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**HUBEI HIGH COURT RELEASES CHINA'S FIRST EVER COMPENSATION  
STANDARDS FOR ONLINE VIDEO COPYRIGHT VIOLATIONS**

**Introduction**

In June 2009, the High Court of Hubei Province issued a circular to its subordinate courts entitled *Minutes of the Symposium on Damage Standards in Cases Involving Infringed-Upon Information Network Dissemination Rights (Minutes)*. The Minutes contain various directions on how to conduct Internet-related copyright infringement trials. Most importantly, however, they define for the first time standards for calculating damages in cases involving copyright infringements committed through the transmission of material over information networks.

**Background**

Streaming online videos has become extremely popular in China during recent years, thanks in part to significant improvements in network bandwidth and video compression technology. As a result of such improvements, the quality of videos available for viewing online, as well as the speed at which they can load, have become better. This, in turn, has increased the number of overall viewers. However, cyber piracy has evolved alongside the technological advances. Thus, the infringement of video copyrights in cyberspace has become endemic.

In the past several years, many lawsuits have been filed by copyright holders claiming that their rights have been infringed-upon by online video websites. Prior to the Minutes being released, there was no uniform standard in China for calculating damages in such cases. Compensation standards have varied from case to case, from region to region, and even from court to court. The damages awarded by the Haidian District of Beijing to date, for example, have ranged from RMB 20,000 to RMB 150,000.

**Key Provisions**

The Minutes state the following:

- the amount of damages that can be awarded for online copyright violations involving films that debuted two or more years ago may not exceed RMB 20,000 per film;

- for films that debuted between one and two years ago, the amount of damages should range from RMB 20,000 to RMB 50,000;
- damages may exceed RMB 50,000 for films which debuted less one year ago and are well-known to the public; and
- the above damages are all cumulative (i.e., awarded per infringing film).

### **Analysis**

The release of the Minutes streamlines the investigation and trial of online copyright infringement cases by courts in Hubei Province. It is the first time in China that a court has established relatively detailed compensation standards for this type of claims. While the Minutes are not legally binding on courts in other provinces, they will nonetheless have reference value in similar cases across China. However, it will take several months before the reaction to the Minutes from courts, defendants and claimants can be assessed accurately.

A similar document issued by the National Supreme People's Court would be more authoritative than the Minutes, which was only issued by a provincial court. Moreover, the Minutes do not describe compensation standards in great detail: they fail to distinguish among cases according to factors such as the type and length of the infringing video.

It is likely that the Minutes was released as a way for the High Court of Hubei Province to standardize damage awards in copyright infringement case, rather than as a means of improving overall copyright protection. Further, because the award amounts specified are relatively low, the Minutes are unlikely to have much of a deterrent effect on piracy, either in Hubei or elsewhere. Other countries have had little luck in curbing online piracy through such legislative measures. In the United States, for example, where damage awards are generally much higher (as high as US\$111 million in the case of torrent search engine TorrentSpy), the practice of distributing and watching pirated videos online continues unabated.

### **Conclusion**

Although the Minutes are not perfect, they demonstrate that provincial courts in China are nonetheless taking the initiative in combating online piracy and protecting legitimate copyrights. Other provinces may well choose not to follow Hubei's lead in releasing local uniform standards, since doing so might lead to forum shopping. However, courts in different Chinese jurisdictions often influence each other anyway. For example, the standards set by the Minutes, especially the cap on damages in the first two categories, are almost the same as the damages granted by courts in Beijing.

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