

**THE 2018 WANHUIDA-BFSU CUP**

**INTELLECTUAL PROPERTY**

**MOOT COURT COMPETITION**

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**P Network Company**

**as petitioner**

**v.**

**S Network Company**

**as respondent**

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**TEAM No. 1813-P**

**BRIEF FOR PETITIONER**

## CONTENTS

<b>I. TABLE OF AUTHORITIES .....</b>	<b>I</b>
<b>A. LAW OF PEOPLE’S REPUBLIC OF CHINA .....</b>	<b>I</b>
<b>B. INTERNATIONAL CONVENTION &amp; TREATIES .....</b>	<b>II</b>
<b>C. CASES.....</b>	<b>II</b>
<b>D. THESIS .....</b>	<b>V</b>
<b>E. MONGRAPHS .....</b>	<b>VI</b>
<b>II. ABBREVIATION .....</b>	<b>VIII</b>
<b>III. STATEMENTS OF THE FACTS .....</b>	<b>1</b>
<b>IV. STATEMENT OF THE ISSUES .....</b>	<b>1</b>
<b>V. STATEMENT OF THE CLAIMS .....</b>	<b>2</b>
<b>VI. PLEADINGS.....</b>	<b>2</b>
<b>A. P COMPANY DID NOT INFRINGE S COMPANY’S COPYRIGHTS.....</b>	<b>2</b>
1. <i>The sports events program cannot constitute a work .....</i>	<i>2</i>
a. The sports events programs cannot be deemed as cinematographic works.....	<i>2</i>
i. The sports events program cannot satisfy the element of originality.....	<i>3</i>
ii. The sports events program cannot satisfy the element of fixation.....	<i>3</i>
b. The sports events programs cannot constitute compilation works ....	<i>4</i>
c. The sports events programs cannot be characterized as other works	<i>4</i>
2. <i>S Company did not obtain a legitimate copyright authorization to broadcast the videos exclusively.....</i>	<i>5</i>
a. CFA could not be the original copyright owner.....	<i>5</i>
b. No commission contract agrees upon CFA’ copyright between CFA and C TV.....	<i>6</i>
3. <i>Even if S Company enjoyed the exclusive copyright, P Company did not violate any rights of S Company. ....</i>	<i>6</i>
a. P Company did not violate the rights of broadcast. ....	<i>6</i>
b. P Company did not violate the right of information network dissemination .....	<i>6</i>
c. P Company did not violate “other right” of S Company .....	<i>7</i>
i. P Company provided links as pure network service .....	<i>7</i>
ii. The miscellaneous provision cannot be applied arbitrarily .....	<i>8</i>
<b>B. P COMPANY’S BROADCASTING DID NOT INFRINGE S COMPANY’S NEIGHBORING RIGHTS OF VIDEO RECORDINGS.....</b>	<b>9</b>
1. <i>S Company was not the appropriate subject of such rights.....</i>	<i>9</i>
2. <i>P Company did not infringe such rights .....</i>	<i>10</i>
<b>C. P COMPANY DID NOT CONDUCT THE ACT OF UNFAIR</b>	

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<b>COMPETITION AGAINST S COMPANY</b> .....	<b>10</b>
1. <i>The issue of unfair competition goes beyond the examination scope of this Court</i> .....	10
2. <i>Even if the Court insists on its jurisdiction over such issue, P Company did not violate any provisions of Anti-Unfair Competition Law of the People's Republic of China [“Competition Law”]</i> .....	11
a. No violation of Article 9 prohibiting false propaganda .....	11
b. No violation of Article 2 with no substantive requirements .....	12
i. The application of Article 2 of Competition Law is incompatible with the legislative policy of Copyright Law .....	12
ii. The conduct of P Company did not satisfy the requirements of Article 2 .....	13
1) P Company did not violate the good faith principle and generally recognized business ethics .....	13
(i) The broadcast through a link did not breach the common practice in sports industry .....	14
(ii) P Company had good faith subjectively .....	14
2) P Company did not injure the legitimate interests of S Company .....	15
<b>VII. CONCLUSION</b> .....	<b>15</b>
<b>VIII. APPENDIX</b> .....	<b>16</b>

## **I. TABLE OF AUTHORITIES**

### **A. Law of People's Republic of China**

- a. Article 3(9), *Copyright Law*
- b. Article 10 (12), *Copyright Law*
- c. Article 10(17), *Copyright Law*
- d. Article 11(3), *Copyright Law*
- e. Article 14, *Copyright Law*
- f. Article 16, *Copyright Law*
- g. Article 15(1), *Copyright Law*
- h. Article 42(1), *Copyright Law*.
- i. Article 46, *Copyright Law*
- j. Article 2(1)(2), *Anti-Unfair Competition Law*
- k. Article 9, *Anti-Unfair Competition Law*
- l. Article 123, *General Principals of Civil Law of People's Republic of China*
- m. Article 168, *Civil Procedure Law of People's Republic of China*
- n. Article 6 *Tort Liability Law of People's Republic of China*.
- o. Article 8, *Tort Liability Law of People's Republic of China*.
- p. Article 2, *Regulation for the Implementation of Copyright Law*
- q. Article 4(11), *Regulation for the Implementation of Copyright Law*
- r. Article 5(3), *Regulation for the Implementation of Copyright Law*
- s. Article 5(5), *Regulation for the Implementation of Copyright Law*

- t. Article 26, *Regulation on the Protection of the Right to Network Dissemination of Information*
- u. Article 323, *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of PRC*
- v. Article 7(2), *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Civil Dispute of Copyright*
- w. Article 24, *The Supreme People's Court's Opinions on Giving Full Play to the Role of Judicial Function of Intellectual Property, to Promote Great Development and Prosperity of Socialist Culture, and Promote Economically and Coordinated Development Independent and Coordinated Development of Economy*
- x. Article 4.1, *Guidelines for the Trial of Copyright Infringement Cases issued by Beijing Higher People's Court*
- y. Article 5.10, *Guidelines for the Trial of Copyright Infringement Cases issued by Beijing Higher People's Court*
- z. Article 5.18, *Guidelines for the Trial of Copyright Infringement Cases issued by Beijing Higher People's Court*
- aa. Article 23 and 26, *Regulation on the Protection of the Right to Communicate Works to the Public over Information Networks*

## **B. International conventions & treaties**

- a. Article 2, *Berne Convention for the Protection of Literary and Artistic Works (1971 Paris version)*
- b. Article 11(2), *Berne Convention for the Protection of Literary and Artistic Works (1971 Paris version)*
- c. Article 10bis(2), *Paris Convention for the Protection of Industrial Property*

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- Higher People's Court. (No.45 Guiding Case of Supreme People's Court of China)
- b. *Chengdu Tongde Fuhechuan Peach Slices Foodstuff Co., Ltd v. Chongqing Hechuan District Tongdefu Peach Slices Co., Ltd.* (2013) Civil Judgment No.292 from Chongqing Higher People's Court. (No.58 Guiding Case of Supreme People's Court of China)
  - c. *Jiaduobao(China) Beverage Co., Ltd v. Guangzhou Pharmaceutical Holdings Co., Ltd.* (2012) Civil Ruling No.2802 from Supreme People's Court of China.
  - d. *Tianjin Yuanwang Technology Co., Ltd v. Tianjin Gezhi Enterprises Management Consulting Co., Ltd.* (2011) Civil Judgment No.40 from Supreme People's Court of China.
  - e. *Shandong Province Food Import and Export Corporation v. Qingdao Shengke Dacheng Trade Co., Ltd.* (2009) Civil Ruling No.1065 from the Supreme People's Court of China.
  - f. *Longyan Rongshun International Hotel Co., Ltd v. Beijing Birdy Art Spread Co., Ltd.* (2012) Civil Judgment No.49 from Fujian Higher People's Court.
  - g. *Fujian Longyan Rongshun International Hotel Co., Ltd. v. Beijing Birdy Art Spread Limited Duty Company* (2012) Civil Judgment No.49 from Fujian Higher People's Court.
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  - j. *Beijing Chaoyuesichuang Technology Co., Ltd. v. America PNY Technologies Inc.* (2008) Civil Judgment No.1172 from Beijing Higher People's Court.
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  - l. *Ningbo Jiangdong Pattern Year Entertainment Co., Ltd. v. Guangzhou New Era Video Co., Ltd.* (2005) Civil Judgment No.89 from Zhejiang Higher People's Court.

- m. *Beijing Tianying Kyushu Network Technology Co., Ltd. v. Beijing Sina Internet Information Service Co., Ltd.* (2018), Civil Judgment No.1818 from Beijing Intermediate People's Court.
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- p. *Beijing Qixin Yiwei Information Technology Co., Ltd v. Baidu Internet Information Technology Co., Ltd.* (2017) Civil Judgment No.1814 from Beijing Intellectual Property Court.
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- w. *Beijing Baidu Internet Information Technology Co., Ltd v. Epson (China) Co., Ltd.* (2015) Civil Judgment No.1753 from Beijing Intellectual Property Court.
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- c. Zhang Yuchao, Cao Jingcheng, *Study on the Legal Attributes of Sports Event Broadcast Right*, *Journal of the Capital University of Physical Education and Sports*, Issue 11, 2014, Page 4.
- d. Yuan Bo, *The Judicial Protection Path of the Broadcast Images from the Competition of Ifeng v. Sina*, online < [www.zhichanli.com](http://www.zhichanli.com) >, Last visit: 2018-05-10.
- e. Lu Haijun, *On the Status of Copyright Law of Sports Events Program*, *Journal of Social Sciences*, Issue 2, 2015, Page 2.
- f. Tang Chenmin, *Analysis on Reconstruction of “Information Network Communication Right” and “Broadcast Right” in the Copyright Law—From the Perspective of Non-interactive Network Communication*, *Journal of Henan Polytechnic University*, Issue 1, 2012, Page 3.
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- i. Cui Guobin, *A Critic on Judge-made law in Intellectual Property*, *China Legal Science*, Issue 1, 2006, Pages 2, 162.
- j. Li Yang, *Doctrine of Numerus of Intellectual Property Right and Its Application*, *Chinese Journal of Law*, Issue 2, 2006, Page 7.
- k. Su Zhiyu, *Regulation for the Online Rebroadcasting in the View of the Application of the Copyright Law*, *Intellectual Property*, Issue 8, 2016, Page 3.

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- b. Song Haiyan, *New copyright issues in China*, The Commercial Press, 2011, Page 123.

