

THE 2018 WANHUIDA-BFSU CUP

INTELLECTUAL PROPERTY

MOOT COURT COMPETITION

P Network Company.

as petitioner

v.

S Network Company

as respondent

TEAM No. 1813-R

BRIEF FOR RESPONDENT

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- k. Article 2, *Implementation Regulations for the Copyright Law [Implementation Regulations]*;
- l. Article 4(11), *Implementation Regulations*;
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- n. Article 7, *Interpretation of the Supreme People's Court Concerning the Application of Laws in the Trial of Civil Disputes over Copyright*;
- o. Article 4, *Interpretation of the Supreme People's Court on several issues applicable to the trial of civil disputes involving infringement of the right to information network transmission [Interpretations of Network Communication Right]*;
- p. Article 6 of *Interpretation of Network Communication Right*;
- q. Article 3.1, *Beijing High People's Court Guidelines for the Trial of Copyright Infringement Cases [Guidelines]*;
- r. Article 3.2, *Guidelines*;
- s. Article 5.18, *Guidelines*;
- t. Article 9.6, *Guidelines*;
- u. Article 9.7, *Guidelines*;
- v. Article 9.14, *Guidelines*;

- w. Article 9.23, *Guidelines*;
- x. Article 9.24, *Guidelines*;
- y. Article 9.25, *Guidelines*;
- z. Article 9.29, *Guidelines*;
- aa. Article 36, *Contract Law of People's Republic of China*[*Contract Law*];
- bb. Article 168, *Civil Procedure Law of People's Republic of China*[*Civil Procedure Law*];
- cc. Article 323, *Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China* [*Interpretation of Civil Procedure Law*];
- dd. Article 1, *Anti-Unfair Competition Law of the People's Republic of China* [*Competition Law*];
- ee. Article 2, *Competition Law*;
- ff. Article 9, *Competition Law*;
- gg. Article 20, *Competition Law*;
- hh. Article 8, *Interpretation of the Supreme People's Court on Some Issues Concerning the Application of Law in the Trial of Civil Cases Involving Unfair Competition* [*Interpretation of Competition Law*];
- ii. Article 7, *Interpretation of the Supreme People's Court on Application of Laws in the Trial of Civil Disputes over Domain Names of Computer Network*[*Interpretation over Domain Names*];
- jj. Article 7, *Opinions of the State Council on accelerating the development of sports industry and promoting sports consumption (2014)*;
- kk. Article 2 and 5, *Notice on Illegal Broadcasting of Olympic Events and Related Activities through the Internet is Strictly Prohibited (2008)*;
- ll. Article 1, 2 and 3, *Notice on Strengthening TV Coverage and Broadcasting Management in Sports Competitions (2000)*;
- mm. Article 1, 2 and 3, *Notice on Improving Broadcasting and TV Reporting and Broadcasting in Sports Competitions (2015)*.

B. Cases

- a. *Lan Jianjun, Hangzhou Little-thumb Automobile Maintenance Technology Co., Ltd. v. Tianjin Little-thumb Automobile Maintenance Service Co., Ltd.* (2012) from Tianjin No. 2 Intermediate People's Court [*Guided Case No. 30*];

- b. *Beijing Baidu Network Technology Co., Ltd. v. Qingdao Aoshang Network Technology Co., Ltd.*, (2010) Civil Judgement No. 5-2 from Shandong Higher People's Court; [Guided Case No. 45];
- c. *Chengdu Tongdefu Hechuan Peach Slice Co., Ltd. v. Chongqing Hechuan Tongdefu Peach Slice Co., Ltd., Yu Xiaohua*, (2013) Civil Judgement No. 292 from Chongqing High People's Court [Guided Case No. 58];
- d. *Japan Takematsuka Corporation v. Astro Boy (Fujian) Sports goods Co., Ltd.* (2017) Final Civil Ruling No.3427 from the Supreme People's Court of China;
- e. Sun Xinzheng v. Wang Shuxiang (2016) Final Civil Ruling No.2158 from the Supreme People's Court of China;
- f. *Beijing Light Media Co., Ltd. v. Wuhan Huaqi Film Production Co., Ltd.* (2015) Civil Judgement No.4 from the Supreme People's Court of China;
- g. *Shandong Foodstuffs import and Export Co., Ltd., Sanfod Group Co. and Sanfod Nissui Co. Ltd. vs Ma Daqing and Qingdao SKD Credit Trading Co., Ltd.* (2009) Civil Judgement No. 1065 from Supreme People's Court of China [Quota of Kelp Case];
- h. *Beijing Qihu Technology Co., Ltd., Qizhi Software (Beijing) Co., Ltd. v. Tencent Technology (Shenzhen) Co., Ltd., Shenzhen Tencent Computer System Co., Ltd.*, (2012) Civil Judgement No. 3 from Supreme People's Court of China [Qihu, Qizhi v. Tencent];
- i. *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;
- j. *Hunan Happy Sunshine entertainment co., Ltd. v. Shanghai Shichang Information Technology Co., Ltd.* (2017) Civil Judgement No.325 from Hunan Higher People's Court;
- k. *Shijilong Network Co., Ltd. v. CNTV Network Co., Ltd*, (2005) Civil Judgement No.197. from Guangdong HPC [Shijilong v. CNTV];
- l. *CCTV International Network Company v. Beijing Baidu Netcom Technology Co., Ltd.* (2013) Civil Judgement No.3142 from Beijing First Intermediate People 's Court;
- m. *CNTV Network Co., Ltd. v. Beijing Zhitong Infinite Technology Co., Ltd.* (2011) Civil Judgement No.5129. from Beijing First Intermediate People 's Court;
- n. *Beijing Shiyue Network Technology Co., Ltd. v. Ningbo Chenggong Multimedia Communication Co., Ltd.* (2008) Civil Judgement No. 5314 from Beijing First Intermediate People 's Court;
- o. *Beijing Dounet Technology Co., Ltd. And Shanghai Juli Media Technology Co., Ltd.* (2014) No. 15243 from Beijing No.3 Intermediate People's Court [Douban v. PPTV].

- p. *Victoria's Secret Store Brand Management Co., Ltd. v. Shanghai Jintian Apparel Co., Ltd.* (2012) Civil Judgement No. 86 from Shanghai No.2 Intermediate People's Court.
- q. *Beijing Sina Internet Information Service Co., Ltd v. Beijing Tianying Jiuzhou Network Technology Co., Ltd.* (2015) Civil Judgement No.1818 from Beijing Intellectual Property Court.
- r. *CCTV International Network Co., Ltd. v. Century long Information Network Co., Ltd.* (2010) Civil Judgement No 196 from Guangzhou Intellectual Property Court.
- s. *CNTV v. Huaxiachengshi. ; Beijing Woailiao Network Technology Co., Ltd. v. CNTV Network Co., Ltd.* (2014) Civil Judgement No. 3199 from Guangzhou Intermediate People's Court [*Woailiao v. CNTV*].
- t. *CNTV Network Co., Ltd. v. Huaxiachengshi Co., Ltd.* (2015) Civil Judgement No.174.from Fuzhou District People's Court [*CNTV v. Huaxiachengshi*].
- u. *CNTV Network Co., Ltd. v. Shanghai Yueti Network Technology Co., Ltd.,* (2015) Civil Judgement No. 1057 from Shanghai Minhang District People's Court [*CNTV v. Yueti*].

C. Thesis

- a. Zhu Xiaoyu, "Some thoughts on the final judgment of CCTV World Cup case and Sina Chinese Super case", online<www.zhichanli.com>, Update:2018-04-28. Last visit:2018-05-10.
- b. Cong Lixian, *An Analysis of the copyright of Live Sports events, China Copyright*, Issue 4, 2015.
- c. Wang Qian, *the Nature of "Spring Festival Gala" in copyright, Intellectual Property*, Issue 4, 2010.

D. Monographs

- a. WIPO, *Glossary of Terms if the Law of Copyright and Neighboring Rights*, China: Peking University Press, (2007).

II. ABBREVIATION

Abbreviation	Full Name
PNC	P Network Company
SNC	S Network Company
LNC	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
HPC	High People's Court
IPC	Intermediate People's Court
DPC	District People's Court
IP Court	Intellectual Property Court
BIPC	Beijing Intellectual Property Court

III. STATEMENTS OF THE FACTS

In March 2006, CFA issued a power of attorney, authorizing SLC as the exclusive agent to develop and operate all-media copyrights of the SL Tournaments for 10 years.

In March 2012, SNC was authorized from SLC to exercise the two-year exclusive right of broadcasting the Super League's videos in its portal website S Network, included but not limited to the rights of live broadcasting, recording, etc. The authorization further mentions that PNC shall by no means broadcast and promote the Super League's tournaments in its portal websites. In December 2012, SLC again issued a power of attorney to SNC, specifying that its exclusive right to rebroadcast and communicate, together with the right to take all legal means to prevent piracy of the third parties, and to claim for damages. Through multiple authorization, LNC was entitled to broadcast the 2013-2014 Season's the SL tournaments in its website and on PC clients, while it shall not delegate or cooperate with others. Besides, C TV obtained the authorization to broadcast the tournaments as well.

All the live programs of the SL were produced and broadcasted by C TV. There was neither copyright agreement regarding the programs between C TV and SLC, nor between C TV and SNC, PNC, LNC in this case. The Charter of CFA explicitly stated that CFA is the governing body of Chinese football movement and the original owner of all rights arising from the various football events, which is also confirmed in the FIFA Constitution.

