Software Copyright Infringement Litigation in China

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Paris   06/2019
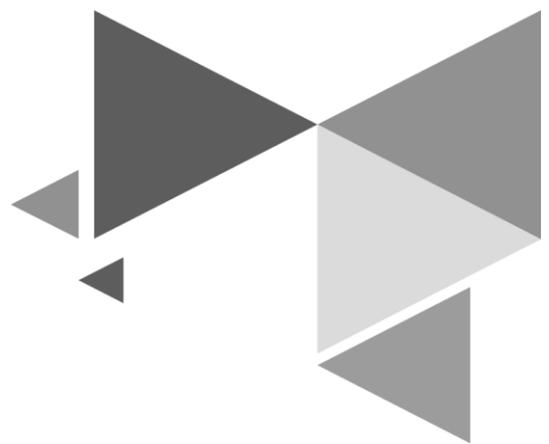
THE CONTENT

1. Laws and Regulations

1.1 The legislation on computer software protection

- **The Copy Right Law (2010)**
  Article 3 of the this law stipulates computer software is a kind of work under the protection of copyright law.
- **The Regulations on Computers Software Protection (2013)**
  This law is specially enacted for protection of computer software, which is the main legislation in software area.
  Article2-3 stipulates the definition of computer software:
  Computer software means computer program and relevant documents. "computer program" means a coded instruction sequence which may be executed by devices with information processing capabilities such as computers, or a symbolic instruction sequence or symbolic statement sequence which may be automatically converted into a coded instruction sequence for the purpose of obtaining certain expected results; the source program and object program of a computer program shall be deemed as one and the same work. "documents" means literal descriptions or charts used to describe the content, structure, design, functional performance, historical development, test results and usage, such as program design instructions, flowcharts, and user's manuals.

1. Laws and Regulations

1.2 Computer Software Infringements

(1)   to publish or register a piece of software without the authorization of the software copyright owner;

(2)   to publish or register a piece of software developed by another person as one's own;

(3)   to publish, or register, a piece of joint software as developed solely by oneself, without the authorization of the other co-developer(s);

(4)   to have one's name mentioned in connection with, or alter the name on, a piece of software developed by another person;

(5)   to alter or translate a piece of software without the authorization of the software copyright owner;

(6)   to reproduce, wholly or in part, a piece of software of the copyright owner;

(7)   to distribute, rent or communicate to the public through information network a piece of software of the copyright owner;

(8)   to knowingly circumvent or sabotage technological measures used by the copyright owner for protecting the software copyright;

(9)   to knowingly remove or alter any electronic rights management information attached to a copy of a piece of software;

(10) to transfer, or authorize another person to exploit, the software copyright of the owner.

(11) *to commit other acts of infringing upon software copyright.*

2. Jurisdiction of the Court

First Instance	Second Instance (Appeal)	Trial Supervision Procedure
All the cases shall have to be registered and tried in the intermediate court. ☐ Jurisdiction of Defendant ☐ Jurisdiction of the place where the infringement act happens.	As of January 1st, 2019, the appeal of all the software infringement litigation shall to to the I.P. Tribunal of the **Supreme Court**.	Any party would not accept the judgement or decide by the appeal court, which is the Supreme Court now, it shall file this procedure to the No.3 Civil Tribunal of the Supreme Court.

3. Evidence Collection & Software Comparison

3.1 Evidence Collection

Evidence is the "king of litigation". Evidence collection will accordingly determine the final result of a litigation. Although different mode of software infringement needs different evidences, we still have a general structure to collect and establish the evidence system for the plaintiff.

Classification of Evidences	Examples	Remarks
1. Evidences for ownership of the software by the Plaintiff.	1. A copy of the software owned by the Plaintiff; 2. The certificate of software registration.	
2. Evidences for software infringement by the Defendant.	Any factual aspect of copying, using, selling, reproducing, etc. of disputed software by the defendant can be collected as evidences.	If the evidences are from the internet, notary is necessary.
3. Evidences for damages.	1. Financial materials of the defendant; 2. Expenses actually caused for this case.	

3. Evidence Collection & Software Comparison

3.1 Evidence Collection

- **Evidence preservation by the court**

  Usually, it is very hard for the plaintiff to collect adequate evidences of software infringement, the plaintiff may apply to the court for evidence preservation. The kind of preservation measure can be permitted on the condition that the plaintiff has already provided some primary evidence or indirect evidences to prove in a strong sense that the defendant committed software copyright infringement but failed to provide core or direct evidences controlled or kept solely by the defendant or third party.

- **Evidence produce by the defendant**

  If the plaintiff has enough evidence to prove that the defendant is using a same or similar objective program with that of the plaintiff, the court will in most case as the defendant to provide the source code for the disputed software. If the defendant fails to do that, the court will presume the defendant has committed software infringement act.

3. Evidence Collection & Software Comparison

3.2 Software Comparison

- Software comparison determines whether Infringement is found to be committed by the defendant.

- Software comparison is mainly done between the plaintiff's source codes and that of the defendant. This work is usually done by the third authentication entity . The authentication entity will

4. Damages Calculation

If the infringement is legally found, there are four fundamental ways to calculate the damages:

- The loss suffered by the plaintiff;
- The profit obtained by the defendant;
- Certain times of license fees actually charged by the plaintiff upon its licensees;
- Damages decided by the court on its discretion (less than half a million RMB).

5. A Typical Case

DASSAULT SYSTEMES v. Shanghai Tongjie Science and technology Corporation software copyright infringement dispute case (2017 the Shanghai I.P. Court)

The plaintiff, a well-know French company, has the copyright of a series of software products named "CATIA". The plaintiff found that the defendant installed and and used its softwares with no license, and sued the defendant to the Shanghai IP Court in the early year of 2017. after more that one year of trial and hearing, the court judged in June, 2018 that the defendant has committed software copyright infringement against the plaintiff. Although this case is still in the second instance, there are two highlight points: 1) the damages amount to more 15 million RMB yuan, which are very huge in this area; 2) the court permitted the application of evidence preservation and preserved the evidences on the spot of the defendant.

Thanks for Your Attention!

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