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- c. Wang Qian, *Guide to Intellectual Property Law (4th edition)*, China Renmin University Press, 2014, Page 208.
  - d. Kong Xiangjun, *Trademark and Anti-Unfair Competition Law-PrincIntellectual Propertytypes and Cases*, Law Press China, 2009, Page 41.
  - e. Wang Qian, *Research on Copyright Protection in Network Environment*, Law Press, 2011, Page 127.

**II. ABBREVIATION**

<b>Abbreviation</b>	<b>Full Name</b>
P Company	P Network Company
S Company	S Network Company
L Company	L Network Company
CFA	Chinese Football Association
C TV	C TV station
SLC	China Super League Limited Liability Company
DAC	Dong'ao Sports Management Company
The SL	China Football Association Super League
SPC	Supreme People's Court

BIPC	Beijing Intellectual Property Court
IP Court	Intellectual Property Court
HPC	High People's Court
IPC	Intermediate People's Court
DC	District People's Court

### **III. STATEMENTS OF THE FACTS**

In March 2012, S Company got the authorization from SLC, the agent of CFA, that it could enjoy exclusive rights of communicating all the Super League's tournaments and videos in the portal websites from March 1, 2012 to March 1, 2014.

In August 2013, P Company labelled and provided links of the Super League's videos to the website under subdomain of L Network. The source of the tournaments was determined and transmitted out by L Network, who had the control power over the broadcasting of relevant videos. There also existed "L Sports" returning entrance on the relevant broadcasting pages.

All of the relevant live programs broadcast by both parties were produced by C TV. And its logo appeared on the broadcast pages. Moreover, there was no copyright agreement between C TV and SLC, S Company, P Company, L Company regarding the programs.

In March 2015, S Company filed a lawsuit against P Company, claiming that P Company violated *Copyright Law* by rebroadcasting the Super League's live programs and constituted unfair competition. The court of first instance supported its claim of infringement of *Copyright Law* and rejected the claim of unfair competition.

P Company refused to accept the judgment and appealed to this Court, petitioning the Court to revoke the judgment of the trial of the first instance and amend the judgment to non-infringement.

### **IV. STATEMENT OF THE ISSUES**

- A. Whether the screens formed by recording the sports tournaments could be identified as works.
- B. Whether S Company was the appropriate subject of the case.
- C. Whether the live broadcast of P Company violated the copyright of S Company.
- D. Whether P Company's rebroadcasting infringed S Company's neighboring rights of video recordings.
- E. Whether P Company conducted the act of unfair competition against S Company.

## V. STATEMENT OF THE CLAIMS

P Company requests the Court to revoke the original judgment and rule that it did not constitute infringement of copyright and unfair competition against S Company.

## VI. PLEADINGS

Petitioner claims that the application of law and determination of facts of the original judgement are incorrect. Pursuant to Article 164 and 170 of *The Civil Procedure Law of the People's Republic of China* [*"Civil Procedure Law"*], P Company appealed to this Court, petitioning the Court to revoke the judgement of the trial of the first instance and amend the judgment to non-infringement.<sup>1</sup>

### **A. P Company did not infringe S Company's copyrights**

Petitioner appeals to this honorable Court that P Company has never infringed S Company's relevant rights for the following reasons: 1) the alleged sports events program cannot be deemed as a work prescribed in *Copyright Law of People's Republic China* [*"Copyright Law"*]; 2) S Company has no standing to charge P Company due to the absence of its copyright ownership; 3) even if S Company was the lawful copyright owner of such sports program, P Company still did not violate any rights of S Company.

#### **1. The sports events program cannot constitute a work**

Respondent may claim the sports events programs constitute works created by virtue of an analogous method of film production [*"cinematographic works"*], compilation works or other works which should be protected by *Copyright Law*. However, on the basis of Article 2 of *Regulation for the Implementation of Copyright Law* [*Regulation*],<sup>2</sup> the alleged programs cannot be regarded as any works in the present case. The reasons will be illustrated as follows:

##### **a. The sports events programs cannot be deemed as cinematographic works**

Pursuant to Article 4(11) of *Regulation*, cinematography works shall satisfy two elements: (1) high degree of originality; and (2) fixation.<sup>3</sup> However, both of these

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<sup>1</sup> Article 164 and 170, *Civil Procedure Law of People's Republic of China* [*Civil Procedure Law*].

<sup>2</sup> Article 2, *Regulation for the Implementation of Copyright Law*. [*Regulation*] The term "works" as referred to in the Copyright Law means intellectual creations with originality in the literary, artistic or scientific domain, insofar as they can be reproduced in a tangible form.

<sup>3</sup> Article 4(11), *Regulation*.

elements are unsatisfied in the present case.

**i. The sports events program cannot satisfy the element of originality**

Although the standard of originality has not been clearly defined by any laws or regulations, in respect of judicial practice, most courts held that cinematographic works require high degree of originality.<sup>4</sup> The BIPC held that cinematographic works demand high degree of originality in the case *CCTV International Network Co., Ltd. v. Baofeng Technology Co., Ltd.*<sup>5</sup> To be more specific, the originality in cinematographic works is generally interpreted as plenty of original choices or arrangements of authors which reflect its characteristic.<sup>6</sup> However, the alleged programs cannot reach such standard.

The court of first instance determined that different location settings, screen selections and cutting reflect the originality of the live programs. However, this decision was incorrect.

Specifically, many factors, such as the unified production guidance for public signals of Super League events,<sup>7</sup> the purpose of rebroadcasting and the expectation of the audience, will greatly limit the freedom to make personalized choice. Even if the rebroadcast group make some choices under such limitations, the filming techniques commonly used cannot reflect their characteristics. For example, during two-hour live broadcasting, most of the time is for factually recording and presenting the sports tournaments. Moreover, the time and space left for rebroadcast group to make personal and unique selection is so limited that cannot reflect their characteristics.<sup>8</sup>

**To sum up**, the sports events programs cannot reflect the characteristics and original choices of the recording group, thus are not in conformity to originality that cinematographic works must possess.

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<sup>4</sup> Yuan Bo, *The Judicial Protection Path of the Broadcast Images from the Competition of Ifeng v. Sina*, online < [www.zhichanli.com](http://www.zhichanli.com) >, Last visit: 2018-05-10; *Qilin Building Culture & Entertainment Co., Ltd. v. Zhengdong Record Co., Ltd.* (2005) Civil Judgment No.98 from Shanghai HPC.

<sup>5</sup> *CCTV International Network Co., Ltd. v. Baofeng Technology Co., Ltd.* (2018) Civil Judgment No.1055 from BIPC.

<sup>6</sup> *Fujian Longyan Rongshun International Hotel Co., Ltd. v. Beijing Birdy Art Spread Limited Duty Company* (2012) Civil Judgment No.49 from Fujian HPC; *Ningbo Jiangdong Pattern Year Entertainment Co., Ltd. v. Guangzhou New Era Video Co., Ltd.* (2005) Civil Judgment No.89 from Zhejiang HPC; *China Audiovisual Copyright Collective Management Association v. Shantou Chenghai District Dining Bar* (2016) Civil Judgment No.349388 from Shantou IPC.

<sup>7</sup> 2013 Chinese Football Association Super League Tournament TV Broadcast for Public Signal Production Manuals; 2014 Chinese Football Association Super League Tournament TV Broadcast for Public Signal Production Manuals.

<sup>8</sup> *CCTV International Network Co., Ltd. v. Shijilong Information Internet Co., Ltd.* (2010) Civil Judgment No.196 from Guangzhou IPC.

**ii. The sports events program cannot satisfy the element of fixation**

In light of Article 4(11) of *Regulation*, cinematographic works shall be fixed on certain materials.<sup>9</sup> *Berne Convention for the Protection of Literary and Artistic Works* [“*Berne Convention*”] that *Copyright Law* is originated from, also prescribes that fixation is essential for cinematographic works.<sup>10</sup>

In the case *Ifeng v. Sina* adjudicated two months ago, this Court held that the characteristic of fixation alters along with the process of live broadcast.<sup>11</sup> The overall programs has not yet been stably fixed when the broadcast is going on. Only after the accomplishment of the broadcast, can it be assumed that sports events program has been fixed.

In the present case, P Company also live broadcast the sports events program.<sup>12</sup> During the broadcast, the programs have not yet been fixed.<sup>13</sup>

In conclusion, live broadcast of the sports events program cannot accord with the elements of higher degree of originality and fixation concerning cinematographic works. Therefore, it cannot be deemed as cinematographic works.

**b. The sports events programs cannot constitute compilation works**

Under Article 14 of *Copyright Law*, in a compilation work, the selection or arrangement of the materials shall reflect the original creation.<sup>14</sup> In the present case, the alleged programs were the combination of screens. Neither the selection of content nor the arrangement of scenes constituted original creation in the present case. If such programs can constitute compilation works, the process of any mechanical recordings will be considered as a compilation of photographic works, which lead to meaningless of the definition of video recordings. Therefore, the alleged programs cannot be deemed as a compilation works.

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<sup>9</sup> Article 4(11), *Regulation*.

<sup>10</sup> Article 2, *Berne Convention for the Protection of Literary and Artistic Works (1971 Paris version)* [*Berne Convention*].

<sup>11</sup> *Beijing Tianying Kyushu Network Technology Co., Ltd. v. Beijing Sina Internet Information Service Co., Ltd.* (2018), Civil Judgment No.1818 from Beijing IPC. [*Ifeng v. Sina*]

<sup>12</sup> Moot problem, Paragraph 7, Line 2.

<sup>13</sup> *IFeng v. Sina*.

<sup>14</sup> Article 14, *Copyright Law*.



**c. The sports events programs cannot be characterized as other works**

Article 3(9) of *Copyright Law* limits the application of “other works” with the premise of “laws and administrative regulations”.<sup>15</sup> Since no laws or administrative regulations clearly characterize the sports events programs as works, they cannot be considered as “other works” to be protected.

**2. S Company did not obtain a legitimate copyright authorization to broadcast the videos exclusively**

Respondent argued in the first trial that S Company got an authorization of exclusive copyright originating from CFA, who was regulated as the original owner in Constitution of FIFA and Charter of CFA. This claim was upheld by the court. However, even if copyright exists in the disputed programs, CFA was not the lawful owner pursuant to *Copyright Law*.

**a. CFA could not be the original copyright owner**

Copyright is an absolute right and statutory right that must be defined strictly in accordance with laws rather than private charter.<sup>16</sup> Unless explicitly recognized by international treaties or domestic law,<sup>17</sup> CFA cannot be empowered by its charter as original owner of the copyright.