In August 2013, PNC, together with LNC, provided and rebroadcasted the alleged programs on their co-built website without any authorization, and publicly placed the title of "Super League" in the prominent position on PNC's Channel Homepage.

In March 2015, SC filed a lawsuit against PNC, claiming that PC violated the Copyright Law and Competition Law for illegally rebroadcasting the Super League programs and false promotion. SC further requested for stopping infringement, compensating for damages and eliminating adverse effects by statement.

The court of first instance supported the claim of infringement of Copyright Law. however, the court did not review the claim of unfair competition.

IV. STATEMENT OF THE ISSUES

- A. Whether the programs of the SL Tournaments can be deemed as works.
- B. Whether SNC obtained the authorization from the copyright owner of the alleged programs.
- C. Whether PNC's conduct should be considered as copyright infringement.
- D. Whether PNC constitutes unfair competition.

V. STATEMENT OF THE CLAIMS

- A. PNC has infringed the copyright of SNC.
- B. PNC should bear the liability for stopping infringement, eliminating the adverse effects and compensation for the damages of SNC.
- C. PNC shall be held liable for unfair competition.

VI. PLEADINGS

Based on the claims of PNC, SNC defends and counterclaims as follows:

A. PNC Has Violated SNC's Copyrights and Should Bear the Responsibility

In the first instance, the trial court supported that PNC's conducts constituted infringement upon SNC's copyright.¹ PNC is petitioning to the court around this judgement. However, respondent insist that the trial judgement is correct.

1. SNC has the exclusive right to broadcast the alleged videos on portal website

The petitioner has petitioned that the respondent cannot enjoy the alleged copyright because (1) the alleged programs should not be protected as works; and (2) SNC did not obtain the authorization from the record producer, C TV. This claim should not be supported for the following reasons.

a. The sports events programs should be regarded as works

(1) The programs should be regarded as works created in a process analogous to cinematography [cinematography work]

Petitioner may argue that the sports events programs are not entitled to the copyright protection, for the programs cannot meet the requirement of originality and fixation. However, this opinion should be denied.

i. The alleged videos should be found original

Pursuant to Article 3 of *Copyright Law*, Article 2 and Article 4(11) of *Implementation Regulations*, a work shall be original. Although no laws or regulations ever defined the standard of originality, in the case *Japan Takematsuka Corporation v. Astro Boy (Fujian) Sports goods Co., Ltd.*, SPC held that originality means the work should be created by its author independently and express the specific choice or arrangement.² To be more specific, the work should be different from works in public

¹ Moot Problem, Paragraph 17; Paragraph 19.

² *Japan Takematsuka Corporation v. Astro Boy (Fujian) Sports goods Co., Ltd.* (2017) Final Civil Ruling No.3427 from SPC.

domain in the selection or arrangement of materials.³

In the present case, the programs include the broadcasting plan, the game record, comments, the players' data, playbacks, highlights and interviews.⁴ A event will be broadcast through planning, shooting, editing, post-effect and other procedures, during each procedure, there are adequate freedom to make personalized selections and arrangements.

Take the orchestration as an example, the editors will, under the command of the director, arrange the screen of the game, comments, playbacks, relevant data, interviews in a narrative way. They should also organize the sequence of close-up, close-shot, mid-shot and panorama. During this procedure, the director is the core. With different director, there will be different story point, different understanding of using the language of lens, and quiet different programs.

Petitioner may claim that several factors, such as the production standard and the purpose to satisfy the audience, may limit the freedom to make personalized choice. Even if the produce group made some choice under such limitation, that might be the common choices of qualified produce groups. However, this opinion should not be supported.

For the first, production standard will not substantively weaken the programs' originality. Production Manuals just set some simple requirement in the position of camera and give some guidance and suggestions, for instance, the playback can be used to solve the audience puzzles or to emphasize some emotions and so on.⁵ It seldom puts a specific requirement for the programs production, and thus should be regarded as general direction rather than a strict binding regulation concerning programs production. As to the common skills of qualified producers, however, the problem is the same as the production standards. Actually, the *Production Manuals* is concluded from the common techniques.

For the second, when it comes to the purpose to satisfy the audience, it cannot narrow the freedom of the produce group neither. Actually, to satisfy the audience is a very abstract requirement, it may just require the producer to focus at the dramatic scene such as the moment of goal. However, what is a dramatic scene, how to show the scene still need to interpreted by the producer. Thus, the purpose to satisfy the audience can hardly be a barrier to prime the programs originality.

To sum up, the Super League programs should be found original to be works.

- ii. The alleged videos satisfy the element of fixation.

Pursuant to Article 4(11) of *Implementation Regulations*, cinematography works

³ *Sun Xinzheng v. Wang Shuxiang* (2016) Final Civil Ruling No.2158 from SPC

⁴ See *The 2014 China Football Association Super League TV Broadcast Public Signal Production Manuals [Production Manuals]*.

⁵ The principle of the switching of scene, in *Production Manuals*. For details, see *Appendix II*.

should be recorded on some material. In practice, the broadcasting of a TV station will delay about 30 seconds to avoid emergency and the sports events programs should be recorded during the delay.⁶ Particularly, the alleged programs had been stored on some materials before being transmitted to the public. Hence, the programs in the present case can satisfy the element of fixation.

Petitioner may quote two latest cases to claim that the overall programs has not yet been stably fixed when live programs are going on.⁷ However, “be recorded on some material” does not refer to “be completed”. An unfinished work should enjoy the same protection as the completed work. Further, except for these two cases, there are few courts and scholars had ever questioned whether the online broadcast is fixed when the live is going on. This illustrates from one perspective that most courts and scholars support that online live broadcast can satisfy the requirement of fixation.

(2) The programs can be regarded as compilation work

Even if the court held that live programs had not been fixed before it finished, the programs can be found as compilation works. It is stipulated that a compilation work is a compilation that original in selecting or arranging the materials.⁸ As discussed above, the arrangement of the scenes and complex elements of alleged programs is original. Hence, the alleged programs should be at least regarded as compilation works.⁹

b. SNC has obtained the right to broadcasting the Super League videos on portal website exclusively

(1) The original copyright owner is CFA

Petitioner insists SNC did not get an effective authorization from C TV, who is the copyright owner, therefore cannot enjoy the relevant rights. On this issue, respondent defends as follows:

i. CFA is the producer of the videos involved in this case

Copyright Law has stipulated that the original copyright owner of a cinematography work is its producer¹⁰ who has taken the initiative and financial responsibility for producing the work.¹¹ In the case *Beijing Light Media Co., Ltd. v. Wuhan Huaqi Film Production Co., Ltd.*,¹² the SPC held that the producer is the one

⁶ See Zhu Xiaoyu, “Some thoughts on the final judgment of CCTV World Cup case and Sina Chinese Super case”, online<www.zhichanli.com>, Update:2018-04-28. Last visit:2018-05-10.

⁷ *Beijing Sina Internet Information Service Co., Ltd v. Beijing Tianying Jiuzhou Network Technology Co., Ltd.* (2015) Civil Judgement No.1818 from BIPC; *CNTV Co., Ltd. v. Storm Groups Co., Ltd.* (2015) No. 1055 From BIPC [CNTV v. Storm].

⁸ Article 14, *Copyright Law*.

⁹ Cong Lixian, *An Analysis of the copyright of Live Sports events*, *China Copyright*, Issue 4, 2015; Wang Qian, *the Nature of “Spring Festival Gala” in copyright*, *Intellectual Property*, Issue 4, 2010.

¹⁰ Article 15, *Copyright Law*.

¹¹ WIPO, *Glossary of Terms if the Law of Copyright and Neighboring Rights*, China: Peking University Press, (2007).

¹² *Beijing Light Media Co., Ltd. v. Wuhan Huaqi Film Production Co., Ltd.* (2015) Civil Judgement No.4 from SPC

who invest in the film and take the great commercial risk, the authors¹³ cannot be regarded as produce just because they create the film.

In the present case, CFA organized the Super League Tournaments, made manuals to direct the creation of the programs,¹⁴ authorized the other party to broadcasting the tournaments,¹⁵ manage and operate the rights concerned.¹⁶ These can be concluded that CFA has invested in the programs and take the financial responsibility, thus CFA conform to the definition of the producer. On the contrary, C TV, who made these programs, could be regarded as the author, but not the copyright owner. This opinion is supported in many similar cases.¹⁷

ii.CFA has made a clear and effective copyright notice

It is stipulated that the one whose sign is affixed to a work shall, without the contrary proof, be the author of the work in Article 11 Paragraph 4 of *Copyright Law*. In the present case, the Charter of CFA has stipulated that CFA is the original owner of all rights arising from the football events, including the right to use in cooperation with third parties.¹⁸ This is a clear copyright notice declared that CFA is the original owner of all relevant works. Its effect has been widely acknowledged by the market and judicial practice.¹⁹ Since there is no contrary proof, CFA should be deemed as the copyright owner.

iii. There did exist a copyright agreement between CFA and CTV.

Even if the court did not support the opinion that CFA is the producer of the alleged programs, the copyright should belong to CFA under Article 17 of the *Copyright law* because there did exist a copyright agreement between CFA and CTV.²⁰ Furthermore, even such copyright agreement is not in a written form as required under Article 17 of the *Copyright law*, it has already been cured by the actions of the two parties that C TV once come to CFA to obtain the broadcasting right.

