

# INTELLECTUAL PROPERTY LAW IN CHINA: BASIC POLICY AND NEW DEVELOPMENTS

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*As part of its rapid economic development, China has taken major steps to provide intellectual property protection. The author examines the legal framework and judicial enforcement procedures that China has established to protect patents, trademarks and copyrights, as well as the constitutional principles that underlie the country's intellectual property protection efforts. While he demonstrates very significant progress across the board, the author notes that China's greatest difficulty has been with copyright protection. The reason, he points out, is that the protection of copyrights has to be reconciled with two other objectives: maintenance of the state's authority to censor all publications, and the desire to keep out what are regarded as undesirable Western cultural products and influences. Nevertheless, he concludes, in view of what has been achieved to date and China's continuing commitment to market-oriented policies, that further strengthening of all areas of intellectual property protection seems assured.*

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In recent years, Sino-U.S. trade-related disputes over protection of intellectual property rights have raised concerns about China's intention to enforce its intellectual property laws.<sup>1</sup> In order to gain a reasonable view on this issue, this article focuses on Chinese basic policies to enforce intellectual property laws and on some important new developments.<sup>2</sup> Part I presents a discussion of China's Constitutional principles for the protection of intellectual property rights. Part II and III describe China's Customs Regulation and judicial enforcement of intellectual property laws.

## I. CONSTITUTIONAL PRINCIPLES FOR IP PROTECTION

We should, first of all, examine the Constitutional principles for the protection of intellectual property rights in China, because it is impossible to understand Chinese basic policies to enforce intellectual property laws without knowing its Constitutional guidelines. The 1982 Constitution of the People's Republic of China contains three articles related to protection of intellectual property rights.<sup>3</sup>

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1. Since 1992, China has reached three trade-related IP agreements with the United States, namely, the Memorandum of Understanding on the Protection of Intellectual Property of January 17, 1992, 34 I.L.M. 676 (1995); the Agreement Regarding Intellectual Property Rights of February 26, 1995, [hereinafter Sino-U.S. Agreement Regarding Intellectual Property Rights] 34 I.L.M. 881 (1995), which includes the Annex Action Plan for Effective Protection and Enforcement of Intellectual Property Rights [hereinafter Action Plan]; and the Report on Chinese Enforcement Actions Under the 1995 IPR Agreement, which includes the Annex IPR Enforcement and Market Access Accord of June 17, 1996, INSIDE U.S. TRADE, June 21, 1996.

2. Regarding intellectual property laws in China, see Suman Naresh, *Improved Intellectual Property Protection in China* 43 LA. B.J. 491 (1996); Assafa Endeshaw, *A Critical Assessment of the U.S.-China Conflict on Intellectual Property*, 6 ALB. L.J.SCI. & TECH. 295 (1996); Gregory S. Kolton, *Copyright Law and the People's Courts in the People's Republic of China: A Review and Critique of China's Intellectual Property Courts*, 17 U.P.A. J. INT'L ECON.L.415 (1996); Reiko R. Feaver, *China's Copyright Law and the TRIPs Agreement*, 5. J. TRANSNAT'L L. & POL'Y 431 (1996); Paul B. Birden, *Trademark Protection in China: Trends and Directions*, 18 LOY. L.A. INT'L & COMP. L.J. 431 (1996); Fonda Y. Duvanel, *The Evolution and Enforcement of Computer Software Copyright in the People's Republic of China*, 16 N.Y.L. SCH. J. INT'L & COMP. L. 337 (1996).

3. Since the founding of the People's Republic of China in 1949, China has had four Constitutions: the 1954 Constitution, the 1975 Constitution, the 1978 Constitution and the 1982 Constitution. The 1982 Constitution is currently valid even though it was amended in 1988 and 1993. See *Constitution of the People's Republic of China*, in [1

## A. BASIC POLICY FOR PATENT LEGISLATION AND ENFORCEMENT

Article 20 of the current Constitution provides that: "The state promotes the development of the natural and social sciences, disseminates scientific and technical knowledge, and commends and rewards achievements in scientific research as well as technological discoveries and inventions."<sup>4</sup> This is a basic policy for patent legislation and enforcement.

