CHAPTER EIGHTEEN

COPYRIGHT PROTECTION IN THE PEOPLE’S REPUBLIC OF CHINA

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LEGISLATION

A great change in the field of technology and the economy has occurred in China since the Chinese Copyright Law was first issued in 1990. This change was particularly evident in the development of the information and communication technology fields. As a result of this change, traditional copyright protection has encountered a variety of new problems, for instance in the areas of computer programming, databases, copyright in the network environment and the electronic environment and security. The World Intellectual Property Organisation (WIPO) through the two treaties it adopted in 1996, the WIPO Performances and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT), have offered the Chinese legislature useful information in overcoming the problems it faced in copyright protection.

There are two aspects to the change in China’s economy. Firstly, the Chinese economy changed from the original plan economy into a market economy which required changes in the legal system. When the Copyright Law came into effect China still had a plan economy and it was important for the legislature to adapt the Copyright Law to the market economy. Secondly, due to the globalisation of the economy China has not only attended the World Trade Organisation (WTO) but has also modified its laws so that they are consistent with the principles of the WTO. Many of the regulations adopted by the Copyright Law in 1990 were inconsistent with the Berne Convention and the TRIPS Agreement.
While there were various reasons for China to amend its Copyright Law, the main reasons were the changes in the field of economy and technology. On 27 October 2001 the revised Copyright Law was finally adopted in the 24th meeting of the Standing Committee of the Ninth People’s Congress. The revised Copyright Law is concerned with six Regulations: the Regulation to Protect Computer Software (20 December 2001), the original Implementing Regulation to the Copyright Law which has been modified (2 August 2002), the Regulation on Collectively Managing Copyright (28 December 2004) and the Regulations for the Protection of the Right of Communication on Information Networks (10 May 2007). The Copyright Protection Methods for Folklore Works and the Methods of Paying the Statutory Licence Fee by Broadcasting Organisations are now being formulated.

China’s copyright regime has undergone numerous changes on a national level since China entered the WTO and the TRIPS Agreement came into force. A variety of principles have also been introduced from the WCT and the WPPT regarding copyright protection in the network environment.

ENFORCEMENT

The Chinese enforcement system relating to Intellectual Property (IP) differs from that used by most other countries. The Chinese system provides a judicial remedy similar to that of other countries, as well as an administrative remedy.

With regard to the judicial remedy, the Chinese Supreme Court, the High Court of each province and the Middle Level courts in the cities have in the last 10 years established more than 30 IP-Tribunals to handle IP disputes. According to the Chinese Supreme Court, in 2006 the Chinese IP-Tribunals accepted 5719 copyright cases and handed down judgements on 5751 cases.

The Chinese courts also have Criminal Tribunals which provide criminal sanctions for serious IP infringements. These serious IP infringements are investigated according to Articles 217, 218 and 220 of the Chinese Criminal Code. In 2004 the Chinese Supreme Court published a Judicial
Interpretation,\(^1\) which was followed by a second Interpretation in 2007,\(^2\) to enforce the relevant Articles in the Criminal Code. According to the Chinese Supreme Court, 2,277 criminal cases regarding IP infringement had been decided and 3508 people had faced criminal sanctions in 2006.

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\(^1\) The ‘Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate Concerning Some Issues on the Specific Application of Law for Handling Criminal Cases of Infringement upon Intellectual Property Rights’, which was adopted at the 1131st meeting of the Judicial Committee of the Supreme People’s Court on November 2, 2004, and the 28th meeting of the Tenth Procuratorial Committee of the Supreme People’s Procuratorate on November 11, 2004, came into force on December 22, 2004.

\(^2\) The ‘Interpretation II of the Supreme People’s Court and the Supreme People’s Procuratorate of the Issues concerning the Specific Application of Law in Handling Criminal Cases of Infringement of Intellectual Property Rights’, which was adopted at the 1422nd meeting of the Judicial Committee of the Supreme People’s Court and the 75th meeting of the Tenth Procuratorial Committee of the Supreme People’s Procuratorate on April 4, 2007, became effective as of April 5, 2007.
Regarding Article 47 of the Chinese *Copyright Law*, the infringing activities have civil and administrative consequences if the activity is serious and impairs the rights and interests of the public. This Article is enforced by the National Copyright Administration of China and its local offices in each province and city. The Copyright Offices have the power to order a person to discontinue the infringement, confiscate unlawful income, destroy infringing reproductions, impose fines and

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3 *Copyright Law of PRC* Art. 47 states:

“Anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, eliminating the effects of the act, making an apology or paying damages, depending on the circumstances' and may, in addition, be subjected by a copyright administration department to such administrative penalties as ceasing the infringing act, confiscating unlawful income from the act, confiscating and destroying infringing reproductions and imposing a fine; where the circumstances are serious, the copyright administration department may also confiscate the materials, tools, and equipment mainly used for making the infringing reproductions; and if the act constitutes a crime, the infringer shall be prosecuted for his criminal liability:

(1) reproducing, distributing, performing, showing, broadcasting, compiling or communicating to the public on an information network a work created by another person, without the permission of the copyright owner, unless otherwise provided in this Law;

(2) publishing a book where the exclusive right of publication belongs to another person;

(3) reproducing and distributing a sound recording or video recording of a performance, or communicating to the public his performance on an information network without the permission of the performer, unless otherwise provided in the Law;

(4) reproducing and distributing or communicating to the public on an information network a sound recording or video recording produced by another person, without the permission of the producer, unless otherwise provided in the Law;

(5) broadcasting and reproducing a radio or television program produced by a radio station or television station without the permission of the radio station or television station, unless otherwise provided in this Law;

(6) intentionally circumventing or destroying the technological measures taken by a right holder for protecting the copyright or copyright-related rights in his work, sound recording or video recording, without the permission of the copyright owner, or the owner of the copyright-related rights, unless otherwise provided in law or in administrative regulations;

(7) intentionally deleting or altering the electronic right management information of a work, sound recording or video recording, without the permission of the copyright owner or the owner of a copyright-related right, unless otherwise provided in law or in administrative regulations; or

(8) producing or selling a work where the signature of another is counterfeited.”
confiscate the materials, tools and equipment used for making infringing reproductions.