Pursuant to Article 36 of *Contract Law*, even if an agreement is not in the required form, it could still be effective if one party has fulfilled its obligation while the other

¹³ The directors, script writers, photographers and other staffs who made mental effort to the film. See *Beijing Light Media Co., Ltd. v. Wuhan Huaqi Film Production Co., Ltd.* (2015) Civil Judgement No.4 from SPC

¹⁴ See *Production Manuals*.

¹⁵ Moot Problem, Paragraph 3-5.

¹⁶ *Ibid.*

¹⁷ *Gong Zhiyong v. Su Xinxian* (2011) Civil Judgement No 161 from Guangdong HPC; *Beijing Huayi Union Cultural Media Investment Co., Ltd. v. Net Music Interconnection (Beijing) Technology Co., Ltd.* (2009) Civil Judgement No 68 from Hubei HPC; *Changsha Guoan Radio and Television Broadband Network Co., Ltd. v. Letv (Tianjin) Information Technology Co., Ltd.* (2017) Civil Judgement No 661 from Hunan HPC.

¹⁸ Moot Problem, Paragraph 2.

¹⁹ *CCTV International Network Co., Ltd. v. Century long Information Network Co., Ltd.* (2010) Civil Judgement No 196 from Guangzhou IPC; *CCTV International Network Co., Ltd. v. Guangzhou NetEase computer system Co., Ltd.* (2013) Civil Judgement No 927 from Guangzhou IPC.

²⁰ Article 17, *Copyright Law*. The ownership of copyright in a commissioned work shall be agreed upon in a contract between the commissioning and the commissioned parties. In the absence of such a contract or of an explicit agreement in the contract, the copyright in such a work shall belong to the commissioned party.

party accept it.²¹ In the present case, CFA and SLC has widely exercised the copyright of the programs. Whereas CTV did not express its disagreement but come to obtain the broadcasting right from CFA.²² These actions fulfilled the agreement and cured the flaw of the form of the agreement. **Therefore**, CFA and CTV's Copyright agreement should be regarded effective, thus, the copyright shall belong to CFA originally.

(2) SNC enjoys the exclusive rights to broadcast the Super League's videos in its portal website with SLC's authorization

As the copyright owner, CFA has authorized SLC as its agent to develop and operate the relevant rights.²³ Then SLC authorized SNC the exclusive rights to broadcast the Super League's videos in its portal website S Network, including the rights of live broadcasting, recording, on demand, and extension and other relevant rights.²⁴ According to the implementation contract, SNC also obtained the rights to take all legal measures to prevent third parties from illegally using above videos and to obtain compensation.²⁵ Therefore, SNC enjoys the exclusive rights to broadcast the Super League's videos in its portal website.

2. PNC's conduct has constituted infringement upon SNC's copyright

a. PNC's piracy broadcasting has infringed SNC's network communication right and broadcasting right or other right

In accordance with authorization contract, SNC enjoys all relevant rights to broadcast the programs on its portal website.²⁶ This include the right to rebroadcast the live programs and the right to rebroadcast the programs recordings on portal websites.

Firstly, in judicial practice, the online programs lives are usually protected under Article 9(11) or Article 9(17) of *Copyright Law*.²⁷ In the case *CCTV International Network Company v. Beijing Baidu Netcom Technology Co., Ltd.* from Beijing First IPC, the court held, "If the initial dissemination of a work is wireless, the online live broadcast should be regulated by the broadcasting rights. otherwise, it should be regulated under Article 9(17)."²⁸ Similarly, Beijing HPC supported that the right of online live could be protected as other right in the Guidelines.²⁹

²¹ Article 36, *Contract Law*.

²² Moot Problem, Paragraph 7.

²³ Moot Problem, Paragraph 3.

²⁴ Moot Problem, Paragraph 4.

²⁵ *Ibid*.

²⁶ Moot Problem, Paragraph 4

²⁷ Article 9(11), *Copyright Law*. The right of broadcasting, that is, the right to publicly broadcast or disseminate works by wireless means, to disseminate broadcast works to the public by wired dissemination or rebroadcast, and to disseminate broadcast works to the public by audio amplifier or other similar instruments for transmission of signs, sounds or images; Article 9(17), *Copyright Law*. Other rights which shall be enjoyed by the copyright owners.

²⁸ *CCTV International Network Company v. Beijing Baidu Netcom Technology Co., Ltd.* (2013) Civil Judgement No.3142 from Beijing First IPC; Similar cases see *Hunan Happy Sunshine entertainment co., Ltd. v. Shanghai Shichang Information Technology Co., Ltd.* (2017) Civil Judgement No.325 from Hunan HPC.

²⁹ Article 5.18, *Guidelines*; Article 9.24, *Guidelines*; Article 9.25, *Guidelines*.

Secondly, the right to provide the programs videos can be protected under the network communication right. Network communication right is the right to provide the public with works, so as to make the public able to respectively obtain the works at the individually selected time and place.³⁰ This could be interpreted that others shall not provide the programs videos on portal website in the present case.

Turning to the present case, PNC labeled and provided the alleged programs in its Super League Channel Homepage.³¹ **On the one hand**, PNC has rebroadcast the live videos on their portal website without authorization. And the programs are transmitted from C TV,³² which means the initial dissemination is wireless, Hence, PNC's conduct has fallen into the scope of SNC's broadcasting or other right. **On the other hand**, PNC provided the recording of the Super League Tournaments on its portal website after the live broadcast of the program.³³ Its conduct has infringed SNC's right of information network communication according to Article 9(12) of *Copyright Law*. Accordingly, PNC's conduct has fallen into the scope of the rights enjoyed by SNC.

b. PNC's defence that it just provided the link should be denied

Although PNC claimed that they just provided a link from L Network, their conduct still should be found as infringement.

(1) PNC did not submit sufficient evidence to prove it just provide a link to LNC's website

As stated in *Guidelines*, the defendant shall prove the involved work is provided in a third-party website.³⁴ In the first instance, the petitioner submit that the programs were broadcast under the subdomain of the L Network. However, it is insufficient to prove that the broadcasting page was a third-party website. According to *Guidelines*, the operator is the one who registered the website or the one who is indicated on the website, if the registrant and the one indicated on the website is different, they should be presumed as co-operators.³⁵ As reflected on the website, the broadcasting page was labelled as "video broadcasting cooperation-P Network interactive broadcasting room".³⁶ There also exist a returning entrance to P Sport website on the broadcasting page.³⁷ Therefore, PNC should be considered to provide the programs on its own page.

(2) PNC's conduct still constitutes joint infringement even if the programs are provided by link.

According to Article 4 of *Interpretations of Network Communication Right* and

³⁰ Article 9(12), *Copyright Law*; Article 3, *Interpretations of Network Communication Right*.

³¹ Moot Problem, Paragraph 6.

³² Moot Problem, Paragraph 7, Line 2.

³³ Moot Problem, Paragraph 6.

³⁴ Article 9.2.3, *Guidelines*.

³⁵ Article 9.29, *Guidelines*.

³⁶ Moot Problem Paragraph 14, line 4.

³⁷ *Ibid*, line 6.

Article 9.6, Article 9.7 of *Guidelines*,³⁸ if a network service provider jointly provide works with others will constitute joint infringement. In judicial practice, providing works together by link is usually deemed as joint infringement. In the case Beijing Douwang Technology Co., Ltd. V. Shanghai Juli Media Co., Ltd., the two defendants were determined to be joint infringement because they provided works by link together to promote each other with subjective fault.

Firstly, PNC provided the links in cooperation with LNC. L Network has pushed the programs onto the broadcasting page which is cooperated with P Network without authorization.³⁹ Then PNC provided link on the prominent position on its portal website.⁴⁰ These conducts should be ruled as joint actions.

Secondly, PNC should be held deliberate or negligent. As a network operator, PNC should make sure LNC has obtained corresponding authorization before cooperating with LNC to avoid infringing others' rights. Further, a higher degree of duty of care should be satisfied for PNC has provided the link prominent position on its website and attained direct interests from the link.⁴¹ These means PNC has known or should have known that its conduct may constitute infringement and shall be measured to be of great subjective fault.

Therefore, the rebroadcasting conduct of P network and L Network should be deemed as joint infringement.

3. PNC should stop infringement and compensate SNC's loss

According to Art 48(1) and Art 49 of *Copyright Law*, the one who infringed the other's copyright should bear the liability to stop infringement, to compensate for economic losses, to eliminate the adverse effects and so on.⁴²

In the present case, PNC has infringed SNC's copyright. Its conduct has caused great damage in the following aspects: Firstly, PNC's conduct has directly taken advantages from SNC by diverting the user's attention and website traffic. Secondly, SNC has cost a lot to stop PNC's infringement. Therefore, PNC should bear the liability to stop its infringement, to compensate for the losses and to eliminate the adverse effects.

B. Even If the Alleged Programs Cannot Meet the Originality Requirement of a "Work", PNC's Act Infringed SNC's Neighboring Right of "Video Recordings"

SNC are entitle to protect its neighboring right against PNC's infringing act if the issued programs lack the originality requirement of a "work" in Copyright Law. This issue will be discussed in four aspects.

³⁸ Article 4, *Interpretations of Network Communication Right*; Article 9.6, *Guidelines*; Article 9.7, *Guidelines*.

³⁹ Moot Problem, Paragraph 14, Line 4; Paragraph 15, line 4.

⁴⁰ Moot Problem, Paragraph 7.

⁴¹ Article 9 and 11, *Interpretations of Network Communication Right*.

⁴² Article 48(1), *Copyright Law*. Article 49, *Copyright Law*.