Since ending the nightmare of the "Cultural Revolution" in 1976, China has launched the modernization of its economy while following an "Open Door" policy and instituting domestic economic reforms. It is China's top priority to promote the development of science and technology. As a developing country, China needs to learn modern technology from developed countries which traditionally encourage and protect inventions by granting patents. On January 31, 1979, China and the United States signed the Implementing Accord on Cooperation in the Field of High Energy Physics.<sup>5</sup> Article 6 provides that: "The parties recognize the need to agree upon provisions concerning protection of copyrights and treatment of inventions or discoveries made or conceived in the course of or under this Accord in order to facilitate specific activities hereunder."<sup>6</sup> On July 7, 1979, China and the United States reached the Agreement on Trade Relations, which specifically provides that: "Both Contracting Parties in their trade relations recognize the importance of effective protection of patents, trademarks and copyrights."<sup>7</sup>

A critical step in implementing the above agreements was the adoption by the Chinese National People's Congress of the 1984

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BUSINESS REGULATION] CHINA LAWS FOR FOREIGN BUSINESS (CCH Australia Limited, 1993) ¶ 4-500 [hereinafter *Constitution of the People's Republic of China*].

4. *Id.*

5. It was the first Sino-U.S. agreement related to protection of intellectual property rights after establishment of diplomatic relations between the People's Republic of China and the United States of America in 1979.

6. See *Implementing Accord between the Department of Energy of the United States of America and the State Scientific and Technological Commission of the People's Republic of China on Cooperation in the Field of High Energy Physics*, 18 I.L.M. 345 (1979).

7. See *China - United States: Agreement on Trade Relations*, 18 I.L.M. 1041 (1979).

Patent Law.<sup>8</sup> Article 1 provides that: "This law is enacted to protect patent rights for invention-creations, to encourage invention-creations, to foster the spreading and application of invention-creations, and to promote the development of science and technology, for meeting the needs of construction of socialist modernization."<sup>9</sup> Pursuant to this goal, China has made a great effort to enforce its patent laws. The number of patent applications has been increasing rapidly since 1985.<sup>10</sup> In comparison with other areas of intellectual property, enforcement of Chinese patent laws is much better. As one of the major patent offices in the world, China Patent Office (CPO) has been recognized as highly effective in enforcing the patent laws.<sup>11</sup> CPO is not only the national administrative agency charged under the State Council with granting patents, but also the quasi-judicial authority responsible for enforcing patent rights. In accordance with Article 60 of the Patent Law, the CPO and local patent offices are authorized to settle patent right disputes and issue orders prohibiting any patent infringement if the plaintiff does not file a lawsuit in People's Court.<sup>12</sup>

Furthermore, it seems that there are no ideological obstacles to the enforcement of Chinese patent law. A patented invention-creation is regarded in China as a matter of natural science.

8. Adopted by the Standing Committee of the 6th National People's Congress on March 12, 1984, entered into force on April 1, 1985, amended by the Standing Committee of the 7th National People's Congress on September 4, 1992.

9. See *Patent Law of the People's Republic of China*, in [2 BUSINESS REGULATION] CHINA LAWS FOR FOREIGN BUSINESS (CCH Australia Limited, 1993) ¶ 11-600 [hereinafter *Patent Law of the People's Republic of China*].

10. The number of patent applications filed in the China Patent Office was about 8,000 in 1985, and 10,000 in 1990. The total number of patent applications was more than 500,000 by October 1995, 86 % of which were filed by Chinese nationals. See JIEFAN DAILY (Shanghai), Nov. 26, 1995, at 3.

11. The China Patent Office is one of the International Search and Preliminary Examination Authorities under the Patent Cooperation Treaty (PCT). See THE FIRST TWENTY-FIVE YEARS OF THE PATENT COOPERATION TREATY (PCT) 1970-1995 (World Intellectual Property Organization, Geneva 1995).

12. Article 60 of the Patent Law reads as follows:

For any exploitation of the patent, without the authorization of the patentee, constituting an infringing act, the patentee or any interested party may request the administrative authority for patent affairs to handle the matter or may directly institute legal proceedings in the People's Court.

See *Patent Law of the People's Republic of China*, supra note 9, ¶ 11-603(63).