**Firstly**, if the court identifies the alleged programs as cinematographic works, the copyright shall be enjoyed by the producer under Article 15(1) of *Copyright Law*.<sup>18</sup> The name on a work is the symbol of the authorship, in the absence of any contrary proof.<sup>19</sup> In the present case, CFA did not show its identity on the sports events program. Rather, it is C TV who affixed its logo to the broadcast pages.<sup>20</sup> Therefore, even if CFA was the organizer of the sports events and had a lot of investment in it, as CFA never

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<sup>15</sup> Hu Kangsheng, *Interpretation of the Copyright of the People's Republic of China*, Law Press, Issue 1, 2002, Page 21.

<sup>16</sup> Article 123, *General Principals of Civil Law*; Cui Guobin, *Criticism on Judge-made law in Intellectual Property*, China Legal Science, Issue 1, 2006.

<sup>17</sup> Cong Lixian, *Analysis On the Copyright Problem of Live Broadcast of Sports Events*, China Copyright, Issue 4, 2015; Zhang Yuchao, Cao Jingcheng, *Study on the Legal Attributes of Sports Event Broadcast Right*, Journal of the Capital University of Physical Education and Sports, Issue 11, 2014.

<sup>18</sup> Article 15(1), *Copyright Law*.

<sup>19</sup> Article 7(2), *Interpretation of the Supreme People's Court on Several Issues Concerning the Application of Law in the Trial of Cases of Civil Dispute of Copyright*; Article 11(3), *Copyright Law*.

<sup>20</sup> Moot problem, Paragraph 11, Line 7-8.

declared its authorship on the programs, which can be easily achieved if it would like to, CFA could not be considered as the copyright owner of the programs.

**Secondly**, if the court characterizes the programs as other types of works besides cinematographic work, the author of a work is the citizen who has created the work.<sup>21</sup> Since the live programs were produced by C TV station,<sup>22</sup> with no evidence to prove that CFA engaged in actual creation, the author could not be CFA.

In conclusion, CFA did not enjoy the copyright in regardless of the specific type of the alleged programs.

**b. No commission contract agrees upon CFA' copyright between CFA and C TV**

Respondent may claim that CFA can be agreed as the owner of copyright when the disputed programs constitute commissioned works. Under Article 17 of *Copyright Law*, in the absence of a commissioned contract or an explicit agreement in the contract, the copyright shall belong to the commissioned party.<sup>23</sup> In the present case, even if CFA delegated C TV to produce the program, since there was no agreement agreeing upon the ownership of copyright between C TV and SLC,<sup>24</sup> the agent of CFA,<sup>25</sup> the copyright shall still belong to C TV.

In conclusion, CFA were not the copyright owner of the alleged program. Due to the invalid authorization from SLC, S Company did not enjoy the copyright either.

**3. Even if S Company enjoyed the exclusive copyright, P Company did not violate any rights of S Company.**

**a. P Company did not violate the rights of broadcast.**

The concept and definition of broadcasting rights under Article 10(12) of *Copyright Law* are also specifically stipulated in Article 11(2) of *Berne Convention*.<sup>26</sup> Such right only regulates following conducts: 1) broadcast works by wireless means; 2) disseminate or rebroadcast broadcast works by wired dissemination; and 3) disseminate

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<sup>21</sup> Article 11(1), *Copyright Law*.

<sup>22</sup> Moot problem, Paragraph 7, Line 5.

<sup>23</sup> Article 17, *Copyright Law*.

<sup>24</sup> Moot problem, Paragraph 7, Line 6-9.

<sup>25</sup> Moot problem, Paragraph 3, Line 2-3.

<sup>26</sup> Article 11(2), *Berne Convention*.

broadcast works by audio amplifier or other similar instruments.<sup>27</sup> It means providing works merely by wired dissemination is not regulated by such right.

Since P Company provided videos of Super League online,<sup>28</sup> which should be deemed as the wired dissemination, the conduct did not fall into the scope of broadcasting right.<sup>29</sup>

**b. P Company did not violate the right of information network dissemination**

According to Article 10 (12) of *Copyright Law*, the right of information network dissemination only adjusts interactive communication, which means that the public can obtain the works according to their selected time or place.<sup>30</sup>

In the present case, the live broadcast cannot fall within the ambit of such right because the users can only get access to the program at a time specified by the network service provider instead of selected by themselves.<sup>31</sup> Therefore, the alleged live broadcast did not violate the right of information network dissemination of S Company.

**c. P Company did not violate “other right” of S Company**

Even if the respondent claim that P Company violated the “other right” of S Company, the claim shall not be supported by the Court.

**i. P Company provided links as pure network service**

**Firstly**, the court of first instance did not ascertain the server source of the disputed broadcast.<sup>32</sup> Without confirming that P uploaded the alleged programs to its servers, the conduct of P Company cannot be regarded as direct infringement.<sup>33</sup> Under Article

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<sup>27</sup> Article 10(12), *Copyright Law*; Article 5(10), *Guidelines for the Trial of Copyright Infringement Cases[Guidelines]* issued by Beijing HPC; *Jiaying Hua Digital TV Communication Co., Ltd. v. Heilongjiang Television Station (2012)* Civil Judgment No.7 from Jiaying IPC.

<sup>28</sup> Moot problem, paragraph 6, Line 1-4.

<sup>29</sup> Tang Chenmin, *Analysis on Reconstruction of “Information Network Communication Right” and “Broadcast Right” in the Copyright Law—From the Perspective of Non-interactive Network Communication*, *Journal of Henan Polytechnic University*, Issue 1, 2012, Page 3.

<sup>30</sup> Article 10 (12), *Copyright Law*.

<sup>31</sup> *CCTV v. Hua Shu Company (2015)* Civil Judgment No.27389 from Beijing Haidian DPC; Su Zhipu, *Regulation for the Online Rebroadcasting in the View of the Application of the Copyright Law*, *Intellectual Property*, Issue 8, 2016, Page 3.

<sup>32</sup> Moot problem, paragraph 15, Line 4-5.

<sup>33</sup> *Beijing Yi Lian Weida Technology Co., Ltd. v. Tencent computer system Co., Ltd (2016)* Civil Judgement No.143 from BIPC; *Guangzhou electric Python Information Technology Co., Ltd. v. Oceanic Interaction (Beijing) Culture Co., Ltd. (2016)* Civil Judgement No.979 from BIPC.

23 of *Regulation on the Protection of the Right to Communicate Works to the Public over Information Networks* [“*Networks Regulation*”], only if P Company knew or should have known that the linked program has infringed upon other's rights, it shall bear liability for joint infringement.<sup>34</sup>

**Secondly**, the court ascertained that P Company provided the alleged program through links.<sup>35</sup> From the relevant websites whose domain is named after L Network and the entrance status, the link can be presumed as a jump link.<sup>36</sup> Since the programs were broadcast under the subdomain controlled by L Network, where the programs are provided legally, P Company did not broadcast or provide the copy of the programs in portal website.

**To sum up**, the program is not stored on the P Company's server but temporarily generated on the computers of users themselves. The conduct of simply providing links by P Company should not be considered as an infringement. The above argument is supported by some judicial cases where the courts found that the jump links only constitute an pure network service.<sup>37</sup>

## ii. The miscellaneous provision cannot be applied arbitrarily<sup>38</sup>

The Respondent may claim that the conduct of P Company can fall into the scope of “any other rights a copyright owner is entitled to enjoy” granted in Article 10, paragraph 1(17) of *Copyright Law*.<sup>39</sup> However, based on statutory copyright principle, many scholars support that when *Copyright Law* has already provided 16 specific rights to the copyright owner, the miscellaneous provision shall be applied cautiously and adapt a strict interpretation in judicial practice.<sup>40</sup>

In the case *CCTV v. BAIDU*, Beijing First IPC found that the application of miscellaneous provision depends on whether alleged continuing infringement will lead

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<sup>34</sup> Article 23, *Regulation on the Protection of the Right to Communicate Works to the Public over Information Networks*.

<sup>35</sup> Moot problem, paragraph 4, Line 4-5.

<sup>36</sup> Moot problem, paragraph 13, Line 1-3.

<sup>37</sup> *Shanghai Shichang Information Technology Co., Ltd. v. CCTV International Network Co., Ltd.* (2015) Civil Judgement No.326 from Shanghai IP Court; *Liu Jingsheng v. SOHU Co., Ltd.* (2009) Civil Judgment No.128 from Beijing Second IPC.

<sup>38</sup> Wang Qian, *Research on Copyright Protection in Network Environment*, Law Press, 2011, Page 127: Since the miscellaneous provision was stipulated in Copyright Law and of, courts have only applied such provision in two cases from 2001 to 2014.

<sup>39</sup> Article 10(17), *Copyright Law*.

<sup>40</sup> Cui Guobin, *Criticism on Judge-made law in Intellectual Property*, China Legal Science, Issue 1, 2006, Page 2; Qiong Qi, *the Paradox of the Statutory and the Freedom of the Copyright*, *Tribune of Political Science and Law*, Issue 5, 2017, Page 3.

to a material imbalance among the interests of the creator, disseminator and the public.<sup>41</sup> This standard is also advanced by Beijing HPC.<sup>42</sup> As aforesaid, the program was broadcast under L Network and all the website traffic will be brought to it in the area of non-portal website.<sup>43</sup> Such technical means will not damage S Company's interests in its portal website.

Hence, the conduct of P Company did not violate "any other right" of S Company.

## **B. P Company's rebroadcasting did not infringe S Company's neighboring rights of video recordings**

Distinguished from copyrights aiming at "works", the protection of "neighboring rights" is granted also by *Copyright Law* to several other types of objects including "video recordings",<sup>44</sup> whose originality is insufficient compared with cinematographic works.<sup>45</sup> Even if the disputed programs may satisfy the requirements of video recording, P Company did not violate its relevant rights.

### **1. S Company was not the appropriate subject of such rights**

Article 42(1) of *Copyright Law* expressly confers the rights of video recording to its producer,<sup>46</sup> who "first makes the video recording".<sup>47</sup> As aforementioned, the disputed live programs were produced by C TV.<sup>48</sup> Since no fact gives indication of CFA or other entities' involvement in the actual production, C TV could be characterized as the only and original producer. Without any copyright authorization from C TV,<sup>49</sup> S Company had no standing to claim the relevant rights of the programs.

The above argument is supported by the case *CCTV International Network Co., Ltd. v. Shijilong Information Internet Co., Ltd.* The Guangzhou IPC declared that

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<sup>41</sup> *CCTV International Network Co., Ltd. v. BAIDU International Network Co., Ltd.*(2013 ) Civil Judgment No.3142 from Beijing First IPC.