1. Sports events programs could also be considered as “video recordings”

The originality requirement of “video recordings” is not stipulated in both *Copyright Law* and *Implementation of Regulations*. In practice, courts normally regard a program as “video recordings” when it does not meet the originality of a “work”.⁴³

In the present case, even if the programs cannot meet the originality of a “work”, considering the alleged programs are composed of a combination of consecutive images and sounds, such programs shall be concluded as “video recordings” and are entitled to neighboring right protection.⁴⁴ **Consequently**, the concerned sports events programs shall be deemed as “video recordings”.

2. SNC is the legitimate subject of the concerned programs

Pursuant to Article 11 Paragraph 3 of *Copyright Law*, Article 7 of *Interpretation of Copyright Law* and Article 3.1 and 3.2 of *Guidelines*,⁴⁵ the right owner of “video recordings” can be determined by the signature affixed on them, supported by proofs like right statement complying with industry practice. Besides, the nature of the object, industry practice and the public cognition shall be considered as well.

Particularly, C TV’s logo appeared on the program cannot be interpreted that C TV is the right owner under Article 11 Paragraph 3,⁴⁶ for TV Station customarily embeds its logo on the programs. Such industry practice has been supported by Guangdong HPC.⁴⁷ Further, CFA has clearly stated that all the rights arising from the tournaments belong to itself, which is confirmed in FIFA Constitution.⁴⁸ Therefore, CFA is the legitimate right owner of the programs of SL tournaments in *Copyright Law*.

To sum up, SNC, granted the exclusive right in the division of portal website by the agent of CFA, has the authority to protect its right by all legal means.⁴⁹

3. PNC’s practice infringed upon the communication right of SNC on the information network

a. Live broadcast falls into the scope of communication right on the information network

Article 42 of *Copyright Law* regulates both network communication under Article 10 (12) and live broadcast on the networks.⁵⁰

⁴³ *CNTV Network Co., Ltd. v. Storm Groups Co., Ltd.* (2015) Civil Judgement No. 1055 from BIPC [CNTV v. Storm]; *CNTV Network Co., Ltd. v. Beijing Zhitong Infinite Technology Co., Ltd.* (2011) Civil Judgement No.5129. from Beijing First IPC; *CNTV v. Shijilong*; *CNTV v. Huaxiachengshi*.

⁴⁴ Article 5 (3), *Implementations Regulations*.

⁴⁵ Article 11 Paragraph 3, *Copyright Law*; Article 7, *Interpretation of Copyright Law*; Article 3.1 and 3.2, *Guidelines*.

⁴⁶ Moot Problem, Paragraph 11, Line 7.

⁴⁷ *Shijilong v. TV Broadcast*.

⁴⁸ Moot Problem, Paragraph 1 and 2.

⁴⁹ Moot Problem, Paragraph 4, Line 2-4.

⁵⁰ Article 42, *Copyright Law*; Article 10 (12), *Copyright Law*.

Firstly, Article 10(12) regulates acts of communicating video recordings to the public at their selected time and space on the networks, regardless of the time length and the available content. This view has been supported by Beijing No.1 IPC,⁵¹ stating, as long as the users can capture parts of the work, the one who illegally communicates the work violates Article 10 (12). Similarly, even if the public can only obtain parts of the concerned programs at a limited time, they still have selectable time and space. Therefore, Article 42 applies under this circumstance.

Secondly, live broadcast of sports programs can be regulated by the networks communication right of “video recordings”. This view has been upheld by Guangzhou IPC in *CNTV v. Shijilong*.⁵²

In conclusion, PNC’s live broadcast shall be regulated by Article 42.

b. PNC, together with LNC, has violated Article 4 of *Interpretation of Network Communication Right*

Article 4 codified that where there is evidence to prove that a network operator has provided video recordings with others by means of cooperation, the companies’ practice constitutes a joint infringement, and they shall be held liable for damages.

In this case, PNC and LNC, intentionally and jointly, built a network platform, labelling it as “video broadcast cooperation-P Network interactive broadcast room”, and rebroadcast the issued programs. However, LNC was granted no right to rebroadcast the programs together with third parties, and PNC ignored to fulfill the duty of care regarding checking LNC’s privileges.⁵³ Therefore, their act of live broadcast violates Article 4.⁵⁴

In conclusion, PNC unlawfully rebroadcast the programs with LNC in a cooperative portal website, which has violated the networks communication right of SNC.⁵⁵

4. PNC shall be enjoined from rebroadcasting the programs and held liable for damages

Given that PNC infringed the empowered right of SNC, PNC shall bear the civil liability for ceasing the act, eliminating the adverse effects and compensating for damages under Article 48 and 49 of *Copyright Law*.⁵⁶

⁵¹ *Beijing Shiyue Network Technology Co., Ltd. v. Ningbo Chenggong Multimedia Communication Co., Ltd.* (2008) Civil Judgement No. 5314 from Beijing First IPC.

⁵² *CNTV v. Shijilong*.

⁵³ *Douban v. PPTV; CNTV Network Co., Ltd. v. Beijing Fengxing online Technology Co., Ltd.* (2015) Civil Judgement No. 14494 from Beijing Haidian DPC [*CNTV v. Fengxing*].

⁵⁴ Article 4, *Interpretation of Networks Communication Right*.

⁵⁵ Moot Problem, Paragraph 8, Line 3-5.

⁵⁶ Article 48(4) and 49, *Copyright Law*.

C. Alternatively, PNC' Practice Has Constituted Unfair Competition and that PNC Shall Be Held Liable for Damages

1. The issue of unfair competition shall be reviewed in this court

Required by Article 168 of *Civil Procedure Law* and Article 323 of *Interpretation of Civil Procedure Law*, the ambit of appellate review shall be restricted to the claim of appeal,⁵⁷ with an exception when the judgement of first instance violates prohibitive provisions in laws or damages the state's interests, public interests or the legitimate rights and interests of other persons.⁵⁸

In the present case, the court of first instance did not adjudicate the issue of unfair competition, which may indulge the piracy of live sports broadcast in both networks and sports industry. Besides, if the court insists that "live sports broadcast" shall not be protected by both *Copyright Law* and *Competition Law*, then it may disturb the public order, deteriorate the existed industry practice, impede the development of sports industry, and even harm the interests of consumers.

In conclusion, the issue of unfair competition shall be brought into the proceedings.

2. PNC's practice has constituted false or misleading promotion under Article 9 of *Competition Law*

Required by Article 9 of *Competition Law*, business operators shall not make false or misleading promotion by advertisement or other means on the quality, producers, origin, or any other information of their commodities.⁵⁹ Whether an act constitutes false or misleading promotion depends on the probability of the relevant public misunderstanding about the commodities after seeing the promotion.⁶⁰ In addition, courts shall judge in the light of daily life experiences, the general attention of the public concerned, the fact misunderstood.⁶¹ The misunderstanding of potential authorization relations between the parties can constitutes misleading propaganda, which is supported by Shanghai Second IPC.⁶²

In the present case, PNC publicly placed the title of "Super League" in the prominent position on its channel's homepage,⁶³ which directly leads to the false belief that PNC obtained authorization to broadcast the concerned programs, for the public firmly believe that a network company with a good and healthy image will always operate their business observing laws and industry practices. **Therefore**, PNC's practice has constituted false or misleading promotion of video recordings to the public.

⁵⁷ Article 168, *Civil Procedure Law*.

⁵⁸ Article 323, *Interpretation of Civil Procedure Law*.

⁵⁹ Article 9, *Competition Law*.

⁶⁰ Article 8(1), *Interpretation of Competition Law*.

⁶¹ Article 8 Paragraph 3, *Interpretation of Competition Law*.

⁶² *Victoria's Secret Store Brand Management Co., Ltd. v. Shanghai Jintian Apparel Co., Ltd.* (2012) Civil Judgement No. 86 from Shanghai Second IPC.

⁶³ Moot Problem, Paragraph 6, Line 1-4

3. PNC's practice has contravened Article 2 of *Competition Law* and has constituted unfair competition

a. Article 2 is applicable to the issue of unfair competition

Article 2 applies to prohibiting those acts of unfair competition both enumerated and unenumerated in Law, for the detailed acts of unfair competition cannot be sufficiently stipulated in *Competition Law*. This view has been widely adopted by judicial *Interpretation* and practices.⁶⁴ Given that a provision shall be interpreted based on the textual meaning given to the terms in their context and in the light of the legislative intent⁶⁵, it is admissible for the court to adjudicate this case under Article 2, for *Competition Law* aims at protecting fair competition.⁶⁶

b. PNC has violated Article 2 because all the three factors of unfair competition are met

In *Guided Case No. 45*,⁶⁷ The Court emphasized that, unfair competition can be judged by three factors: 1) the perpetrator is a business operator in competition law; 2) the perpetrator breaches the good faith principle and the generally recognized business ethics in business transactions; and 3) the legitimate rights and interests of other operators are damaged by perpetrator's acts of unfair competition." This view has been supported in many cases.⁶⁸

(1) Both parties are competitive business operators in the industry of network services

Pursuant to Article 2 Paragraph 3, "A business operator" refers to a person or legal entity who engages in commodity marketing or profit-making services ("commodity" also refers to services).⁶⁹ To determine the "competitive relations" between the parties, the court shall only consider the similarity of their business scope, rather than whether the operators 1) have direct or concrete competitive relations or 2) engage in the same industry.⁷⁰

In the present case, both parties operate portal websites and engage in providing profit-making services of live broadcasting the Super League on the internet,⁷¹ which suggests the existence of a competitive relation between them. **Therefore**, SNC and PNC are competitive operators on the networks.⁷²

⁶⁴ Article 7, *Interpretation of the Supreme People's Court on Application of Laws in the Trial of Civil Disputes over Domain Names of Computer Network*; *Guided Case No. 45*; *Quota of Kelp Case*; *Woailiao v. CNTV*.