Given this perspective, it is understandable why the first Sino-U.S. intellectual property rights-related agreement has led to cooperation in the field of high energy physics.

## B. BASIC POLICY FOR TRADEMARK LEGISLATION AND ENFORCEMENT

China's Constitution does not specifically provide protection for trademarks. It should be mentioned that the 1982 Trademark Law was adopted before the 1982 Constitution was ratified by the National People's Congress.<sup>13</sup> Article 7 of the 1993 Amendments to the 1982 Constitution revised its Article 15, which now provides that: "The state practices a socialist market-directed economy. The state improves economic legislation and perfects macro-readjustment and control. The state prohibits, according to the law, disturbance of society's economic order by any organization or individual."<sup>14</sup> This Article is silent on protection of trademarks, because Article 1 of the Trademark Law defines its purpose as promotion of the socialist commodity (i.e. market) economy.<sup>15</sup> This is the basic policy that underlies China's trademark legislations and enforcement.

Before carrying out its market-directed economic reforms, China enacted trademark regulations in 1950 and 1963. However, the old trademark system played a limited role in the protection of trademark holders' rights. There was virtually no motivation to infringe trademarks in the centralized planning economy, because producers did not care whether their products could be sold; their only concern was to follow government planning. Now that China is gradually changing

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13. The Trademark Law was adopted on 23 August 1982 by the 24th Session of the Standing Committee of the 5th National People's Congress, which preceded adoption of the 1982 Constitution on 4 December 1982 by the 5th Session of the 5th National People's Congress.

14. See *The 1993 Amendments to the Constitution of the People's Republic of China*, in [1 BUSINESS REGULATION] CHINA LAWS FOR FOREIGN BUSINESS (CCH Australia Limited, 1993), ¶ 4-500(7).

15. See *Trademark Law of the People's Republic of China*, in [2 BUSINESS REGULATION] CHINA LAWS FOR FOREIGN BUSINESS (CCH Australia Limited 1993) ¶ 11-500(5).

its economic system into a market-based model, most producers, whether in state-owned enterprises or private firms, are facing a competitive market. They realize that their shares in particular markets depend to a great degree on offering high quality products with well-known trademarks. It is very important to protect the exclusive rights of trademark holders in a market economy. This is why the Trademark Law was adopted in the early 1980s when China began its economic reforms.

To strengthen trademark protection further, China undertook a nationwide crackdown on fake and poorly made goods in July 1992. Then on February 22, 1993, it amended and repromulgated its Trademark Law, which now includes service mark protection.<sup>16</sup> Chinese legislators also amended the Criminal Law with Supplementary Provisions Concerning the Punishment of Crimes of Counterfeiting Registered Trademarks, which became effective on July 1, 1993.<sup>17</sup> According to Article 2 of the Trademark Law, the Trademark Office, under the China State Administration of Industry and Commerce (AIC), is responsible for registration and administrative control of trademarks nationwide. The Trademark Office and local trademark administrative offices have the power to handle trademark infringement cases and impose fines when the infringing activities do not constitute a criminal offense.

### C. BASIC POLICY FOR COPYRIGHT LEGISLATION AND ENFORCEMENT

China promised to protect copyrights at the time it was concluding the Sino-U.S. Implementing Accord on Cooperation in the Field of High Energy Physics as well as the Agreement on Trade Relations in 1979. However, it took more than a decade for China to adopt the new Copyright Law, which

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16. Regarding the background of the 1993 Trademark Law Amendments, see Birden, *supra* note 2.

17. *Id.*

entered into effect on June 1, 1991.<sup>18</sup> One of the reasons for this delay was China's concern about the control of publications while at the same time protecting copyrights.