<sup>42</sup> Article 5(18), *Guidelines*.

<sup>43</sup> Moot Problem, Paragraph 7, Line 1-4.

<sup>44</sup> Chapter 4, *Copyright Law*.

<sup>45</sup> Article 5(3), *Regulation*; *Longyan Rongshun International Hotel Co., Ltd v. Beijing Birdy Art Spread Co., Ltd.* (2012) Civil Judgment No.49 from Fujian HPC; *Dongying Era Lianzhong Electronic Commerce Co., Ltd v. Beijing Huatu Hongyang Internet Technology Co., Ltd.* (2017) Civil Judgment No.983 from BIPC.

<sup>46</sup> Article 42(1), *Copyright Law*.

<sup>47</sup> Article 5(5), *Regulation*.

<sup>48</sup> Moot Problem, Paragraph 7, Line 8-9.

<sup>49</sup> Moot Problem, Paragraph 7, Line 7-8.

authorized by CCTV Station, the producer of football tournaments programs, the petitioner enjoyed the right of communication of information on networks concerning the video recordings.<sup>50</sup>

## **2. P Company did not infringe such rights**

Even if S Company was the owner of such rights, among all rights arising from video recordings that producer is entitled to under Article 42(1) and Article 46 of *Copyright Law*,<sup>51</sup> the right to communicate to the public through network [“the right through network”] has the most significant relationship with the present case.

Codified as specific provisions aiming at “the right of information network dissemination” under Article 10 of *Copyright Law, Networks Regulation* also treats video recordings as an object to be protected.<sup>52</sup> According to systematic interpretation, the right on network shall be interpreted consistent with the right of information network despite the different literal expressions. Namely, the right on network is only limited to the circumstance that recordings are accessible from a place and at a time individually chosen by public.<sup>53</sup>

Since the public have no access to the live broadcast at the individually selected time, the right on network is incompatible with the present case.

## **C. P Company did not conduct the act of unfair competition against S Company**

### **1. The issue of unfair competition goes beyond the examination scope of this Court**

Required by Article 168 of *Civil Procedure Law*, the ambit of appellate review shall be restricted to the claims in appeal,<sup>54</sup> with an exception when the judgement of

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<sup>50</sup> *CCTV International Network Co., Ltd. v. Shijilong Information Internet Co., Ltd.* (2010) Civil Judgment No.196 from Guangzhou IPC.

<sup>51</sup> Article 42(1), 46, *Copyright Law*.

<sup>52</sup> Article 26, *Networks Regulation*.

<sup>53</sup> Wang Qian, *Guide to Intellectual Property Law (4th edition)*, China Renmin University Press, 2014, Page 208.

<sup>54</sup> Article 168, *Civil Procedure Law*.

first instance breaches prohibitive provisions in laws or damages the state's interests, public interests or the legitimate rights and interests of other persons.<sup>55</sup>

**Firstly**, P Company appealed to the court to confirm its non-infringement,<sup>56</sup> which was only dealt with in the field of Copyright Law by the original court.<sup>57</sup> Further, no facts suggest S Company's objection to the result of original judgement. It can be concluded that the issue of unfair competition is not appealed to the Court by both parties.

**Secondly**, whether the conduct of P Company should be identified as unfair competition merely influences the interests of Respondent, S Company in the present case, rather than the state, public or any other person not involved as a party. The procedure justice cannot be prejudiced simply owing to possible benefits of particular individuals.

Accordingly, the issue of unfair competition should not be brought into the proceedings.

**2. Even if the Court insists on its jurisdiction over such issue, P Company did not violate any provisions of *Anti-Unfair Competition Law of the People's Republic of China* [*“Competition Law”*]**<sup>58</sup>

**a. No violation of Article 9 prohibiting false propaganda**

Article 9(1) of *Competition Law* obliges operators not to give false or misleading promotion by advertisement or other means on the origin, producers or any other information of their commodities.<sup>59</sup> The determination of false propaganda depends on whether the propaganda can easily make relevant public mistakenly believe some characteristics that goods or services do not actually possess.<sup>60</sup>

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<sup>55</sup> Article 323, *Interpretation of the SPC on the Application of the Civil Procedure Law of PRC* [*Interpretation of Civil Procedure Law*].

<sup>56</sup> Moot Problem, Paragraph 20, Line 3-4.

<sup>57</sup> Moot Problem, Paragraph 18, Line 3-5.

<sup>58</sup> *Anti-Unfair Competition Law of the People's Republic of China (1993 version)* [*Competition Law*]. P Company conducted the act of broadcasting in August 2013, before the implementation of *Competition Law (2017 version)*. Based on the principle of “non-retroactivity of law”, *1993 version* is applicable.

<sup>59</sup> Article 9, *Competition Law*.

<sup>60</sup> *Jiaduobao(China) Beverage Co., Ltd v. Guangzhou Pharmaceutical Holdings Co., Ltd.* (2012) Civil Ruling No.2802 from SPC; No.58 Guiding Case of SPC: *Chengdu Tongde Fuhechuan Peach Slices Foodstuff Co., Ltd v. Chongqing Hechuan District Tongdefu Peach Slices Co., Ltd.* (2013) Civil Judgement No.292 from Chongqing HPC.

In many judicial cases where network links are found misleading, the operators often use some descriptive words or labeled other operators' marks around the entrance of links, attempting to establish certain relationship between them and websites they link.<sup>61</sup>

Differently in the present case, the title of "videos of Super League" without any descriptions only served as an indication and introduction of link for users to jump to the broadcasting website.<sup>62</sup> It was too short to imply that P Company enjoyed the lawful right over the videos. Moreover, according to the domain name of website and the "L Sport" returning entrance on the broadcasting pages,<sup>63</sup> the public concerned can easily find that the videos were provided by L Network through a link rather than P Network. Both the name and content of link would not mislead relevant public to believe that P Company had certain authorization from Super League.

Consequently, P Company did not constitute misleading false propaganda against S Company.

**b. No violation of Article 2 with no substantive requirements**

**i. The application of Article 2 of Competition Law is incompatible with the legislative policy of Copyright Law**

Where the specialized law of intellectual property has exhaustive regulations, Article 2 of *Competition Law* can no longer provide additional protection in case of contravening the legislative policy of intellectual property. This argument is supported by SPC and other courts.<sup>64</sup> Since *Copyright Law* also guarantees the fair and free use of thoughts or facts in public sphere when encouraging creation, the restrictions to any use of them imposed by *Competition Law* will defeat the legislative policy of *Copyright Law*.<sup>65</sup>

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<sup>61</sup> *Fu wenjun v. Chen Xianfeng* (2009) Civil Judgement No.244 from Jiangsu HPC; *Shenzhen Hexin Automatics Co., Ltd v. Ximenzi (China) Co., Ltd.* (2009) Civil Judgement No.366 from Guangdong HPC; *Beijing Chaoyuesichuang Technology Co., Ltd. v. America PNY Technologies Inc.* (2008) Civil Judgement No.1172 from Beijing HPC.

<sup>62</sup> Moot Problem, Paragraph 6, Line 1-4.

<sup>63</sup> Moot Problem, Paragraph 14, Line 2-3, 6-7.

<sup>64</sup> Article 24, *The Supreme People's Court's Opinions on Giving Full Play to the Role of Judicial Function of Intellectual Property*; *Shandong Province Food Import and Export Corporation v. Qingdao Shengke Dacheng Trade Co., Ltd.* (2009) Civil Ruling No.1065 from the SPC [*Quota of Kelp Case*]; Article 1.4, *Guidelines*.

<sup>65</sup> Cui Guobin, *A Critic on Judge-Made Law of Intellectual Property*, China Legal Science, Issue 1, 2006, Page 162; Kong Xiangjun, *Trademark and Anti-Unfair Competition Law-Principles and Cases*, Law Press China, 2009, Page 41.



Particularly, due to lack of originality, an essential element to be governed by copyright guaranteed in *Copyright Law*, sports tournaments programs cannot be exclusively controlled by its owner. The application of Article 2 will adversely influence the public's free communication and utilization of sports tournaments, and further damage the legislations of *Copyright Law*.

In conclusion, Article 2 of *Competition Law* is not applicable to the present case.

## ii. The conduct of P Company did not satisfy the requirements of Article 2

On the grounds of Article 2(1)(2),<sup>66</sup> the Shandong HPC explicitly held in No.45 Guiding Case of the SPC that, the conduct can be determined as unfair competition only if: 1) the controversial party is an operator under *Competition Law*; 2) the operator does not follow the principle of good faith and observe generally recognized business ethics; 3) the competitive conduct damages the lawful rights and interests enjoyed by other operators.<sup>67</sup> The last two elements was not met when P broadcast the programs through a link.

### 1) P Company did not violate the good faith principle and generally recognized business ethics

Neither *Competition Law* nor other valid legal documents ever deal with the definition and relationship of these two concepts. The SPC first found in Case *Quota of Kelp* that the “good faith principle”, the fundamental principle of civil law, is embodied as “generally recognized business ethics” for the purpose of *Competition Law*. The judgement further referred “business ethics” to “the norms of conduct generally recognized and accepted by the business operators”.<sup>68</sup> Such interpretations are frequently supported by many courts<sup>69</sup> including this Court<sup>70</sup>.

The existence of business ethics can be reflected by common practice of specific industry domains on a case-by-case basis.<sup>71</sup> To determine whether an operator

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<sup>66</sup> Article 2(1)(2), *Competition Law*.

<sup>67</sup> No.45 Guiding Case of SPC: *Beijing Baidu Internet Information Technology Co., Ltd v. Qingdao Aoshang Internet Technology Co., Ltd.* (2010) Civil Judgment No.5-2 from Shandong HPC.

<sup>68</sup> *Quota of Kelp Case*.

<sup>69</sup> *Beijing Huicong Global Information Co., Ltd v. Beijing Wanwangzhicheng Technology Co., Ltd.* (2012) Civil Judgment No.12389 from Beijing First IPC.

<sup>70</sup> *Beijing Qixin Yiwei Information Technology Co., Ltd v. Baidu Internet Information Technology Co., Ltd.* (2017) Civil Judgment No.1814 from BIPC; *Beijing Xiaoming Culture Development Co., Ltd v. President Enterprises (China) Investment Co., Ltd.* (2016) Civil Judgment No.1078 from BIPC.