⁶⁵ Article 104, *Legislation Law of PRC*.

⁶⁶ Article 1, *Competition Law*.

⁶⁷ *Guided Case No. 45*.

⁶⁸ *Ibid*; *Quota of Kelp Case*; *Woailiao v. CNTV*.

⁶⁹ Article 2, *Competition Law*.

⁷⁰ *Guided Case No. 30*; *Guided Case No. 58*.

⁷¹ Moot Problem, Paragraph 4, Line 2-4; Moot Problem, Paragraph 6, Line 2-4.

⁷² *CNTV v. Yueti*.

(2) PNC violated the good faith principle and generally recognized business ethics

Operators have obligation to observe the good faith principle and generally recognized business ethics under Article 2 of *Competition Law*.⁷³ In *Quota of Kelp Case*,⁷⁴ SPC held that the “good faith principle”, a fundamental principle in Civil Law, is embodied in the “generally recognized business ethics” in accordance with the purpose of *Competition Law*. The Court further referred it as “the norms of conduct that generally recognized and accepted by business operators”. Such interpretations have also been echoed by vast courts.⁷⁵ **In conclusion**, the court considers the weight of common industry practices when it comes to judgment of violation of business ethics.

i. There exists the generally recognized business ethics in football industry

The generally recognized business ethics arise from the common practices of specific industries on a case-by-case basis.⁷⁶ In sports industry, all the operators shall obtain the authorization from the original owner by paying certain amount of fees, before rebroadcasting the videos on its own platforms. This practice has been set and confirmed in various administrative documents and cases.⁷⁷ As mentioned in the present case, SLC usually maintain separate authorization formats, including authorization of rebroadcasting rights to portal websites, to televisions and authorization of television products rights.⁷⁸ **Therefore**, a common practice exists in football industry.

ii. PNC violated the generally recognized business ethics in football industry

All the operators shall be subject to the good faith principle and the generally recognized business ethics.⁷⁹ To determine whether an operator violates the industry practice, courts consider both the objective behavior and the subjective intentions of the operator.⁸⁰

⁷³ Article 2, *Competition Law*.

⁷⁴ *Quota of Kelp Case*.

⁷⁵ *Ibid*; Qihu, Qizhi v. Tencent.

⁷⁶ *Quota of Kelp Case*.

⁷⁷ Article 7 of *Opinions of the State Council on accelerating the development of sports industry and promoting sports consumption* (2014); Article 2 and 5 of *Notice on Illegal Broadcasting of Olympic Events and Related Activities through the Internet is Strictly Prohibited* (2008); Article 1, 2 and 3 of *Notice on Strengthening TV Coverage and Broadcasting Management in Sports Competitions* (2000); Article 1, 2 and 3 of *Notice on Improving Broadcasting and TV Reporting and Broadcasting in Sports Competitions* (2015). *CNTV v. Yueti*; *Woailiao v. CNTV*; *CNTV Network Co., Ltd. v. Guangzhou Dongjing Technology Co., Ltd.* (2015) Civil Judgement No. 285 from Guangzhou Tianhe DPC; *CNTV v. Huaxiachengshi*.

⁷⁸ Moot Problem, Paragraph 12, Line 3-5.

⁷⁹ Article 2, *Competition Law*.

⁸⁰ *Hunan Wang Yuwen v. Hebei Wang Yuwen* (2004) Civil Judgment No.221 from Changsha IPC 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 Intellectual Property Court; *CNTV v. Yueti*.

Firstly, PNC has breached the common practice in football industry. In this case, PNC, together with LNC who was granted no right to delegate or cooperate with third parties to broadcast the concerned programs,⁸¹ rebroadcast the programs in a collaborative portal website without obtaining any authorization documents or examining the privileges of LNC,⁸² which runs afoul of the abovementioned industry practice and suggests bad faith. Overall, PNC violated the common practice in football industry.

Secondly, PNC's act cannot be justified by the fact that LNC obtained authorization from the right owner, for 1)PNC provided the concerned programs in a jointly built platform with LNC, not to mention that PNC did not fulfill the burden of proof requesting linking to a third party website under Article 6 of *Interpretation of Network Communication Right* and Article 9.14 of *Guidelines*;⁸³ 2) Even if the alleged programs were provided by LNC, the authorization has explicitly excluded its right to delegate or cooperate with others. Besides, it is reasonable to assume that, PNC, as a professional operator, shall scrutiny all the privileges of LNC, in order to fulfill the duty of care.⁸⁴ However, PNC ignored the abovementioned duty of care. It implies a vicious intention of PNC.

In conclusion, PNC's conduct has violated the generally recognized business ethics.

(3) PNC's act of unfair competition damaged SNC's legitimate rights and interests

i.SNC enjoys legitimate rights and interests

The expected economic benefits derived from rebroadcasting live programs by purchase shall be protected in *Competition Law*. This rule has been supported by courts.⁸⁵ Similarly, the entitled rights and interests of SNC derived from live broadcast of the SL programs by purchase from the right owner, which are legitimate and shall be protected by the law.

ii.PNC's act of unfair competition damaged SNC's legitimate rights and interests

The freedom of competition and innovation has limitations. It shall not be practiced to infringe others' lawful rights and interests.⁸⁶ Besides, the injured party seeking damages shall prove that its potential business opportunities have been

⁸¹ Moot Problem, Paragraph 6, Line 2-4.

⁸² *Douban v. PPTV*; *CNTV v. Fengxing*.

⁸³ Article 6, *Interpretation of Network Communication Right*; Article 9.14, *Guidelines*.

⁸⁴ *Douban v. PPTV*; *CNTV v. Fengxing*.

⁸⁵ *CNTV v. Yueti*; *CNTV v. Huaxiachengshi*.

⁸⁶ *Qihu, Qizhi v. Tencent*.

inappropriately grabbed by others.⁸⁷

Particularly, PNC tried to substitute for SNC's exclusive service by illegally providing the same videos in its portal website,⁸⁸ which grabbed the economic benefits from SNC, diverted the user's attention and the website traffic,⁸⁹ and harmed SNC's business advantage and opportunities.⁹⁰ In addition, the expected business benefits arising from the live broadcast of sports events is valued the most in sports industry. And the probability is scarcely left for the operators to acquire profits afterwards. Therefore, PNC has caused irreversible and irreparable damages to SNC. **In conclusion**, the legitimate rights and interests of SNC were damaged by PNC.

4. PNC shall be held liable for damages suffered by SNC.

In accordance with Article 20 of *Competition Law*,⁹¹ PNC shall be held liable for damages suffered by SNC.

VII. Conclusion

Firstly, the alleged programs shall be regarded as cinematography works or compilation works for satisfying the requirement of originality and fixation. Since SNC is entitled to copyright protection through multiple authorization originated from CFA who is the original owner enjoying the copyrights over the alleged programs in the present case. Therefore, PNC shall be held liable for copyright infringement, for it, together with LNC, jointly live broadcast the involved programs in the division of portal websites, which infringed SNC's empowered right to broadcast and communicate on networks.

Secondly, PNC constitutes unfair competition under Article 2 and Article 9, for it intentionally leads to false or misunderstanding promotion, violated the generally recognized ethics, damaged the legitimate rights and interests of SNC, disturbed the market order and may harm the consumer's interests. Thus, PNC should be held liable for unfair competition.

In conclusion, PNC has infringed the copyrights of SNC, constituted unfair competition, and shall bear the liability for damages of SNC.

We respectfully submit that the court shall overrule the petitioner's claim of appeal.

Respectfully Submitted,

Attorney for the Respondent

⁸⁷ *Quota of Kelp Case*.

⁸⁸ *Woailiao v. CNTV*.

⁸⁹ Moot Problem, Paragraph 8, Line 7.

⁹⁰ *CNTV v. Huaxiachengshi*.

⁹¹ Article 20, *Competition Law*.

VIII. APPENDIX I

Laws and Regulations of People's Republic of China

A. Copyright Law

《中华人民共和国著作权法》

Article 3 “Works” mentioned in this Law shall include works of literature, art, natural science, social science, engineering technology and the like made in the following forms:

- (1) written works;
- (2) oral works;
- (3) musical, dramatic, quyi*, choreographic and acrobatic art works;
- (4) works of fine art and architecture
- (5) photographic works;
- (6) cinematographic works and works created in a way similar to cinematography
- (7) drawings of engineering designs and product designs, maps, sketches and other graphic works as well as model works;
- (8) computer software;
- (9) other works as provided in laws and administrative regulations.