Article 22 of the Constitution provides that: "The state promotes the development of literature and art, the press, broadcasting and television undertakings, publishing and distribution services, libraries, museums, culture centers, and other cultural undertakings, that serve the people and socialism..."<sup>19</sup> This is the basic policy for the protection of copyrights. Article 1 of the Copyright Law therefore provides that: "This law is formulated in accordance with the Constitution to protect the copyright of authors of literary, artistic and scientific works, as well as to safeguard their copyright-related rights and interests, to encourage the creation and publication of works which contribute to the development of the socialist material and spiritual culture and to promote the development and prosperity of socialism's culture and scientific institutions."<sup>20</sup> Article 4 of the Copyright Law provides that: "Any work prohibited from publication or issue shall not receive the protection of this law."<sup>21</sup> It is obvious that China wants to protect copyrights, but copyrights, unlike patents or trademarks, are related to the issue of ideology. China controls the affairs of publications and the press through censorship. This controlling power is vested in the Press and Publications Administration (PPA) rather than the National Copyright Administration (NCA). It seems, however, that Article 4 of the Copyright Law misconstrues the concept of copyright, because copyright is an inherent right of authorship, whether or not a literary or artistic work is by law prohibited from being published.

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18. Adopted on 7 September 1990 by the 15th Session of the Standing Committee of the 7th National People's Congress. See *Copyright Law of the People's Republic of China*, in [2 BUSINESS REGULATION] CHINA LAWS FOR FOREIGN BUSINESS (CCH Australia Limited 1993) ¶ 11-700(3) [hereinafter *Copyright Law of the People's Republic of China*].

19. See *Constitution of the People's Republic of China*, *supra* note 3, ¶ 4-500(27).

20. See *Copyright Law of the People's Republic of China*, *supra* note 18, art. 1, ¶ 11-700(3).

21. *Id.* art. 4, ¶ 11-700(9).

In addition, China is very concerned about cultural influences from Western countries. Article 2 of the Copyright Law provides that a foreigner's copyright will be protected if the work is first published in China. If it is not first published in China, it will be protected according to a bilateral agreement signed by China and the foreign country in which the work is first published or an international agreement acceded to by China and this foreign country. China acceded to the Berne Convention for the Protection of Literary and Artistic Works in 1992; accordingly, any foreigner's work must be protected by Chinese Copyright Law if the foreign country is a member of the Berne Convention.<sup>22</sup> It is a big challenge for China to control Western cultural influence while protecting foreigners' copyrights.

In summary, it is a principle of China's Constitution to protect intellectual property rights including copyrights, but there is still too much political concern about control of publications and too little attention to the economic interests of copyright owners, which indicates that it will not be easy to enforce copyright law in China.

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22. *Id.* art. 2, ¶ 11-700(3). According to Article 4 of the *Regulation on Implementation of International Copyright Treaties* (issued 25 September 1992 pursuant to the People's Republic of China State Council Decree No. 105), the foreign works referred to in this Regulation shall include:

- (1) works whose author or one of whose authors, other copyright holder or one of the other copyright holders is a national of an international copyright treaty member state or is a permanent resident of a member state to the said treaty;
- (2) works whose author is not a national of an international copyright treaty member state or a permanent resident of a member state to the said treaty, but whose initial publication or simultaneous publication was carried out in a member state to the said treaty;
- (3) works whose copyright holder or one of whose copyright holds, according to the contract, is a Sino-foreign joint equity enterprise, Sino-foreign cooperative enterprise or sole foreign investment or works commissioned by such an enterprise.

*Regulation on Implementation of International Copyright Treaties*, in [2 BUSINESS REGULATION] CHINA LAWS FOR FOREIGN BUSINESS (CCH Australia Limited 1993) ¶ 11-703(5).



## II. IP LAW: NEW DEVELOPMENTS

Based on the above mentioned Constitutional principles, China has adopted many intellectual property laws, including mainly the 1982 Trademark Law, which was amended in 1993, the 1984 Patent Law, which was amended in 1992, the 1987 Law on Technology Contracts, the 1990 Copyright Law, the 1991 Regulation on Protection of Computer Software, the 1993 Law Against Unfair Competition and the 1995 Regulation on Customs Protection for Intellectual Property (Customs Regulation).<sup>23</sup> Meanwhile, China's General Administration of Customs (GAC) promulgated the Implementing Rule of Customs Regulation.<sup>24</sup> China has acceded to most of the international treaties for protection of intellectual property rights.<sup>25</sup>

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23. See *Intellectual Property Rights Get Protection*, TAXATION & CUSTOMS: CHINA LAWS FOR FOREIGN BUSINESS (CCH) Report No. 11(28 May 1996). The full text of the *Rules of the People's Republic of China on Customs Protection of Intellectual Property Rights* is set out in [CUSTOMS] CHINA LAWS FOR FOREIGN BUSINESS (CCH Australia Limited 1993) ¶ 50-610(7) [hereinafter *Customs Regulation*].