The Chinese Government has been firm on fighting piracy. Since 1995 the Government has offered rewards of 300,000 to 600,000 RMB to people who provide important information in reporting illegal CD-production lines. At present 231 illegal CD-production lines have been seized. The Government also sends staff from the Departments of Public Security, Industry and Commerce, Fighting against Illegal and Pornography Publications and Copyright Administration to seize and destroy piracy products. For example, in 2006 during the so-called ‘Hundred Days of Anti-Piracy Campaign’ 150,000 shops, 49,800 kiosks and 116,000 printing and reproduction enterprises were inspected. As a result 4408 printing and reproduction enterprises and 2377 web sites were penalised for IP infringements and 13,000 shops and kiosks, 664 printing and reproduction enterprises and 1061 illegal web sites were shut down. Overall over 58 million illegal publications, pirated audiovisual products and software were confiscated, which was nearly half of the total products seized during the previous year.

Another example of the stance the Chinese Government has taken on piracy comes from the Copyright Administrative Agencies. In 2005 the Copyright Administrative Agencies accepted 9644 cases of which it ruled on 9380 cases, 7840 cases were given criminal sanctions and 366 cases were transferred to judicial agencies. The Copyright Administrative Agencies confiscated over 100 million pirated goods, consisting of over 19 million pirated books, over 1 million pirated journals, over 65 million pirated audiovisual products, over 13 million e-publications and over 7 million in pirated software.

In order to fight the various types of counterfeiting and establish a fair competition system, the State Council decided to improve the Chinese market economy order in 2001. Since copyright piracy is related to counterfeiting and because it is a factor in destroying the Chinese market economy order, from 2001 the fight against software piracy was implemented nationally.
In June 2000 the State Council published a regulation encouraging the development of the computer software and integrated circuit industries. This regulation states that the fight against piracy must be strengthened and requires public agencies to use authorised software. In 2001, in order to effectively enforce the Copyright Law and the 2000 Regulation, NCAC tried to concentrate on the issues through the end-user of the software. Because this problem has a wide scope and is not well-understood by the public, NCAC tried to explain the meaning of software protection through training courses, disseminating legal knowledge through various types of media and other positive education schemes. Any agency that used unauthorised software could generally cancel the illegal software and buy its legal replacement through an initiative of the Copyright Administrative Agencies. While these schemes and educational promotions were a massive undertaking for the Copyright Administrative Agencies, they should be continued in the future.

At present there is only one copyright collective management organization for musical works – the Music Copyright Society of China (MCSC). This Society commenced in 1992 and currently has 4706 members. The Society manages performing rights, broadcasting rights and mechanical reproduction rights and has signed representative contracts with 37 sister societies throughout the world. In 2006 the income of the Society was slightly above 45 million RMB. The Society has commenced 23 suits in total and has been awarded 1.28 million RMB. With the development of digital technology the potential market for literature and artistic works has increased. The authors and the users of the works hope that through establishing corresponding copyright

4 The ‘Some Policies for Encouraging the Development of Computer Software Industry and Integrated Circuit Industry’ (Guo Fa [2000] No. 8) was released by the State Council of PRC in 2000.

5 There are several other collective management organisations being in the process of examination and approval by relevant Chinese authorities. For example, the China Audio-Video Collective Administration, founded by China Audio-Video Association, has been approved by the National Copyright Administration and is awaiting further approval by the Ministry of Civil Affairs of the PRC. Moreover, the Collective Management Organisation for Literature, Films and Photographs is also in the process of being established. For more information, see <http://www.bjipo.gov.cn/include/wenzhang.jsp?id=11452416640005> at 18 January 2008.
collective societies this will resolve the problems associated with numerous people using the works and having to pay licence fees. Preparation is now underway in China to establish copyright collective societies for audio-visual producers, literature work, fine art work and photographic work.

As a result of trying to effectively enforce the Copyright Law, the Government has increased the positive education schemes. Since 2001, advertisements to improve public awareness relating to copyright protection have been made under the Cooperation Project between the NCAC and the EU. These advertisements have been broadcasted by the main broadcasting stations in mainland China and Hong Kong. In conjunction with the advertisements broadcast, numerous posts and education efforts have been made to the public in order to raise legal awareness of copyright protection. China is a developing country with a population of 1.3 billion and a history of unbalanced economic development. To enforce the Copyright Law China needs public support, if the Copyright Law meets public resistance it is unlikely to have any effect.

CONCLUSION

Although China is a member of the WTO it has not yet fulfilled its legal notification and review of obligations as required. As a result an important task in the near future will be trying to complete the IP requirements, including legal notification of the Copyright Law and the review of its proceedings.

After entering the WTO, the next problem facing China is enforcement of the law. The revised Copyright Law has strengthened the fight against infringement and increased the obligations of administrative enforcement bodies. At present there are few staff members of the Copyright Administration. The Chinese Government needs to consider and solve how this task could best be fulfilled.

The Chinese Government has garnered respect regarding the IP problems mentioned in the new Doha negotiations. China as a new member of the WTO should be actively participating in all discussions, including IP.