第三条 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 “Copyright owners” shall include:

(1) authors;

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

第九条 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 “Copyright” shall include the following personal 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 the work by means of printing, Xeroxing, rubbing, sound recording, video recording, duplicating, or re-shooting, etc.;

(6) the right of distribution, that is, the right to provide the public with original copies or reproduced copies of works by means of selling or donating;

(7) the right of lease, that is, the right to nongratically permit others to temporarily exploit a cinematographic work, a work created in a way similar to cinematography or computer software, unless the computer software is not the main object under the lease;

(8) the right of exhibition, that is, the right to publicly display the original copies or reproduced copies of works of fine art and cinematographic works;

(9) the right of performance, that is, the right to publicly perform works, and to publicly transmit the performance of works by various means;

(10) the right of projection, that is, the right to make, by such technical equipment as projector, episcopy, etc., the works of fine art, photographic works, cinematographic works and works created in a way similar to cinematography, etc. reappear publicly;

(11) the right of broadcasting, that is, the right to publicly broadcast or disseminate works by wireless means, to disseminate broadcast works to the public by

wired dissemination or rebroadcast, and to disseminate broadcast works to the public by audio amplifier or other similar instruments for transmission of signs, sounds or images;

(12) the right of information network dissemination, that is, the right to provide the public with works by wired or wireless means, so as to make the public able to respectively obtain the works at the individually selected time and place;

(13) the right of production, that is, the right to fix works on the carrier by cinematography or in a way similar to cinematography;

(14) the right of adaptation, that is, the right to modify a work for the purpose of creating a new work of original creation;

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

(16) the right of compilation, that is, the right to choose or edit some works or fragments of works so as to form a new work;

(17) other rights which shall be enjoyed by the copyright owners.

A copyright owner may permit others to exercise the rights provided in Items (5) through (17) of the preceding paragraph, and may receive remuneration as agreed upon in the contract or in accordance with the relevant provisions in this Law.

A copyright owner may wholly or partially transfer the rights provided in Items (5) through (17) of Paragraph 1 of this Article, and may receive remuneration as agreed upon in the contract or in accordance with the relevant provisions in this Law.

第十条 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 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 another organization, such legal entity or organization shall be the author of the work.

The citizen, legal entity or organization whose name is affixed to a work shall, without the contrary proof, be the author of the work.

第十一条 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 work created by compilation shall refer to the work which is compiled of

some works, fragments of works or the data or other materials not constituting a work, and the choice or layout of the contents of which embodies the original creation. The copyright of the compilation work shall be enjoyed by the compiler, provided that the exercise of such copyright does not infringe upon the copyright of the pre-existing works included in the compilation.

第十四条 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 The copyright of a cinematographic work or a work created in a way similar to cinematography shall be enjoyed by the producer, while any of the playwright, director, cameraman, words-writer, composer and other authors of the work shall enjoy the right of authorship, and shall be entitled to obtain remuneration as agreed upon in the contract between him and the producer.

The authors of the screenplay, musical works and other works that are included in a cinematographic work or a work created in a way similar to cinematography and can be exploited separately shall be entitled to exercise their copyright independently.

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

电影作品和以类似摄制电影的方法创作的作品中的剧本、音乐等可以单独使用的作品的作者有权单独行使其著作权。

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

第十七条 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 permit others to reproduce, distribute, lease and disseminate to the public through information network such sound recordings or video recordings and shall have the right to receive remuneration for it. The term of protection of such rights shall be fifty years, expiring on December 31 of the fiftieth year after the production of the recording is firstly completed.

A producer of sound recordings or video recordings who is permitted to reproduce, distribute, lease or disseminate to the public through information network a sound

recording or video recording shall obtain permission from and also pay remuneration to both the copyright owner and the performer.

第四十二条 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。

被许可人复制、发行、通过信息网络向公众传播录音录像制品，还应当取得著作权人、表演者许可，并支付报酬。

Article 48 He who commits any of the following acts of infringement shall bear the civil liability for such remedies as ceasing the infringements, eliminating the effects of the act, making a public apology or paying compensation for damages, depending on the circumstances; where he damages public interests at the same time, the copyright administration department may order him to cease the act of tort, may confiscate his illegal gains, confiscate and destroy the reproductions of infringement, and impose a fine on him; if the case is serious, the copyright administration department may also confiscate the materials, instruments and equipment, etc. mainly used to make the reproductions of infringement; where his act has constituted a crime, he shall be investigated for criminal liabilities in accordance with the law:

第四十八条 有下列侵权行为的，应当根据情况，承担停止侵害、消除影响、赔礼道歉、赔偿损失等民事责任；同时损害公共利益的，可以由著作权行政管理部门责令停止侵权行为，没收违法所得，没收、销毁侵权复制品，并可处以罚款；情节严重的，著作权行政管理部门还可以没收主要用于制作侵权复制品的材料、工具、设备等；构成犯罪的，依法追究刑事责任：

(1) without the permission from the copyright owner, reproducing, distributing, performing, projecting, broadcasting, compiling, disseminating to the public through information network his works, except where otherwise provided in this Law;

(一) 未经著作权人许可，复制、发行、表演、放映、广播、汇编、通过信息网络向公众传播其作品的，本法另有规定的除外；

Article 49 The infringer shall, when having infringed upon the copyright or the rights related to copyright, make a compensation on the basis of the obligee's actual losses; where the actual losses are difficult to be calculated, the compensation may be made on the basis of the infringer's illegal gains. The amount of compensation shall also include the reasonable expenses paid by the obligee for stopping the act of tort.

Where the obligee's actual losses or the infringer's illegal gains cannot be determined, the people's court shall, on the basis of the seriousness of the act of tort, adjudicate a compensation of 500,000 Yuan or less.

第四十九条 侵犯著作权或者与著作权有关的权利的，侵权人应当按照权利人的实际损失给予赔偿；实际损失难以计算的，可以按照侵权人的违法所得给予赔偿。

赔偿数额还应当包括权利人为制止侵权行为所支付的合理开支。

权利人的实际损失或者侵权人的违法所得不能确定的，由人民法院根据侵权行为的情节，判决给予五十万元以下的赔偿。

B. Implementation Regulation

《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.

第二条 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 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;

第四条 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 hereunder assigned to them:

(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;

第五条 著作权法和本条例中下列用语的含义：

(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；

C. Interpretation of Copyright Law

《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 documents, originals, legal publications, copyright registration certificates, certificates issued by the certification bodies and contracts for obtaining rights provided by the parties concerned may be used as evidence.

A natural person, legal person or other organization that signs a work or an article of work shall be regarded as the owner of the copyright or the rights and interests relating to the copyright, except where there is proof to the contrary.

第七条 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. Interpretations of Network Communication Right

《最高人民法院关于审理侵害信息网络传播权民事纠纷案件适用法律若干问题的规定》

Article 4 where there is evidence to prove that the network service provider and others jointly provide works, performances, audio and video recordings, etc., which constitute joint infringement, the people's court shall order the provider to bear joint liability. If a network service provider can prove that it only provides network services such as automatic access, automatic transmission, information storage space, search, link, file sharing technology, and claims that it does not constitute a joint infringement, the people's court shall support it.

第四条 有证据证明网络服务提供者与他人以分工合作等方式共同提供作品、表演、录音录像制品，构成共同侵权行为的，人民法院应当判令其承担连带责任。网络服务提供者能够证明其仅提供自动接入、自动传输、信息存储空间、搜索、链接、文件分享技术等网络服务，主张其不构成共同侵权行为的，人民法院应予支持。

Article 6 where the plaintiff has prima facie evidence to prove that the network service provider has provided the relevant works, performances, sound and video recordings, but the network service provider can prove that it only provides the network service and has no fault, The people's court shall not consider it to constitute an infringement.

第六条 原告有初步证据证明网络服务提供者提供了相关作品、表演、录音录像制品，但网络服务提供者能够证明其仅提供网络服务，且无过错的，人民法院不应认定为构成侵权。

Article 9 the people's court shall, on the basis of whether the specific facts of network users' infringement of the right of information network dissemination are obvious or not, comprehensively consider the following factors to determine whether the network service provider constitutes a network service provider or not:

(1) the ability of the network service provider to manage information based on the nature and manner of providing the service and the possibility of causing infringement;

(2) the types and popularity of the works, performances and audio and video recordings disseminated and the extent to which the infringing information is apparent;

(3) whether the network service provider has taken the initiative to select, edit, modify and recommend works, performances and audio and video recordings;

(4) whether the network service provider has actively taken reasonable measures to prevent infringement;

(5) whether the network service provider has set up a convenient procedure to receive the infringement notice and make a reasonable response to the infringement notice in a timely manner;

(6) whether the network service provider has taken the corresponding reasonable measures against the repeated infringement of the same network user;

(7) other relevant factors.

第九条 人民法院应当根据网络用户侵害信息网络传播权的具体事实是否明显，综合考虑以下因素，认定网络服务提供者是否构成应知：

（一） 基于网络服务提供者提供服务的性质、方式及其引发侵权的可能性大小，应当具备的管理信息的能力；

（二） 传播的作品、表演、录音录像制品的类型、知名度及侵权信息的明显程度；

（三） 网络服务提供者是否主动对作品、表演、录音录像制品进行了选择、编辑、修改、推荐等；

（四） 网络服务提供者是否积极采取了预防侵权的合理措施；

（五） 网络服务提供者是否设置便捷程序接收侵权通知并及时对侵权通知作出合理的反应；

（六） 网络服务提供者是否针对同一网络用户的重复侵权行为采取了相应的合理措施；

（七） 其他相关因素。

Article 11 where a network service provider directly obtains economic benefits from works, performances, sound recordings and video products provided by network users, The people's court shall determine that it has a high duty of attention to the act of infringing upon the right of information dissemination by the users of the network. The network service provider makes profits by placing advertisements on specific works, performances, audio and video recordings, or gains economic benefits from other specific links to the works, performances, audio and video recordings transmitted by them, Shall be regarded as direct economic benefits as specified in the preceding paragraph. The general advertising fee, service charge and so on charged by the

network service provider for the provision of the network service do not fall under the circumstances stipulated in this paragraph.