<sup>71</sup> Article 10bis(2), *Paris Convention for the Protection of Industrial Property*; *Quota of Kelp Case*; *Heyi Information Technology(Beijing) Co., Ltd v. Beijing Jinshan Security Software Co., Ltd.* (2014) Civil Judgment No.3283 from Beijing First IPC.

observe the business ethics, courts often consider both the objective conducts and the subjective intention of the operator.<sup>72</sup>

**(i) The broadcast through a link did not breach the common practice in sports industry**

The Respondent may assert that any operators who intend to broadcast videos of sports events must acquire the authorization from the events' governing body, CFA in the present case. As aforementioned, what P Company provided is merely a jump link, a pure network service widely accepted in the area of Internet.<sup>73</sup> The tournaments were broadcast under the subdomain of L Network,<sup>74</sup> a non-portal network authorized originating from CFA.<sup>75</sup> P Company did not broadcast the videos directly by itself in its portal website, therefore, the link it set did not breach the common practice.

**(ii) P Company had good faith subjectively**

The court of first instance noted that P Company shall held joint liability with L Company, who shall not cooperate with third parties through links.<sup>76</sup> However, according to Article 6 and 9 of *Tort Liability Law of People's Republic of China*, the liability of P Company lies on whether it has subject fault, namely, whether it knew that it committed the conduct of infringement together with L Company.<sup>77</sup> This view is also supported by this Court.<sup>78</sup>

In the present case, P Company did not conduct the piracy of broadcast with no legitimate sources maliciously. Rather, P Company collaborated with L Company under its subdomain in good faith, after examining its authorization to broadcast the videos in its own website. However, P Company did not know that it could not provide links from L Company in portal website, since the form of links was not definitely excluded from the authorization.<sup>79</sup> S Company did not fulfilled its burden

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<sup>72</sup> *Tianjin Yuanwang Technology Co., Ltd v. Tianjin Gezhi Enterprises Management Consulting Co., Ltd.* (2011) Civil Judgment No.40 from SPC; *Beijing Aiqiyi Technology Co., Ltd v. Shenzhen Juwangshi Technology Co., Ltd.* (2015) Civil Judgment No.728 from Shanghai IPC.

<sup>73</sup> *Beijing Financial City Internet Co., Ltd v. Chengdu Caizhi Software Co., Ltd.* (2000) Civil Judgment No.1221 from Beijing Second IPC.

<sup>74</sup> Moot Problem, Paragraph 13, Line 4-6.

<sup>75</sup> Moot Problem, Paragraph 5, Line 3-9.

<sup>76</sup> Moot Problem, Paragraph 15, Line 5-7.

<sup>77</sup> Article 6 and 8, *Tort Liability Law of People's Republic of China*.

<sup>78</sup> *Beijing Baidu Internet Information Technology Co., Ltd v. Epson(China) Co., Ltd.* (2015) Civil Judgment No.1753 from BIPC; *Guangdong Liansu Technology Industry Co., Ltd v. Beijing Sogou Information Service Co., Ltd.* (2016) Civil Judgment No.1753 from Guangzhou IP Court.

<sup>79</sup> Moot Problem, Paragraph 5, Line 8-9.

to prove that P Company could have access to all details of L Company's authorization agreement.

In conclusion, although the cooperation may constitute an infringement, P Company did not have the intention to do that in bad faith.

## 2) P Company did not injure the legitimate interests of S Company

The Petitioner admits that through multiple authorization, S Company does enjoy certain legitimate interests concerning the broadcast of tournaments. As the party requesting for civil remedies, S Company shall bears the burden to prove the loss of benefits resulting from the unfair behaviors.<sup>80</sup>

As aforementioned, the conduct of P Company conforms to the generally recognized business ethics. The broadcast of videos through a link was based on the authorization of L Company in its non-portal website, which did not contradict the exclusive rights of S Company in portal website. Moreover, no evidence indicates that the users' attention and website traffic of S Company was diverted by P Company.

Accordingly, P Company did not prejudice any legitimate interests of S Company.

## VII. CONCLUSION

**First**, the screens formed by recording the sports tournaments could not be identified as works prescribed in the *Copyright Law*.

**Second**, S Company got the authorization with a major flow and thus it was not the copyright owner of the programs in the field of portal website.

**Furthermore**, P Company's live broadcast did not fall into the scope of the copyright infringement. The broadcast under the control of L Company through the link did not constitute unfair competition against S Company.

**In conclusion**, P Company did not violate the copyright of S Company and constitute unfair competition.

We respectfully request the court to reverse the judgment of the Trial Court.

Respectfully Submitted,  
Attorney for the Petitioner

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<sup>80</sup> *Quota of Kelp case.*

## VIII. APPENDIX

### Laws and Regulations of People's Republic of China

#### *A. Copyright Law*

#### 《中华人民共和国著作权法》

**Article 1** This Law is enacted, in accordance with the Constitution, for the purposes of protecting the copyright of authors in their literary, artistic and scientific works and the copyright-related rights and interests, of encouraging the creation and dissemination of works which would contribute to the construction of socialist spiritual and material civilization, and of promoting the development and prosperity of the socialist culture and science.

**第 1 条** 为保护文学、艺术和科学作品作者的著作权,以及与著作权有关的权益,鼓励有益于社会主义精神文明、物质文明建设的作品的创作和传播,促进社会主义文化和科学事业的发展与繁荣,根据宪法制定本法。

**Article 2** Works of Chinese citizens, legal entities or other organizations, whether published or not, shall enjoy copyright in accordance with this Law.

**第 2 条** 中国公民、法人或者其他组织的作品,不论是否发表,依照本法享有著作权。

**Article 3** For the purposes of this Law, the term "works" includes works of literature, art, natural science, social science, engineering technology and the like which are expressed in the following forms:

- (1) written works;
- (2) oral works;
- (3) musical, dramatic, quyi', choreographic and acrobatic works;
- (4) works of fine art and architecture;
- (5) photographic works;
- (6) cinematographic works and works created by virtue of an analogous method of film production;
- (7) drawings of engineering designs, and product designs; maps, sketches and other graphic works and model works;
- (8) computer software;
- (9) other works as provided for in laws and administrative regulations.

**第 3 条** 本法所称的作品,包括以下列形式创作的文学、艺术和自然科学、社会科学、工程技术等作品:

- (一) 文字作品;

- (二) 口述作品；
- (三) 音乐、戏剧、曲艺、舞蹈、杂技艺术作品；
- (四) 美术、建筑作品；
- (五) 摄影作品；
- (六) 电影作品和以类似摄制电影的方法创作的作品；
- (七) 工程设计图、产品设计图、地图、示意图等图形作品和模型作品；
- (八) 计算机软件；
- (九) 法律、行政法规规定的其他作品。

**Article 9** The term "copyright owners" shall include:

- (1) authors;
- (2) other citizens, legal entities and other organizations enjoying copyright in accordance with this Law.

**第 9 条** 著作权人包括：

- (一) 作者；
- (二) 其他依照本法享有著作权的公民、法人或者其他组织。

**Article 10** The term "copyright" shall include the following personality rights and property rights:

- (1) the right of publication, that is, the right to decide whether to make a work available to the public;
- (2) the right of authorship, that is, the right to claim authorship and to have the author's name mentioned in connection with the work;
- (3) the right of alteration, that is, the right to alter or authorize others to alter one's work;
- (4) the right of integrity, that is, the right to protect one's work against distortion and mutilation;
- (5) the right of reproduction, that is, the right to produce one or more copies of a work by printing, photocopying, lithographing, making a sound recording or video recording, duplicating a recording, or duplicating a photographic work or by any other means;
- (6) the right of distribution, that is, the right to make available to the public the original or reproductions of a work through sale or other transfer of ownership;
- (7) the right of rental, that is, the right to authorize, with payment, others to temporarily use cinematographic works, works created by virtue of an analogous method of film production, and computer software, except any computer software that is not the main subject matter of rental;
- (8) the right of exhibition, that is, the right to publicly display the original or reproduction of a work of fine art and photography;
- (9) the right of performance, that is, the right to publicly perform a work and publicly broadcast the performance of a work by various means;
- (10) the right of showing, that is, the right to show to the public a work, of fine art, photography, cinematography and any work created by analogous methods of film production through film projectors, over-head projectors or any other technical devices;
- (11) the right of broadcast, that is, the right to publicly broadcast or communicate to the

public a work by wireless means, to communicate to the public a broadcast work by wire or relay means, and to communicate to the public a broadcast work by a loudspeaker or by any other analogous tool used to transmit symbols, sounds or pictures; (12) the right of communication of information on networks, that is, the right to communicate to the public a work, by wire or wireless means in such a way that members of the public may access these works from a place and at a time individually chosen by them;

(13) the right of making cinematographic work, that is, the right to fixate a work on a carrier by way of film production or by virtue of an analogous method of film production;

(14) the right of adaptation, that is, the right to change a work to create a new work of originality;

(15) the right of translation, that is, the right to translate a work in one language into one in another language;

(16) the right of compilation, that is, the right to compile works or parts of works into a new work by reason of the selection or arrangement; and

(17) any other rights a copyright owner is entitled to enjoy.

A copyright owner may authorize another person to exercise the rights under the preceding paragraphs (5) to (17), and receive remuneration pursuant to an agreement or this Law.

A copyright owner may assign, in part or in whole, the rights under the preceding paragraphs (5) to (17), and receive remuneration pursuant to an agreement or this Law.

**第 10 条** 著作权包括下列人身权和财产权:

- (一) 发表权, 即决定作品是否公之于众的权利;
- (二) 署名权, 即表明作者身份, 在作品上署名的权利;
- (三) 修改权, 即修改或者授权他人修改作品的权利;
- (四) 保护作品完整权, 即保护作品不受歪曲、篡改的权利;
- (五) 复制权, 即以印刷、复印、拓印、录音、录像、翻录、翻拍等方式将作品制作一份或者多份的权利;
- (六) 发行权, 即以出售或者赠与方式向公众提供作品的原件或者复制件的权利;
- (七) 出租权, 即有偿许可他人临时使用电影作品和以类似摄制电影的方法创作的作品、计算机软件的权利, 计算机软件不是出租的主要标的的除外;
- (八) 展览权, 即公开陈列美术作品、摄影作品的原件或者复制件的权利;
- (九) 表演权, 即公开表演作品, 以及用各种手段公开播送作品的表演的权利;
- (十) 放映权, 即通过放映机、幻灯机等技术设备公开再现美术、摄影、电影和以类似摄制电影的方法创作的作品等的权利;
- (十一) 广播权, 即以无线方式公开广播或者传播作品, 以有线传播或者转播的方式向公众传播广播的作品, 以及通过扩音器或者其他传送符号、声音、图像的类似工具向公众传播广播的作品的权利;
- (十二) 信息网络传播权, 即以有线或者无线方式向公众提供作品, 使公众可以在其个人选定的时间和地点获得作品的权利;
- (十三) 摄制权, 即以摄制电影或者以类似摄制电影的方法将作品固定在载体上的权利;
- (十四) 改编权, 即改变作品, 创作出具有独创性的新作品的权利;

(十五) 翻译权, 即将作品从一种语言文字转换成另一种语言文字的权利;

(十六) 汇编权, 即将作品或者作品的片段通过选择或者编排, 汇集成新作品的权利;

(十七) 应当由著作权人享有的其他权利。

著作权人可以许可他人行使前款第(五)项至第(十七)项规定的权利, 并依照约定或者本法有关规定获得报酬。

著作权人可以全部或者部分转让本条第一款第(五)项至第(十七)项规定的权利, 并依照约定或者本法有关规定获得报酬。

**Article 11** Except where otherwise provided in this Law, the copyright in a work shall belong to its author.

The author of a work is the citizen who has created the Work.

