any publication has infringed upon the copyright of any other person, the publisher shall assume civil liabilities of compensation according to the provisions of [Articles 46](#) and [47](#) of the [Copyright Law](#) and [Articles 117](#) and [118](#) of the [General Principles of the Civil Law of the People's Republic of China](#).

A publisher who fails to give reasonable care to the authorization of the publication or the source or authorship of the contributions or the content of the publication it has edited shall be responsible for making compensations according to the provisions of [Article 48](#) of the [Copyright Law](#).

If a publisher has given reasonable care and the copyright holder cannot produce evidences to prove that the publisher should have known that the publication constituted an infringement, it shall, according to the provisions of [Article 117](#), Paragraph 1 of the [General Principles of the Civil Law of the People's Republic of China](#), assume the civil liabilities of stopping the infringement and refunding the profits gained from the infringement.

A publisher shall bear the burden of proof to prove that it has given reasonable care.

A user of computer software who uses the software without permission or beyond the permitted scope of business use shall assume the civil liability in [Article 47](#), Item 1 of the [Copyright Law](#), [Article 24](#), Item 1 of the [Regulation on the Protection of Computer Software](#).

Where a contract for the transfer of copyright fails to be made in written form, the people's court shall examine and determine whether the contract is valid according to the provisions of [Articles 36](#) and [37](#) of the [Contract Law](#).

Where any publisher who loses the work of delivered by the holder of copyright for publication so that the publication contract cannot be performed shall assume the civil liabilities as provided in [Article 53](#) of the [Copyright Law](#), [Article 117](#) of the [General Principles of the Civil Law](#) and [Article 122](#) of the [Contract Law](#).

The actual losses of the copyright holder may be computed according to the arithmetic product of the reduced sales volume of the reproductions due to the infringement or the sales volume of the infringing reproductions and the unit profits of the reproductions of the copyright holder. If it is difficult to determine the actual losses of the copyright holder, it shall be the market sales volume of the infringing reproductions.

Where it is impossible to determine the actual losses of the copyright holder or the illegal gains of the infringer, the people's court may determine the actual losses of the copyright holder or the illegal gains of the infringer according to the provisions of [Article 117](#) of the [General Principles of the Civil Law](#).

f compensation upon the request of the parties concerned or by applying the provisions of [Article 48](#), Paragraph 2 of the [Copyright Law](#) upon its o

etermining the amount of compensation, the people's court shall take into comprehensive consideration of the type of the work, reasonable royalty  
sequences of the infringing act, etc.

≥ parties concerned have come into any agreement concerning the amount of compensation according to the provisions of Paragraph 1 of the pre  
ch agreement shall apply.

The term “reasonable expenses for stopping infringing acts” as mentioned in [Article 48](#), Paragraph 1 of the [Copyright Law](#) shall include the reaso  
of the right holder or the agent entrusted thereby in looking into the infringing acts and obtaining evidences.

le's courts may, according to the allegations of the parties concerned and the specific situations of the cases concerned, include the lawyer's fees  
o the provisions of relevant departments of the state into the range of compensations.

As for the cases instituted on the ground of infringing upon one's copyright that has happened before the Decision (of the Standing Committee of  
Congress) on Amending the [Copyright Law](#) takes effect and the people's court makes the judgment after the Decision has taken effect, the provis  
of the [Copyright Law](#) may be applied by reference.

The statute of limitations for the infringement of copyright is two years, starting from the day when the copyright holder knows or should have kno  
ing act. Where the right holder institutes an action after two years, and if the infringing act still exists when the action is instituted and is within the  
ht protection, the people's court shall rule that the defendant shall stop the infringing act, and the amount of compensations for damages shall be  
l till two years further as of the day when the right holder institutes the action with the people's court.

As for the infringing acts as provided in [Article 47](#) of the [Copyright Law](#), the people's court may, apart from imposing civil liabilities upon the actor  
ng of the parties concerned, impose civil sanctions to the actors according to the provisions of [Article 134](#), Paragraph of the [General Principles of](#)  
amount of fines to be imposed upon may be determined by referring to the relevant provisions of the [Regulation of the People's Republic of Chin](#)  
[ting the Copyright Law](#).

e administrative department of copyright has already imposed administrative punishments to a same infringing act, the people's court shall not im  
civil sanctions.

As for the acts of infringing upon copyright prior to October 27, 2001, if the parties concerned pleads to the people's court for ordering the actors  
acts or for taking measures of attachment of evidences, the provisions of [Articles 49](#) and [50](#) of the [Copyright Law](#) shall apply.

≥ people's court takes the measures before the institution of an action, it shall handle the case by referring to the provisions of the [Interpretation o](#)  
[People's Court Concerning the Application of Laws for Stopping Acts of Infringing upon Registered Trademark Rights and for Attachment of Evid](#)  
[Action Is Instituted](#).

Unless there are other provisions in the present Interpretation, the cases of civil dispute over copyright as accepted by the people's courts after C  
for the acts that happened prior to October 27, 2001, the provisions of [Copyright Law](#) prior to its amendment shall apply, while for the acts that ha  
nt to the said date, the provisions of the amended [Copyright Law](#) shall apply. As for the civil acts that happened prior to the said but continues aft  
provisions of the amended [Copyright Law](#) shall apply.

Where any of the relevant provisions promulgated in the past is inconsistent with the present Interpretation, the present Interpretation shall preva

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