

ADMINISTRATIVE MANAGEMENT AND ENFORCEMENT OF COPYRIGHT IN CHINA

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The Copyright Law of the People's Republic of China went into force on June 1, 1991. On the same day, the Implementing Regulations of the Copyright Law became effective. In addition, the State Council issued the Regulations on Computer Software Protection in 1991.

On October 15 and October 30, 1992, respectively, China became a member state to the Berne Convention and the Universal Copyright Convention. Before these two conventions went into effect in China, the State Council promulgated the International Copyright Treaties Implementing Rules, which made further provisions on certain issues where the Chinese Copyright Law is incompatible with the Berne Convention. Thus, the copyright law of China was further harmonized with the international copyright conventions. On April 30, 1993 China acceded to the Phonograms Convention. Also, the Criminal Code of the People's Republic of China, as revised on March 14, 1997 established the "Crime of the Infringement of Intellectual Property," which further amplified the copyright law.

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By conferring upon the copyright administration department the power of imposing administrative punishment as well as the function of administrative management, the copyright law established the status of the copyright administration department, which is also a remarkable characteristic of the copyright protection system of China.

In order to strengthen copyright administration, China gradually established and perfected its national and local copyright administration departments. Established in 1985, the National Copyright Administration of the People's Republic of China (NCAC) is the copyright administration department under the State Council responsible

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for the nationwide administration of copyright. The main functions of NCAC include:

- to implement the Copyright Law and related regulations, and promulgate rules in relation to copyright administration;
- to investigate and redress cases of serious infringements of copyright which are of nationwide influence or involve the interests of foreign legal persons or citizens;
- to provide guidance for the local copyright administration departments;
- to organize and guide the popularization of copyright knowledge and the training of copyright personnel;
- to approve the establishment of collective administration organizations of copyright and foreign-related copyright agencies, and to supervise and guide their work;
- to administer copyrights of which the State is the owner;
- to be responsible for the administration of external copyright relations, including the exchanges and cooperation with international copyright circles;
- to administer foreign-related copyright trade, and to examine and verify foreign-related copyright trade contracts;
- to examine and approve applications on compulsory licenses for reproduction or translation of foreign works, and grant compulsory licenses thereupon;
- to administer the registration of foreign-related copyright contracts and the voluntary registration of various works;
- to organize the academic exchanges on copyright; and
- to carry out other duties assigned by the State Council in relation to copyright administration.

In order to fulfill the above-listed tasks, NCAC has set up a copyright department as its functional organ. Within this department there are six divisions: the General Office, the Copyright Division I, the Copyright Division II, the Legal Division, the International Division, and the Information Division. Copyright administration departments have also been set up in the provinces, autonomous regions, and municipalities directly under the State Council. The local copyright departments were responsible for the copyright administration work of the administrative areas they are in. According to the Copyright Law and relevant laws and regulations, the copyright administration departments of various levels strengthen copyright administration.

In addition to the establishment of the copyright department, a system of registering the authorization contracts was put into place in order to prevent the unauthorized use of overseas books, sound and video recordings, and computer software. For the past two years the publication and reproduction contracts of over 3,000 titles of sound and video recordings and over 2,000 titles of books involving foreign rights have been registered. NCAC imposed sanctions on over twenty infringing companies that had fraudulent authorizations from abroad and had not registered their contracts. Along with the registration system, the system of title verification was set up and gradually perfected. These rules strengthened the function of the copyright administration departments and built up their authority.

Furthermore, a system of voluntary registration has been implemented in order to heighten the self-protection awareness of copyright owners, to prevent disputes concerning copyright ownership, and to provide prima facie evidence in cases of disputes. By now over 1,546 computer software and 3,000 other works have been registered all over the country.

Several additional measures have also been enacted, including: The Implementing Measures of Administrative Punishment against Copyright Infringements to implement the Law on Administrative Punishment and to regulate administrative punishment against copyright infringements, and The Measures Strengthening the Administration of Foreign-Related Copyright Agencies.

The NCAC has also collaborated with the Press and Publication Administration in sending inspectors to be stationed at compact disc factories in order to enhance the administration of publication and reproduction of audiovisual products and electronic publications.

Customs undertakes the function of protecting intellectual property at the borders. The engraving of a Source Identification Code and closing of laser disc halls have also proved effective.

Copyright administration departments have always attached great importance to the publicity and training of copyright. They opened special columns on newspapers, radio and television lectures, television contests, and organized training courses to popularize copyright knowledge. Copyright administration departments provide legal counsel and mediate copyright disputes for the general public. Meanwhile, they serve as bodies of administrative enforcement. They can deal with infringements at the request of copyright owners, and may also actively investigate on an *virtute officii* basis. The administrative channel is relatively easy and quick.

On April 19, 1994 the copyright administration department in Guangdong cooperated with the police, administration departments of industry and commerce, press, and publication administration departments to mobilize over 4,000 people to carry out raids in twenty cities on illegal compact discs. This started the national campaign against piracy. Ten compact disc factories were closed in the action.

In the winter action of 1996, the Guangdong province took strong and resolute measures including offering a large reward of 300,000 yuan, and digging out twenty-eight underground production lines in addition to the eight lines dug out before the concentrated action.

THE REVISION AND PERFECTION OF THE COPYRIGHT LAW

The copyright law of China is a modern and internationalized law. A legal system of copyright protection with Chinese characteristics has been set up in the past decade. However, the situation has undergone dramatic changes in the past years. In order to adapt the copyright law to the needs of the socialist market economy and bring it further in line with the international system, an amendment to the Copyright Law is on the agenda. The current amendments emphasize two areas: (1) the differences between the current copyright law and international treaties, particularly the Berne Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and (2) the differences with bilateral agreements China has signed; and the practical problems of implementation of the copyright law, which include:

- establishing the legal status and main responsibilities of the collective management organizations;
- making more explicit and practicable provisions on judicial protection, especially on issues such as injunctions and damages; and
- clarifying and simplifying the ownership of rights in works of legal entities, works created in the course of employment, and commissioned works.

In addition, other issues also need to be clarified, such as whether property rights can be transferred, the relationship between copyright and industrial property rights, the rights and obligations of performances, and the copyright questions in editing textbooks.