Where a work is created according to the intention and under the supervision and responsibility of a legal entity or other organization, such legal entity or organization shall be deemed to be the author of the work.

The citizen, legal entity or other organization whose name is mentioned in connection with a work shall, in the absence of proof to the contrary, be deemed to be the author of the work.

**第 11 条** 著作权属于作者, 本法另有规定的除外。

创作作品的公民是作者。

由法人或者其他组织主持, 代表法人或者其他组织意志创作, 并由法人或者其他组织承担责任的作品, 法人或者其他组织视为作者。

如无相反证明, 在作品上署名的公民、法人或者其他组织为作者。

**Article 14** A works created by compilation of several works, parts of works, data that do not constitute a work or other materials and having originality in the selection or arrangement of its contents is a work of compilation. The copyright in a work of compilation shall be enjoyed by the compiler, provided that the exercise of such copyright shall not prejudice the copyright in the preexisting works.

**第 14 条** 汇编若干作品、作品的片段或者不构成作品的数据或者其他材料, 对其内容的选择或者编排体现独创性的作品, 为汇编作品, 其著作权由汇编人享有, 但行使著作权时, 不得侵犯原作品的著作权。

**Article 15(1)** The copyright in a cinematographic work and any work created by an analogous method of film production shall be enjoyed by the producer of the work, but the scriptwriter, director, cameraman, lyricist, composer, and other authors thereof shall enjoy the right of authorship in the work, and have the right to receive remuneration pursuant to the contract concluded with the producer.

**第十五条第 1 款** 电影作品和以类似摄制电影的方法创作的作品, 其著作权由制片人享有, 但编剧、导演、摄影、作词、作曲等作者享有署名权, 并有权按照与制片人签订的合同获得报酬。

**Article 17** The ownership of the copyright in a commissioned work shall be agreed upon in a contract between the commissioning and the commissioned parties. In the absence of a contract or of an explicit agreement in the contract, the copyright in such a work shall belong to the commissioned party

**第 17 条** 受委托创作的作品，著作权的归属由委托人和受托人通过合同约定。合同未作明确约定或者没有订立合同的，著作权属于受托人。

**Article 42** A producer of sound recordings or video recordings shall have the right to authorize others to reproduce, distribute, rent and communicate to the public on an information network such sound recordings or video recordings and the right to obtain remuneration therefore. The term of protection of such rights shall be fifty years, and expires on 31 December of the fiftieth year after the recording was first produced

**第 42 条第 1 款** 录音录像制作者对其制作的录音录像制品，享有许可他人复制、发行、出租、通过信息网络向公众传播并获得报酬的权利；权利的保护期为五十年，截止于该制品首次制作完成后第五十年的 12 月 31 日。

**Article 46** A television station that broadcasts a cinematographic work, a work created by virtue of an analogous method of film production or a video graphic work produced by another person shall obtain permission from, and pay remuneration to, the producer of the cinematographic or video graphic work; the station that broadcasts a video graphic work produced by another person shall obtain permission of, and pay remuneration to, the copyright owner.

**第 46 条** 电视台播放他人的电影作品和以类似摄制电影的方法创作的作品、录像制品，应当取得制片者或者录像制作者许可，并支付报酬；播放他人的录像制品，还应当取得著作权人许可，并支付报酬。

***B. Regulations for the implementation of the Copyright Law of the People's Republic of China***

**中华人民共和国著作权法实施条例**

**Article 2** The term “works” as referred to in the Copyright Law means intellectual creations with originality in the literary, artistic or scientific domain, insofar as they can be reproduced in a tangible form.

**第 2 条** 著作权法所称作品，是指文学、艺术和科学领域内具有独创性并能以某种有形形式复制的智力成果。

**Article 4(11)** For the purposes of the Copyright Law and these Regulations, the



following expressions concerning works shall have the meanings hereunder assigned to them:

(11)“cinematographic works and works created by a process analogous to cinematography” means works which are recorded on some material, consisting of a series of images, with or without accompanying sound, and which can be projected with the aid of suitable devices or communicated by other means;

**第 4 条第 11 款** 著作权法和本条例中下列作品的含义:

(十一)电影作品和以类似摄制电影的方法创作的作品,是指摄制在一定介质上,由一系列有伴音或者无伴音的画面组成,并且借助适当装置放映或者以其他方式传播的作品;

**Article 5** For the purposes of the Copyright Law and these Regulations, the following expressions shall have the meanings here under assigned to them:

(1) “news on current affairs” means the mere facts or happenings conveyed through the media such as newspapers, periodicals and radio and television programs;

(2) “sound recordings” means aural fixations of sounds of performances or of other sounds;

(3) “video recordings” means fixations of a connected series of related images or pictures, with or without accompanying sounds, other than cinematographic works and works created by a process analogous to cinematography;

(4) “producer of sound recordings” means the person who first makes the sound recordings;

(5) “producer of video recordings” means the person who first makes the video recordings;

(6) “performer” means an actor, or a performing group or any other person who performs literary or artistic works.

**第 5 条** 著作权法和本条例中下列用语的含义:

(一)时事新闻,是指通过报纸、期刊、广播电台、电视台等媒体报道的单纯事实消息;

(二)录音制品,是指任何对表演的声音和其他声音的录制品;

(三)录像制品,是指电影作品和以类似摄制电影的方法创作的作品以外的任何有伴音或者无伴音的连续相关形象、图像的录制品;

(四)录音制作者,是指录音制品的首次制作人;

(五)录像制作者,是指录像制品的首次制作人;

(六)表演者,是指演员、演出单位或者其他表演文学、艺术作品的人。

***C. Interpretation of the Supreme People's Court on Several Issues  
Concerning the Application of Law in the Trial of Cases of Civil Dispute  
of Copyright***

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

**Article 7** The manuscripts, original scripts, lawful publications, copyright registration certificates, attestations issued by authentication institutions, contracts for acquiring rights, etc. as submitted by the parties concerned may be adopted as evidences.

The 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 copyright-related rights and interests unless there are evidences that prove the opposite.

**第7条** 当事人提供的涉及著作权的底稿、原件、合法出版物、著作权登记证书、认证机构出具的证明、取得权利的合同等，可以作为证据。

在作品或者制品上署名的自然人、法人或者其他组织视为著作权、与著作权有关权益的权利人，但有相反证明的除外。

#### ***D. Regulation on the Protection of the Right to Network Dissemination of Information***

##### **信息网络传播权保护条例**

**Article 26** The definitions of the terms in this Regulation are as follows:

"Right to communicate works to the public over information networks" refers to the right to provide the public with the works, performances, or audio-visual recordings by wired or wireless means, so that the public may have access to these works, performances, and audio-visual recordings at a time and place chosen by the owner.

**第26条第1款** 本条例下列用语的含义：

信息网络传播权，是指以有线或者无线方式向公众提供作品、表演或者录音录像制品，使公众可以在其个人选定的时间和地点获得作品、表演或者录音录像制品的权利。

#### ***E. Anti-Unfair Competition Law of the People's Republic of China (1993 version)***

##### **中华人民共和国反不正当竞争法（1993年修订）**

**Article 2** In carrying on transactions in the market, operators shall follow the principle of voluntariness, equality, fairness, honesty and credibility, and observe generally recognized business ethics.

Unfair competition in this Law refers to acts of operators which contravene the provisions of this Law, with a result of damaging the lawful rights and interests of other operators, and disturbing the socio-economic order.

Operators in this Law refer to legal persons, other economic organizations and individuals engaging in the trading of goods or profit-making services. (Goods mentioned below include services.)

**第 2 条** 经营者在市场交易中，应当遵循自愿、平等、公平、诚实信用的原则，遵守公认的商业道德。

本法所称的不正当竞争，是指经营者违反本法规定，损害其他经营者的合法权益，扰乱社会经济秩序的行为。

本法所称的经营者，是指从事商品经营或者营利性服务(以下所称商品包括服务)的法人、其他经济组织和个人。

**Article 9(1)** An operator shall not use advertisement or other means to give false, misleading information on the quality, composition, performance, use, manufacturer, useful life, origin, etc. of the goods.

**第 9 条第 1 款** 经营者不得利用广告或者其他方法，对商品的质量、制作成分、性能、用途、生产者、有效期限、产地等作引人误解的虚假宣传。

*F. Interpretation of the Supreme People's Court on Some Issues Concerning the Application of Law in the Trial of Civil Cases Involving Unfair Competition*

最高人民法院关于审理不正当竞争民事案件应用法律若干问题的解释

**Article 8** In case a business operator commits any of the following acts, which is sufficient to cause the misunderstanding of the relevant public, it may be affirmed as a “false or misleading publicity” prescribed in Paragraph 1 of Article 9 of the Anti-unfair Competition Law:

- (1) conducting one-sided or contrastive publicity of goods;
- (2) conducting the publicity of goods by taking undecided scientific viewpoints or phenomena as the facts for final conclusions; or
- (3) conducting the publicity of goods by using ambiguous language or other misleading means.

The publicity of goods by obviously exaggerating means, if it is insufficient to cause the misunderstanding of the relevant public, shall not be affirmed as the “false or misleading publicity”.

The people's court shall affirm the false or misleading publicity according to daily life experiences, the general attention of the relevant public, the misunderstanding caused, as well as the actuality of the publicity objects, etc.