24. For the full text of the *Implementing Measures of the Customs of the People's Republic of China for the Protection of Intellectual Property Rights* see [CUSTOMS] CHINA LAWS FOR FOREIGN BUSINESS (CCH Australia Limited 1993) ¶ 50-612(4) [hereinafter *Implementing Measures of the Customs Regulation*].

25. Since 1980, China has acceded to the following international treaties on protection of intellectual property rights:

- (1) Convention Establishing the World Intellectual Property Organization;
- (2) Paris Convention for the Protection of Industrial Property;
- (3) Berne Convention for the Protection of Literary and Artistic Works;
- (4) Madrid Agreement Concerning the International Registration of Marks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks;
- (5) Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks;
- (6) Locarno Agreement Establishing an International Classification for Industrial Designs;
- (7) Patent Cooperation Treaty;
- (8) Strasbourg Agreement Concerning International Patent Classification;
- (9) Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms;
- (10) Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure;
- (11) Treaty on Intellectual Property in Respect of Integrated Circuits; and
- (12) Universal Copyright Convention.

## A. CUSTOMS REGULATION: TRADE-RELATED IP PROTECTION

According to the 1995 Sino-U.S. Agreement Regarding Intellectual Property Rights, China promised to strengthen customs enforcement in response to the increased volume of counterfeit goods that had been exported from China.<sup>26</sup> China is making substantial efforts to institute customs regulations that will protect trade-related intellectual property rights.

Article 2 of its 1995 Customs Regulation provides that the scope of customs protection will cover any import or export goods related to intellectual property rights, including trademarks, copyrights and patent rights, which are considered subjects protected by Chinese laws. It complies with the special requirements related to the broader measures stipulated by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), even though China has not yet been granted membership in the World Trade Organization (WTO).<sup>27</sup> Article 51 of TRIPs provides that Members shall adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademarks or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authority of release into free circulation of such goods. Members may make such an application in respect to goods which involve other infringements of intellectual property rights. Members also have recourse to similar procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.<sup>28</sup> Under this provision, it is a preliminary obligation for WTO Members' customs authorities

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*See General Information about WIPO*, <<http://www.wipo.org/eng/general/index.htm>>.

26. *See Sino-U.S. Agreement Regarding Intellectual Property Rights*, *supra* note 1. The Action Plan provides that: "New customs regulation will be published by July 1, 1995 and enter into force by October 1, 1995. These new regulations will clarify that infringing goods that are imported or exported are illegal." Action Plan, *supra* note 1, at 900.

27. *See Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods*, SELECTED INTELLECTUAL PROPERTY AND UNFAIR COMPETITION: STATUTES, REGULATIONS AND TREATIES (1995).

28. *Id.*

to protect trademarks or copyrights related to importation. This level of customs protection may be extended as an optional procedure to imported goods in regard to patent rights, and to exported goods in regard to intellectual property rights. China's Customs Regulation includes provisions for the TRIPs optional procedure. In this aspect, China will be in conformity with the obligations of the TRIPs agreement if China becomes a member of WTO.

In comparison with China's Customs Regulation, the United States' Customs Regulations provide for a narrower scope of customs protection, including the recordation of trademarks, trade names, and copyrights with the United States Customs Service for the purpose of prohibiting the importation of certain articles.<sup>29</sup> U.S. Customs has no authority to prevent the importation of goods which violate a patent unless directed to do so by an exclusion order issued by the U.S. International Trade Commission (ITC) under the provisions of section 337 of the Tariff Act of 1930, as amended.<sup>30</sup>

According to Article 2 of China's Customs Regulation, Chinese Customs will protect intellectual property rights related to import or export goods under Chinese laws. This means that the intellectual property rights eligible for Chinese Customs protection are patents issued by China's Patent Office, trademarks registered in China's trademark offices, and copyrights of literary and artistic works, regardless of whether they have been published, whether their copyright owners are Chinese nationals, or whether they are the works of foreigners first published in China, or works published outside China by nationals of countries that are parties to the Berne Convention for the Protection of Literary and Artistic Works.