第十一条 网络服务提供者从网络用户提供的作品、表演、录音录像制品中直接获得经济利益的, 人民法院应当认定其对该网络用户侵害信息网络传播权的行为负有较高的注意义务。

网络服务提供者针对特定作品、表演、录音录像制品投放广告获取收益, 或者获取与其传播的作品、表演、录音录像制品存在其他特定联系的经济利益, 应当认定为前款规定的直接获得经济利益。网络服务提供者因提供网络服务而收取一般性广告费、服务费等, 不属于本款规定的情形。

E. Beijing High People's Court Guidelines for the Trial of Copyright Infringement Cases

《北京高级人民法院侵害著作权案件审理指南》

3.1 Proof of ownership

Unless there is proof to the contrary, the ownership of a work shall be determined according to the name of author identified on the work.

The drafts, originals, legal publications, copyright registration certificates, certificates issued by competent certification institutions, right transfer contracts, statements of right holders in conformity with the relevant trade practices and the like presented by a party to the case may be admitted as prima facie evidence of the ownership.

3.1 【权属的证明】

在无相反证据的情况下, 根据作品的署名推定权利归属。

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、认证机构的证明、取得权利的合同、符合行业惯例的权利人声明等可以作为证明权利归属的初步证据。

3.2 Verification of author's name

In judging whether a name identified as the author of a work is the real author's name, the court shall give comprehensive consideration to, inter alia, the nature, type and form of expression of the work, trade practice and the public's cognitive habit.

3.2 【署名的识别】

在判断某一署名是否属于作者署名时, 应当综合考虑如下因素: 作品的性质、作品的类型、作品的表现形式、行业惯例、公众的认知习惯等。

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。

9.2 Plaintiff’ s burden of proof

Where the plaintiff claims that the defendant provides any work, performance or sound or visual recording individually or jointly with others, he/she shall have the burden of proof.

Where the plaintiff presents prima facie evidence that the work, performance or sound or visual recording in suit can be played, downloaded or otherwise obtained from the defendant’ s website, but the defendant still claims that he/she has not provided such content, the defendant shall have the burden of proof.

The plaintiff may prove the content of the defendant’ s website by notarial certificate or otherwise, provided that he/she shall ensure the completeness of the steps to collect the evidence and the related web pages.

9.3 Defendant’ s burden of proof

Where the defendant claims that he/she only provides automatic connection, automatic transmission, information storage space, searching, link, file sharing technology or other network technology services of the like, he/she shall have the

burden of proof, and if he/she fails to present sufficient proof thereof, his/her claim shall be dismissed.

The defendant shall be responsible for presenting evidence for the provider of the work, performance or sound or visual recording in suit or the relationship between him/her and the provider. If the defendant fails to present such evidence, but the plaintiff has presented prima facie evidence, the defendant's claim that he/she has not provided the content shall be dismissed.

9.6 Direct infringement

Provision of any work, performance or sound or visual recording individually or in cooperation with others without permission shall constitute a direct infringement of the right of communication via the Internet.

If there are subjective communications among the defendants or between the defendants and others for the purpose of joint provision of the work, performance or sound or visual recording in suit, and they have taken actions to realize such subjective communications, the court may determine that their act constitutes an act described in the preceding paragraph.

9.6 【直接侵权】

未经许可单独或者以分工合作方式共同提供作品、表演、录音录像制品的行为，属于直接侵害信息网络传播权的行为。

各被告之间或者被告与他人之间具有共同提供涉案作品、表演、录音录像制品的主观意思联络，且为实现前述主观意思联络客观上实施了相应行为的，可以认定构成前款所规定情形。

9.7 Cooperation in infringement

If there's any agreement or other evidence reflecting an intent of cooperation among the defendants or between the defendants and others, or the evidences available prove close links among the parties involved in content cooperation, benefit sharing and other aspects, the court may determine that there are subjective communications among the parties involved for the purpose of joint provision of the work, performance or sound or visual recording in suit, unless the defendants prove that they only provides technical service according to the objective need of technological or business model.

9.7 【分工合作】

各被告之间或者被告与他人之间存在体现合作意愿的协议等证据，或者基于在案证据能够证明各方在内容合作、利益分享等方面紧密相联的，可以认定各方具有共同提供涉案作品、表演、录音录像制品的主观意思联络，但被告能够证明其根据技术或者商业模式的客观需求，仅提供技术服务的除外。

9.14 Determination of provision of linking service

Where the defendant proves any of the following, the court may preliminarily determine what he/she provides is a linking service:

(i) the work, performance or sound or visual recording in suit is shown on a third-party website redirected from the defendant's website;

(ii) though the work, performance or recording in suit is shown on the defendant's website, but the evidence presented by the defendant is sufficient to prove that the work, performance or sound or visual recording in suit is placed on a third-party website;

(iii) other circumstances.

The court shall not determine what the defendant provides is a linking service solely based on the watermarks on the frames shown, or icons or words about the source of film.

9.14 【提供链接服务行为的认定】

被告能够举证证明存在以下情形之一的，可以初步认定其提供的是链接服务：

(1) 涉案作品、表演、录音录像制品的播放是自被告网站跳转至第三方网站进行的；

(2) 涉案作品、表演、录音录像制品的播放虽在被告网站进行，但其提供的证据足以证明涉案作品、表演、录音录像制品置于第三方网站的；

(3) 其他情形。

单独依据播放画面的水印或者影片介绍中播放来源的图标、文字等，不宜认定被告实施的是链接服务行为。

9.24 Scheduled broadcasting

Where a network service provider publicly broadcasts a work via the Internet according to a pre-determined schedule without permission, his/her act shall not constitute an infringement of the right of communication via the Internet, but any claim lodged by the copyright owner of the work against the network service provider for infringement under Article 10 Paragraph 1 Subparagraph 17 of the Copyright Law shall be upheld.

9.24 【定时播放】

网络服务提供者未经许可通过信息网络按照事先安排的时间表向公众提供作品在线播放的，不构成侵害信息网络传播权，但著作权人依据著作权法第十条第一款第十七项主张权利的，应予支持。

9.25 Simultaneous retransmission

Where a network service provider simultaneously retransmits a work via the network without permission, any claim lodged by the copyright owner of the work against the network service provider for infringement under Article 10 Paragraph 1 Subparagraph 17 of the Copyright Law shall be upheld.

9.25 【同步转播】

网络服务提供者未经许可通过网络同步转播作品，著作权人依据著作权法第十条第一款第十七项主张权利的，应予支持。

9.29 Determination of website operator

The operator of a website is the operator stated in the registration information of the website or indicated on the website. If the operator stated in the registration information of the website is different from the one indicated on the website, such operators may be determined as co-operators, unless there is proof to the contrary.

9.29 【网站经营者的认定】

网站登记备案信息、网站中标示的信息载明的经营者，是网站经营者。上述经营者主体不一致的，可以认定为共同经营者，但有相反证据的除外。

F. Contract Law

《中华人民共和国合同法》

Article 36 where a contract is concluded in writing as provided for by laws, administrative regulations or agreed upon by the parties, if the party has not adopted the written form but one of the parties has performed its main obligations, the contract shall be established if the other party accepts the contract.

第三十六条 法律、行政法规规定或者当事人约定采用书面形式订立合同，当事人未采用书面形式但一方已经履行主要义务，对方接受的，该合同成立。

G. Civil Procedure Law

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

第一百六十八条 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。

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。

H. Interpretation of Civil Procedure Law

《最高人民法院关于民事诉讼法司法解释》

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

第三百二十三条 第二审人民法院应当围绕当事人的上诉请求进行审理。

I. Anti-unfair Competition Law

《中华人民共和国反不正当竞争法》

Article 1 This law is drawn up in order to safeguard the healthy development of the socialist market economy, encourage and protect fair market competition, prohibit unfair competition, safeguard the legal rights and interests of managers.

第一条 为保障社会主义市场经济健康发展，鼓励和保护公平竞争，制止不正当竞争行为，保护经营者和消费者的合法权益，制定本法。

Article 2 Managers shall abide by the principle of voluntariness, equality, impartiality, honesty and good faith, and also adhere to public commercial moral in their business transactions.

"Unfair competition", in this Law, means activities made by managers who damage the others' legal rights and interests, disturb the order of social economy and violate the provisions of this Law.

"Manager", in this Law, means the legal person, the other economic organisations and individuals who deal with commercial business or profitable service (commodities in this Law in hereafter as to commodity which includes service).

第二条 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 Managers shall not use advertisement or the other methods to make a false propaganda for the quality, composition, function, usage, producer, time of efficacy and place of production of commodities.

Advertising company shall not be an agent of, or design, or make, or propagandize false advertisement, if it knows or should know the truth.

第九条 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。
广告经营者不得在明知或者应知的情况下，代理、设计、制作、发布虚假广告。

Article 20 Manager shall bear the responsibility for compensating to the damage made by damager to the damaged party under the violation of the provision of this Law. Amount of the compensation shall be equivalent to the profit made by the damager during its damaging, if it is difficult to measure the amount of damage; And it also shall compensate the reasonable cost to the damaged party who has paid the cost to investigate the activities of unfair competition made by damager.
The damaged party may bring law suit to the People's Court when its legal interests and rights are damaged.

第二十条 经营者违反本法规定，给被侵害的经营者造成损害的，应当承担损害赔偿责任，被侵害的经营者的损失难以计算的，赔偿额为侵权人在侵权期间因侵权所获得的利润；并应当承担被侵害的经营者因调查该经营者侵害其合法权益的不正当竞争行为所支付的合理费用。
被侵害的经营者的合法权益受到不正当竞争行为损害的，可以向人民法院提起诉讼。

J. Interpretation of Competition Law

《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.