**第 8 条** 经营者具有下列行为之一，足以造成相关公众误解的，可以认定为反不正当竞争法第九条第一款规定的引人误解的虚假宣传行为：

- (一) 对商品作片面的宣传或者对比的；
- (二) 将科学上未定论的观点、现象等当作定论的事实用于商品宣传的；
- (三) 以歧义性语言或者其他引人误解的方式进行商品宣传的。

以明显的夸张方式宣传商品，不足以造成相关公众误解的，不属于引人误解的虚假宣传行为。

人民法院应当根据日常生活经验、相关公众一般注意力、发生误解的事实和被宣

传对象的实际情况等因素，对引人误解的虚假宣传行为进行认定。

### ***G. Beijing High People's Court "Guidelines for the Trial of Copyright Infringement Cases"***

#### **北京高院发布的《侵害著作权案件审理指南》**

#### **1.4 Cause of action**

In the same case, if the plaintiff claims that the same infringement constitutes both a copyright infringement and a violation of Article 2 of the Anti-unfair Competition Law, such claims may be adjudicated together, in which case, if the plaintiff's claims can be upheld pursuant to the Copyright Law, the case shall be tried without applying Article 2 of the Anti-unfair Competition Law; if the plaintiff's claims cannot be upheld pursuant to the Copyright Law but do not conflict with the policies of the Copyright Law, the case may be tried pursuant to Article 2 of the Anti-unfair Competition Law.

#### **1.4 【审查案由】**

同一案件中，针对同一被诉侵权行为，原告既主张侵害著作权又主张违反反不正当竞争法第二条的，可以一并审理。如果原告的主张能够依据著作权法获得支持，则不再适用反不正当竞争法第二条进行审理。如果原告的主张不能依据著作权法获得支持，在与著作权法立法政策不冲突时，可以依据反不正当竞争法第二条进行审理。

#### **5.10 Acts subject to the broadcasting right**

Acts subject to the broadcasting right include:

- (i) wireless communication of a work;
- (ii) communication by wire or by rebroadcasting of the broadcast of a work; and
- (iii) public communication by loudspeaker or analogous instruments of the broadcast of a work.

However, any direct communication of a work by wire shall not be subject to the broadcasting right, and shall be governed by other relevant provisions of the Copyright Law.

#### **5.10 【广播权控制的行为】**

广播权控制的行为包括：

- (1) 以无线方式传播作品的行为；
- (2) 以无线或者有线转播的方式传播广播的作品的行为；
- (3) 通过扩音器等类似工具向公众传播广播的作品的行为。

以有线方式直接传播作品，不属于广播权控制的行为，可以适用著作权法其他规定予以调整。

### 5.18 Application of miscellaneous provisions

In the application of Article 10 Paragraph 1 Sub-paragraph 17 of the Copyright Law “other rights enjoyed by the copyright owner”, the court shall generally take the following factors into consideration:

- (i) whether the alleged infringement falls within the scope of protection under Article 10 Paragraph 1 Sub-paragraphs 1 through 16 of the Copyright Law;
- (ii) if the alleged infringement is not stopped, whether the normal exercise of the rights already established under the Copyright Law will be affected;
- (iii) if the alleged infringement is stopped, whether it will lead to a material imbalance among the interest of the creator, disseminator and the public.

#### 5.18 【“兜底”条款的适用】

适用著作权法第十条第一款第十七项规定的“由著作权人享有的其他权利”时，一般考虑如下因素：

- （1）是否可以将被诉侵权行为纳入著作权法第十条第一款第一项至第十六项的保护范围；
- （2）对被诉侵权行为若不予制止，是否会影响著作权法已有权利的正常行使；
- （3）对被诉侵权行为若予以制止，是否会导致创作者、传播者和社会公众之间的重大利益失衡。

## *H. Tort Law of the People's Republic of China*

### 中华人民共和国侵权责任法

**Article 6(1)** A doer whose negligence has harmed the civil rights and interests of others shall bear tort liability.

**第 6 条第 1 款** 行为人因过错侵害他人民事权益，应当承担侵权责任。

**Article 8** Where two or more persons jointly commit a tort, causing harm to another person, they shall be liable jointly and severally.

**第 8 条** 二人以上共同实施侵权行为，造成他人损害的，应当承担连带责任。

### *I. The Supreme People's Court's Opinions on Giving Full Play to the Role of Judicial Function of Intellectual Property, to Promote Great Development and Prosperity of Socialist Culture, and Promote Economically and Coordinated Development Independent and Coordinated Development of Economy*

最高人民法院关于充分发挥知识产权审判职能作用推动社会主义文化大发展大繁荣和促进经济自主协调发展若干问题的意见

24. Strengthen the trial of unfair competition cases and maintain fair market competition. We must properly handle the relationship between the special intellectual property law and the anti-unfair competition law. While encouraging innovation, we must also encourage fair competition. The function of the supplementary protection of the unfair competition law must not contravene the legislative policy of the special intellectual property law. Where the intellectual property special law has been used as an exhaustive provision, the anti-unfair competition law will no longer provide additional protection in principle, allowing the free use of free competition, but within the scope of compatibility with the legislative policies of the special intellectual property law, protection can still be provided from the standpoint of stopping unfair competition. To properly handle the relationship between the principles and special regulations of the Anti-Unfair Competition Law, we must make full use of the flexibility and adaptability provided by the principles, effectively stop all kinds of tricks, and unceasingly emerge unfair competition, but also prevent the principles. Stipulate the arbitrariness of application and avoid impeding free and fair competition in the market. Strictly grasp the applicable conditions of the anti-unfair competition law principle, all behavior areas that are specifically prohibited by the special provisions of the anti-unfair competition law, can only regulate similar unfair competition behavior in accordance with special regulations, in principle, it is not appropriate to apply the principle of expansion The scope of application. The unfair competition law does not specifically prohibit it, if it causes damage to the legitimate rights and interests of other business operators, it is indeed a violation of the principle of good faith and recognized business ethics, and it is unfair, and it is not enough to maintain the order of fair competition. , may apply to the principle of regulation. Correctly grasp the standards of honesty and credit principles and recognized business ethics, and use the ethical standards of economic people generally recognized and accepted in certain commercial fields as the yardstick, and avoid equating the principles of good faith and recognized business ethics with individual ethics or social ethics.

24、加强不正当竞争案件的审判，维护市场公平竞争。妥善处理好知识产权专门法与反不正当竞争法的关系，在激励创新的同时，又要鼓励公平竞争。反不正当竞争法补充保护作用的发挥不得抵触知识产权专门法的立法政策，凡是知识产权专门法已作穷尽性规定的领域，反不正当竞争法原则上不再提供附加保护，允许自由利用和自由竞争，但在与知识产权专门法的立法政策相兼容的范围内，仍可以从制止不正当竞争的角度给予保护。妥善处理好反不正当竞争法的原则规定与特别规定之间的关系，既要充分利用原则规定的灵活性和适应性，有效制止各种花样翻新、层出不穷的不正当竞争行为，又要防止原则规定适用的随意性，避免妨碍市场自由公平竞争。严格把握反不正当竞争法原则规定的适用条件，凡属反不正当竞争法特别规定已作明文禁止的行为领域，只能依照特别规定规制同类不正当竞争行为，原则上不宜再适用原则规定扩张适用范围。反不正当竞争法未作特别规定予以禁止的行为，如果给其他经营者的合法权益造成损害，确属违反诚实信用原则和公认的商业道德而具有不正当性，不制止不足以维护公平竞争秩序的，可以适用原则规定予以规制。正确把握诚实信用原则和公认的商业道德的评判标准，以特定商业领域普遍认同和接受的经济人伦理标准为尺度，避免把诚实信用原则和公认的商业道德简单等同于个人道德或者社会公德。

*J. Civil Procedure Law of People's Republic of China*

中华人民共和国民事诉讼法

**Article 64(1)** A party shall have the burden to provide evidence for its claims.

**第 64 条第 1 款** 当事人对自己提出的主张，有责任提供证据。

**Article 168** The people's court of second instance shall review the facts and application of law in relation to the claims in appeal.

**第 168 条** 第二审人民法院应当对上诉请求的有关事实和适用法律进行审查。

*K. Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China*

最高人民法院关于适用《中华人民共和国民事诉讼法》的解释

**Article 90** A party shall provide evidence to prove the facts on which his claims are based or to repudiate the facts on which the claims of the opposing party are based, unless it is otherwise prescribed by any law.

**第 90 条第 1 款** 当事人对自己提出的诉讼请求所依据的事实或者反驳对方诉讼请求所依据的事实，应当提供证据加以证明，但法律另有规定的除外。

**Article 91** A people's court shall determine the carrying of burden of proof under the following principles, unless it is otherwise prescribed by any law.

(1) A party claiming the existence of a legal relationship shall carry the burden of proof on the basic facts giving rise to the legal relationship.

(2) A party claiming the modification or extinction of a legal relationship or the impairment of a right shall carry the burden of proof on the basic facts about the modification or extinction of a legal relationship or the impairment of a right.

**第 91 条** 人民法院应当依照下列原则确定举证证明责任的承担，但法律另有规定的除外：

（一）主张法律关系存在的当事人，应当对产生该法律关系的基本事实承担举证证明责任；

（二）主张法律关系变更、消灭或者权利受到妨害的当事人，应当对该法律关系变更、消灭或者权利受到妨害的基本事实承担举证证明责任。

**Article 323** The people's court of second instance shall try a case around the party's claims in appeal.

Where a party does not file claims, the people's court shall not try the case, unless the

first-instance judgment violates prohibitive provisions in laws or damages the interests of the state, public interests, or the legitimate rights and interests of other persons.

**第 323 条** 第二审人民法院应当围绕当事人的上诉请求进行审理。

当事人没有提出请求的，不予审理，但一审判决违反法律禁止性规定，或者损害国家利益、社会公共利益、他人合法权益的除外。

### *L. General Principals of Civil Law of People's Republic of China*

#### 民法总则

**Article 123** The parties to civil legal relations enjoy intellectual property rights in accordance with the law.

Intellectual property rights are the proprietary rights enjoyed by right holders in accordance with the law in respect of the following objects:

- (1) Works.
- (2) Inventions, utility models, and designs.
- (3) Trademarks.
- (4) Geographic indications.
- (5) Trade secrets.
- (6) Layout designs of integrated circuits.
- (7) New varieties of plants.
- (8) Other objects specified by laws.

**第 123 条** 民事主体依法享有知识产权。

知识产权是权利人依法就下列客体享有的专有的权利：

- (一) 作品；
- (二) 发明、实用新型、外观设计；
- (三) 商标；
- (四) 地理标志；
- (五) 商业秘密；
- (六) 集成电路布图设计；
- (七) 植物新品种；
- (八) 法律规定的其他客体。

### International Conventions

#### *A. Berne Convention for the Protection of Literary and Artistic Works (1971 Paris version)*

#### 伯尔尼保护文学和艺术作品公约（巴黎文本）

##### **Article 2**

(1) The expression 'literary and artistic works' shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its



expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatic musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) It shall, however, be a matter for legislation in the countries of the Union to prescribe that works in general or any specified categories of works shall not be protected unless they have been fixed in some material form.