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29. See DEPARTMENT OF THE TREASURY U.S. CUSTOMS SERVICE, HOW TO OBTAIN COPYRIGHT, TRADEMARK, AND PATENT PROTECTION FROM THE U.S. CUSTOMS SERVICE (revised April 1993).

30. See Tariff Act of 1930, U.S.C.A. Title 19, Customs Duties.

## B. CUSTOMS RECORDATION FOR IP PROTECTION

Article 8 of the Customs Regulation provides that intellectual property owners shall submit an application in writing to China's General Administration of Customs for recordation, which shall include the following information or documents:

- (1) The names of the intellectual property owners, their place of registration or nationality, complete addresses or principal business addresses as well as legal representative;
- (2) A status copy of the trademark registration certificate issued by the Trademark Office of ACI, as well as its number, content and duration, or a status copy of the patent certificate issued by the China Patent Office as well as its number, content and duration, or a proof of copyright;
- (3) The name of the goods related to the intellectual property rights as well as their origin;
- (4) The main customs office of import or export goods related to the intellectual property rights as well as the names of the goods' importers or exporters;
- (5) The infringing goods and their manufacturer, and the names of their importers or exporters if an infringement has existed.<sup>31</sup>

China's General Administration of Customs shall issue a certificate of recordation for customs protection if the application has been approved. The recordation will be valid for no less than seven years, but it can be extended if intellectual property rights have not expired.<sup>32</sup>

Intellectual property owners can submit an application for customs recordation when they apply to detain suspected

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31. *Customs Regulation*, *supra* note 23, art. 8, ¶ 50-610(8).

32. *Id.* arts. 9 and 10, ¶ 50-610(13).

infringing goods; this means that even though the customs recordation is a precondition for China Customs to detain any suspected infringing goods, intellectual property owners can apply for both customs recordation and detention at the same time.

### C. CUSTOMS INVESTIGATION AND DETENTION PROCEDURE

Regarding the procedure for customs investigation and detention, the Customs Regulation provides that if an intellectual property owner files a written application for customs protection to the customs office in which the alleged infringing goods will be imported or exported, the customs office shall promptly notify the applicant whether it has been approved.<sup>33</sup> If the customs office makes a decision to detain the suspected infringing import or export goods, it shall promptly notify the importer or exporter, who should submit a written defense within seven days after receiving the customs' decision of detention. In case of no defense, the customs office will seize the detained infringing goods after an investigation. The customs office is to begin the investigation within 15 days of the goods being detained. But the detained goods can be released if a written defense has been submitted together with a bond in an amount double the value of the bonded goods, to be determined based on f.o.b. in the case of exportation or c.i.f. in the case of importation.<sup>34</sup>

Under the Customs Regulation, once the detained goods are determined to be infringing, they will be seized by the customs office. All infringing copies will be destroyed. Goods bearing infringing trademarks will be destroyed if it is impossible to clear the trademarks, but if it is possible, the infringing goods will be utilized for public purposes or sold at auction.

China has improved enforcement of trade-related intellectual property rights since the Customs Regulation entered into effect on October 1, 1995. For example, according to the Report

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33. *Supra* note 23.

34. *See Implementing Measures of the Customs Regulation, supra* note 24.

on Chinese Enforcement Actions under the 1995 Sino-U.S. Agreement Regarding Intellectual Rights, over 80,000 pirated CDs, LDs, and VCDs were seized by Chinese Customs in the period of January-June, 1996.<sup>35</sup>

### III. JUDICIAL ENFORCEMENT OF IP LAWS

China has not only established a basic legal system to protect intellectual property rights but has also made substantial efforts to improve judicial enforcement of its intellectual property laws.

#### A. JUDICIAL REFORM FOR IP PROTECTION

In general, Chinese People's Courts have four trial levels: District People's Court, Intermediate People's Court, High People's Court and Supreme People's Court. Each People's Court has the following four trial divisions:

- (1) A civil trial division in charge of civil cases, including copyright disputes;
- (2) An economic trial division dealing with economic matters, particularly enforcement of the Economic Contract Law and industrial property laws, including the Patent Law, the Trademark Law, and the Law Against Unfair Competition;
- (3) A criminal trial division, which has exclusive jurisdiction over all criminal cases, including intellectual property cases if the defendants are criminally liable under the Criminal Law;
- (4) An administrative trial division handling all cases arising from the Administrative Law.