第八条 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。

K. Interpretation of the Supreme People's Court on Application of Laws in the Trial of Civil Disputes over Domain Names of Computer Network

《最高人民法院关于审理涉及计算机网络域名民事纠纷案件适用法律若干问题的解释》

Article 7 When trying cases of dispute over domain name, the people's court shall apply the corresponding provisions of law to the circumstances complying with the provisions of Article 4 of this Interpretation that constitute infringement according to the relevant provisions of law; those that constitute unfair competition may apply the provisions of Article 4 of the General Principles of Civil Law and the first paragraph of Article 2 of the Law on Anti-Unfair Competition.

The cases of disputes over domain name involving foreign elements shall be handled according to the relevant provisions of Chapter 8 of the General Principles of Civil Law.

第七条 人民法院在审理域名纠纷案件中，对符合本解释第四条规定的情形，依照有关法律规定构成侵权的，应当适用相应的法律规定；构成不正当竞争的，可以适用民法通则第四条、反不正当竞争法第二条第一款的规定。涉外域名纠纷案件，依照民法通则第八章的有关规定处理。

L. Legislation Law

《中华人民共和国立法法》

Article 104 The interpretations on specific application of law in trial or procuratorial work as developed by the Supreme People's Court or the Supreme People's Procuratorate shall primarily involve the specific clauses of laws and conform to the objectives, principles, and original meaning of legislation. Under any of the circumstances as set out in paragraph 2, Article 45 of this Law, a request for legal interpretation or a proposal for developing or amending a relevant law shall be submitted to the Standing Committee of the National People's Congress.

The interpretations on specific application of law in trial or procuratorial work as developed by the Supreme People's Court or the Supreme People's Procuratorate shall be reported to the Standing Committee of the National People's Congress for recordation within 30 days of issuance.

Judicial and procuratorial authorities other than the Supreme People's Court and the Supreme People's Procuratorate shall not develop any interpretation on specific application of law.

第一百零四条 最高人民法院、最高人民检察院作出的属于审判、检察工作中具体应用法律的解释，应当主要针对具体的法律条文，并符合立法的目的、原则

和原意。遇有本法第四十五条第二款规定情况的，应当向全国人民代表大会常务委员会提出法律解释的要求或者提出制定、修改有关法律的议案。

M. Opinions of the State Council on accelerating the development of sports industry and promoting sports consumption

《国务院关于加快发展体育产业促进体育消费的若干意见》

Article 3 (7) Research the establishment of sports industry resources trading platform, innovation market operation mechanism, promote the right to host events, sports events broadcast rights, athletes transfer rights, intangible assets development and other resources with the conditions of fair, open circulation.

According to the market principle to establish the distribution mechanism of sports event relay income, to promote the common development of multiple participants. Relax the right to broadcast the event restrictions, in addition to the Olympic Games, Asian Games, World Cup football match, all kinds of domestic and foreign sports events, television stations can directly purchase or transfer.

We will strengthen the management of security services, improve the standards of security services for sports events and activities, actively promote the socialization of security services, further promote fair competition, and reduce the costs of events and activities.

第三条（七）优化市场环境。

研究建立体育产业资源交易平台，创新市场运行机制，推进赛事举办权、赛事转播权、运动员转会权、无形资产开发等具备交易条件的资源公平、公正、公开流转。按市场原则确立体育赛事转播收益分配机制，促进多方参与主体共同发展。放宽赛事转播权限制，除奥运会、亚运会、世界杯足球赛外的其他国内外各类体育赛事，各电视台可直接购买或转让。加强安保服务管理，完善体育赛事和活动安保服务标准，积极推进安保服务社会化，进一步促进公平竞争，降低赛事和活动成本。

N. Notice on Illegal Broadcasting of Olympic Events and Related Activities through the Internet is Strictly Prohibited

《国家广播电影电视总局关于严禁通过互联网非法转播奥运赛事及相关活动的通知》

Article 2 The illegal broadcast of the Olympic Games and related events on the Internet and mobile platforms shall be covered by the “2008 Special Campaign on Crackdown on Internet Infringement & Piracy” jointly launched by the National Copyright Administration, the Ministry of Public Security and the Ministry of Industry and Information Technology, and the unauthorized broadcast of the Olympic Games and related events on the Internet and mobile platforms shall be seriously investigated and punished according to law.

第二条 通过互联网和移动平台非法转播奥运赛事及相关活动的行为，将纳入国家版权局、公安部、工业和信息化部共同开展的“2008年打击网络侵权盗版专项行动”，对未经许可转播奥运赛事及相关活动的互联网和移动平台，将依法严

厉查处。

Article 5 To prevent the infringement upon the right to broadcast the Olympic Games and promote the development of new media in China, all the Internet and mobile platform operators may legally use the video and audio signals of the Olympic Games and related events through the authorization of the CCTV Network Dissemination Center.

第五条 为避免奥运赛事转播权被非法侵害，同时促进我国新媒体的发展，各互联网和移动平台可通过取得中央电视台网络传播中心授权的形式，合法使用奥运赛事及相关活动的视音频节目信号。

O. Notice on Strengthening TV Coverage and Broadcasting Management in Sports Competitions

《关于加强体育比赛电视报道和转播管理工作的通知》

Article 1 Major international sports competitions, including the Olympic Games, the Asian Games and the World Cup football match (including the qualifying matches), are under the responsibility of CCTV to negotiate and purchase the television broadcasting rights in China.

Other television stations (including cable radio and television stations) may not buy directly.

CCTV, under the principle of ensuring maximum audience coverage, should transfer broadcasting rights in a specific region through negotiation with regard to the needs of local stations.

第一条 重大的国际体育比赛，包括奥运会、亚运会和世界杯足球赛（包括预选赛），在我国境内的电视转播权统一由中央电视台负责谈判与购买，其他各电视台（包括有线广播电视台）不得直接购买。中央电视台在保证最大观众覆盖面的原则下，应就地方台的需要，通过协商转让特定区域内的转播权。

Article 2 Major domestic sports competitions, including television broadcasts of the national sports meeting, the city sports meeting and the national minority games, shall be led by the Central Television Station in convening relevant television stations for consultation.

To formulate a reasonable way of compensation and television signal production standards, and the CCTV is responsible for the negotiation and purchase of television broadcasting rights, other television stations may not directly purchase.

第二条 国内重大的体育比赛，包括全国运动会、城市运动会和少数民族运动会的电视转播，由中央电视台牵头召集各有关电视台进行协商，制定出合理的补偿方式及电视信号制作标准，并由中央电视台负责谈判和购买电视转播权，其他各电视台不得直接购买。

Article 3 Television broadcasting rights for other sports competitions shall be purchased or transferred by television stations on the basis of fair and reasonable principles.

第三条 其他体育比赛的电视转播权，各电视台应本着公平、合理的原则购买或转让。

*P. Notice on Improving Broadcasting and TV Reporting and
Broadcasting in Sports Competitions*

《关于改进体育比赛广播电视报道和转播工作的通知》

Article 1 Major international sports competitions, including the Olympic Games, the Asian Games and the World Cup football matches (including the qualifying matches), shall be the sole responsibility for negotiations and purchase of television broadcasting rights within the territory of China, and no other radio and television stations may directly purchase them.

Under the principle of ensuring maximum audience coverage, CCTV shall, according to the needs of other radio and television stations, negotiate and transfer broadcasting rights in specific regions to ensure coverage of major international sporting events in China.

第一条 重大的国际体育比赛，包括奥运会、亚运会和世界杯足球赛（包括预选赛），在我国境内的电视转播权统一由中央电视台负责谈判与购买，其他电台电视台不得直接购买。中央电视台在保证最大观众覆盖面的原则下，应就其他电台电视台的需要，通过协商转让特定区域内的转播权，确保重大国际体育赛事在中国境内的播出覆盖。

Article 2 In addition to the Olympic Games, the Asian Games and the World Cup football matches (including qualifying matches), all kinds of sports events at home and abroad may be purchased or transferred directly by radio and television stations in accordance with the principle of fair, just and open circulation.

To realize the orderly competition of broadcasting rights of sports events.

第二条 除奥运会、亚运会和世界杯足球赛（包括预选赛）外的其他国内外各类体育赛事，各电台电视台可以本着公平、公正、公开流转的原则直接购买或转让，实现体育赛事转播权有序竞争。

Article 3 In reporting and broadcasting sports competitions, all radio and television stations should abide by the relevant management regulations, grasp the correct guidance of public opinion, abide by the professional ethics requirements of news reports and the rules of sports competitions, and report and interpret sports events in a true, objective and impartial manner.

All radio and television stations should take necessary measures to guard against sensitive images, sound sets, and words that damage the image of China.

Live sports events to be carried out according to the requirements of live broadcast program management.

第三条 各电台电视台报道和转播体育比赛，要遵守有关管理规定，把握正确的舆论导向，遵守新闻报道的职业道德要求和体育比赛规则，真实、客观、公正地进行赛事报道和解说。对损害中国形象的敏感画面、音响、文字等，各电台电视台须采取必要措施加以防范。直播体育赛事需按直播节目管理要求执行。

IX. APPENDIX II

The 2014 China Football Association Super League TV Broadcast Public Signal Production Manuals⁹²

Basic Principles of Switching

- The director should study the competition carefully, designs the lens carefully, fully uses the modern equipment, uses the storytelling technique, 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。

⁹² 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 preprocessing, 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*.

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, 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。