(3) Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the original work.

(4) It shall be a matter for legislation in the countries of the Union to determine the protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts.

(5) Collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.

(6) The works mentioned in this Article shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.

(7) Subject to the provisions of Article 7(4) of this Convention, it shall be a matter for legislation in the countries of the Union to determine the extent of the application of their laws to works of applied art and industrial designs and models, as well as the conditions under which such works, designs and models shall be protected. Works protected in the country of origin solely as designs and models shall be entitled in another country of the Union only to such special protection as is granted in that country to designs and models; however, if no such special protection is granted in that country, such works shall be protected as artistic works.

(8) The protection of this Convention shall not apply to news of the day or to miscellaneous facts having the character of mere items of press information.

## 第 2 条

一、“文学艺术作品”一词包括科学和文学艺术领域内的一切作品，不论其表现方式或形式如何，诸如书籍、小册子及其他著作；讲课、演讲、讲道及其他同类性质作品；戏剧或音乐戏剧作品；舞蹈艺术作品及哑剧作品；配词或未配词的乐曲；电影作品或以电影摄影术类似的方法创作的作品；图画、油画、建筑、雕塑、雕刻及版画；摄影作品及以与摄影术类似的方法创作的作品；实用美术作品；插图、地图；与地理、地形、建筑或科学有关的设计图、草图及造型作品。

二、但本联盟各成员国法律有权规定仅保护表现于一定物质形式的文学艺术作品或其中之一种或数种。

三、翻译作品、改编作品、改编乐曲以及某件文学或艺术作品的其他改变应得到与原著同等的保护，而不损害原著作者的权利。

四、本联盟成员国得以立法确定对立法、行政或司法性质的官方文件及这些文件的正式译本的保护。

五、文学或艺术作品的汇集本，诸如百科全书和选集，由于对其内容的选择和整理而成为智力创作品，应得到与此类作品同等的保护，而不损害作者对这种汇集本内各件作品的权利。

六、上述作品得在本联盟所有成员国内享受保护。此种保护应为作者及其权利继承人的利益而行使。

七、考虑到本公约第七条第四款的规定，本联盟成员国得以立法规定涉及实用美术作品及工业设计和模型的法律的适用范围，并规定此类作品，设计和模型的保护条件。在起源国单独作为设计和模型受到保护的作品，在本联盟其他成员国可能只得到该国为设计和模型所提供的专门保护。但如在该国并不给予这类专门保护，则这些作品将作为艺术品得到保护。

八、本公约所提供的保护不得适用于日常新闻或纯属报刊消息性质的社会新闻。

### **Article 11bis**

(1) Authors of literary and artistic works shall enjoy the exclusive right of authorizing:

(i) the broadcasting of their works or the communication thereof to the public by any other means of wireless diffusion of signs, sounds or images;

(ii) any communication to the public by wire or by rebroadcasting of the broadcast of the work, when this communication is made by an organization other than the original one;

(iii) the public communication by loud-speaker or any other analogous instrument transmitting, by signs, sounds or images, the broadcast of the work.

(2) It shall be a matter for legislation in the countries of the Union to determine the conditions under which the rights mentioned in the preceding paragraph may be exercised, but these conditions shall apply only in the countries where they have been prescribed. They shall not in any circumstances be prejudicial to the moral rights of the author, nor to his right to obtain equitable remuneration which, in the absence of agreement, shall be fixed by competent authority.

(3) In the absence of any contrary stipulation, permission granted in accordance with paragraph (1) of this Article shall not imply permission to record, by means of instruments recording sounds or images, the work broadcast. It shall, however, be a matter for legislation in the countries of the Union to determine the regulations for ephemeral recordings made by a broadcasting organization by means of its own facilities and used for its own broadcasts. The preservation of these recordings in of facial archives may, on the ground of their exceptional documentary character, be authorized by such legislation.

### **第 11 条之 2**

一、文学和艺术作品的作者享有下述专有权：1.许可以无线电广播其作品或以任何其他无线播送符号、声音或图象方法向公众发表其作品；2.许可由原广播机构以外的另一机构通过有线广播或无线广播向公众发表作品；3.许可通过扩音器或

其他任何传送符号、声音或图象的类似工具向公众传送广播作品。

二、本联盟成员国的法律得规定行使上面第一款所指的条件的权利的条件，但这些条件的效力只限于作出这些规定的国家。在任何情况下，这些条件均不应有损于作者的人身非财产权利，也不应有损于作者获得公正报酬的权利，该报酬在无友好协议的情况下应由主管当局规定之。

三、除另有规定外，根据本条第一款给予的许可，不包括利用录音或录象工具录制广播作品的许可。但本联盟成员国法律有权为某一广播机构使用其自己设备并为共自己播送之用而进行短期录制制定规章。本联盟成员国法律也可以批准由于这些录制品具有的特殊文献性质而交付官方档案馆保存。

## ***B. Paris Convention for the Protection of Industrial Property***

### **《保护工业产权巴黎公约》**

#### **Article 10bis Unfair Competition**

(1) The countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition.

(2) Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

(3) The following in particular shall be prohibited:

(i) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;

(ii) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;

(iii) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods.

#### **第 10 条之 2 不正当竞争**

(1) 本联盟国家有义务对各该国国民保证给予制止不正当竞争的有效保护。

(2) 凡在工商业事务中违反诚实的习惯做法的竞争行为构成不正当竞争的行为。

(3) 下列各项特别应予以禁止：

(i) 具有采用任何手段对竞争者的营业所、商品或工商业活动产生混淆性质的一切行为；

(ii) 在经营商业中，具有损害竞争者的营业所、商品或工商业活动的信用性质的虚伪说法；

(iii) 在经营商业中使用会使公众对商品的性质、制造方法、特点、用途或数量易于产生误解的表示或说法。

#### **Others**

**A. 2014 Chinese Football Association Super League Tournament TV  
Broadcast for Public Signal Production Manuals<sup>81</sup>**

**《2014 中国平安中国足球协会超级联赛电视转播公用信号制作手册》**

**Basic Principles of Switching**

- The director should study the competition carefully, designs the lens carefully, fully uses the modern equipment, uses the storytelling technique, and vividly conveys the splendid scene to the audience.
- Follow the movement, if the player runs out of range of one camera, there is another camera to take over.
- Display new information, such as panoramic view of the field, close-up description details.
- Enhance the details, the contestant's close-up can reveal his nervousness.
- Telling stories, such as groups of pictures, requires showing the reaction of the players, teammates, coaches, and spectators, and making the relationship clear.
- Attract the attention of the audience, change the scene or visual angle, increase freshness.

**切换基本原则**

- >导演细心研究赛事，精心设计镜头，充分使用现代化设备，用讲故事的手法，生动的把运动员在赛场上精彩场面以及喜怒哀乐的神情传达给观众。
- >跟随运动进程，如果运动员跑出一台摄像机的拍摄范围，则有另外一台摄像机接替拍摄。
- >展示新的信息，比如全景展示赛场全貌，特写描述细
- >强化细节，比赛选手的特写镜头能揭示他的紧张情绪。
- >讲述故事，比如一些画面的组接，需要展示运动员、队友、教练以及观众的反应镜头，并将其间的关系陈述清楚。
- >吸引观众的注意力，变换景别或视觉角度，增加新鲜感。

**Specification for Playback**

- The production of the competition wonderful lens must grasp the rhythm switch, divides the match paragraph. It usually occurs when there are obvious visual changes, paragraphs of the movement itself, and a series of continuous movements.
- Content contrast, alternate splicing can create a suspense tension atmosphere, continuous short switching will strengthen the audience association and anticipation mood, so that tension and suspense presented to the audience.
- The photographer captures the picture accurately, the composition is reasonable,

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<sup>81</sup> Including public signal technical standards, broadcast vehicle configuration, bit diagram and instructions, slow motion system, audio requirements, public signal production specifications, slow motion instructions and specifications, subtitle operation requirements, commentaries, unilateral ENG and DSNG pre-processing. definite coordination, signal transmission specification, signal transmission technical standard, online packaging system usage specification, etc. **Only “Basic Principles of Switching”, “Specification for Playback” and “The Function of Playback” were listed in Appendix II.**

the focal point is clear. The slow-motion operator is familiar with the equipment used and the location of each material entry / exit point is reasonable. Slow motion director transfers timely, accurate, to the switchboard clear and clear instructions. Switching staff with the director, slow guide link real-time and playback switch table button operation.

Two slow-motion pictures appear at the junction of the static frame screen, to maintain the smooth and stretch of the picture.

### 慢动作说明及规范

>比赛精彩镜头的制作要把握节奏的切换，划分比赛段落。通常在有明显视觉变化、运动项目本身的段落以及发生一连串连续性动作时进行。

>内容对比、交替剪接可以制造悬疑紧张的气氛，连续短促的切换会加强观众联想与期待的心情，从而将紧张和悬念呈现给观众。

>摄影师精准捕捉到画面，构图合理、焦点清晰。慢动作操作员熟悉所用器材、每段素材入/出点位置合理。慢动作导演调动及时、准确，给切换员清晰明确的指令。切换员配合导演，慢导衔接实时与慢动作回放的切换台按键操作。

>两个慢动作画面的衔接处出现静帧画面，要保持画面的流畅与舒展。

### The Function of Playback

- Instant playback: time and space remodeling.
- Answering questions: offside of football, foul in body contact, ball landing in the door, decision out of bounds, red and yellow card, etc.
- Stressing: single / multiple angles of the same action, different scenes play back, highlight emotion, emphasize the plot.
- Related additions: coach, opponent, audience reaction.
- Production of the collection: have the idea, have the connection, have the head and end, have the amount of information.
- Special scenes: athletes' faces, sleepy babies, fanatical fans, etc.

### 慢动作功能

>即时回放：时空重塑。

>答疑解惑：足球的越位、身体接触中小动作犯规、球落地进门、界外判定、红黄牌判定等等。

>重复强调：同一动作的单/多角度、不同景别的回放，突出情绪、强调情节。

>相关补充：教练、对手、观众的反应。

>集锦制作：有构思、有衔接、有头尾、有信息量。

>特殊场景：运动员鬼脸、嗜睡的婴儿、狂热的球迷等。