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35. See Report on Chinese Enforcement Actions Under the 1995 IPR Agreement, *supra* note 1.

To strengthen judicial enforcement for protection of intellectual property rights, a new intellectual property trial division has been set up since 1993 in the High People's Courts of the cities of Beijing, Shanghai, and Tianjin, and of the Guangdong, Fujian, Jiangsu and Hainan Provinces. An intellectual property trial division has also been added to the Intermediate People's Courts in the cities where those High People's Courts are located as well as in the Special Economic Zones within the jurisdiction of those High People's Courts, because there are more intellectual property disputes in these developed areas than in other parts of China. The new trial divisions combine the functions performed by civil and economic trial divisions in intellectual property matters, which seems to make for greater efficiency.

Beside this judicial reform, special tribunals to deal with copyright disputes and industrial property cases have been established in both civil and economic trial divisions of all other High People's Courts and Intermediate People's Courts in the cities in which these Courts preside.

In the period 1991-95, the total number of civil lawsuits concerning intellectual property rights was 15,543, 96% of which reached a final judgment.<sup>36</sup> From January to October 1996, the total number of intellectual property cases was 1,930.<sup>37</sup>

Some intellectual property dispute cases involving foreigners have been tried. For example, *Walt Disney Co. v. the Beijing Youngsters and Children's Publishing House* was the first copyright infringement case involving a U.S. party. The Beijing Intermediate People's Court gave a judgment in favor of plaintiff on August 4, 1994, awarding plaintiff approximately RMB227,000, the equivalent of US \$27,360, in damages to be paid in a lump sum by defendants. Additionally, defendants were ordered to make a public apology and stop their illegal

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36. See JIEFAN DAILY, June 6, 1996, at 3.

37. See *Chinese Courts to Step Up IP Protection Efforts*, WEST'S LEGAL NEWS (January 13, 1997).

publishing activities.<sup>38</sup> In April 1996, the Beijing Intermediate People's Court also issued a verdict on *Microsoft Co. v. Beijing Juren Computer Co.*, the first case in which a U.S. software copyright owner filed copyright infringement claims in China. The Court ordered defendants to pay \$53,000 in damages to plaintiffs. It also confiscated computers and software seized from Juren during the investigation of its pirating activities, enjoined it from further piracy of Microsoft, Autodesk, and WordPerfect products, and ordered Juren to make a public apology to the plaintiffs.<sup>39</sup>

## B. NEW DEVELOPMENTS AND PROBLEMS

Recently, China's Supreme People's Court established an office called the Intellectual Property Trial Office. It is chaired by the vice president of the Court, Judge Li Guoguang, who was head of the intellectual property trial division of the Shanghai High People's Court before he moved to his new position in charge of guidance for all judicial issues involving intellectual property trials nationwide.

It is also very important that, most recently, all of the District People's Courts in Shanghai have established intellectual property tribunals in their economic trial divisions to handle all intellectual property cases not involving criminal or administrative laws. Furthermore, two of these Shanghai District People's Courts have established intellectual property trial division similar to those in the High or Intermediate People's Courts; these two independent divisions have jurisdiction over all intellectual property cases including those involving matters of criminal or administrative laws.

Chinese judicial enforcement for protection of intellectual property rights is still in the process of evolution. Some People's Courts have special intellectual property trial divisions, some do not. And there remain some procedural problems in handling intellectual property cases that involve

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38. See Kolton, *supra* note 2, at 442.

39. *Id.* at 449.



both criminal law and administrative law. These problems arise where the intellectual property trial division has exclusive jurisdiction over all intellectual property cases, including those involving criminal law and administrative law.

It is not certain whether China will develop a unique judicial system with special trial divisions in its courts at all levels from the Supreme People's Court to each District People's Court, having unified, exclusive jurisdiction over all cases related to protection of intellectual property rights. What is clear is that judicial enforcement of existing intellectual property laws will be further strengthened.

It must be said in conclusion that China truly wants to enforce its intellectual property laws and, considering its short history in this field, that what it has already accomplished has not been easy.