

# Chinese Copyright Protection Has Storied History, Strong Future

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As inventors of printing technology, the Chinese began official copyright protection in 1068 when the Emperor of the North Song Dynasty issued an order forbidding reproduction of the "Nine Books" without authorization. Guo Zi Jian, an official publisher of the Tang Dynasty, published the books in 932. The publishers of the Song Dynasty first became aware of copyright protection. For example, when a certain Mr. Cheng of Meishan, Sichuan, printed the book *Stories of the East Capital*, the "copyright page" of those days said, "Printed by Cheng of Meishan, who applied protection from the superior, any reproduction is prohibited."<sup>1</sup> Later on, international treaties between China and other countries during the Qing Dynasty also stipulated for copyright protection. Nevertheless, there was no formal legal or administrative copyright protection until the middle of 20<sup>st</sup> century.

## **Legal Protection of Copyright in China**

China has gradually implemented copyright protection along with certain other open policy reforms. As awareness of the importance of copyright protection continues to deepen, legislation on copyright issues has accelerated, and China has set up and enforced a fundamental legal system of copyright protection.

## **China Joins International Conventions**

In the early eighties, China passed Provincial Regulations of Copyright Protection on Books and Magazines. The legislation of copyright protection in China has strengthened ever since. The Copyright Law of the People's Republic of China was put into force on June 1, 1991. The Chinese government then enacted a series of laws and regulations, among which are The Enforcement Regulations of Copyright Laws of the People's Republic of China, Protective Regulations on Computer Software, Rules on the Enforcement of International Copyright Pact, and Resolution on Punishment of Infringing Copyrights.

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<sup>1</sup> *Evolution of Copyright System, Intellectual Property Law in China*, Isinolaw Research Center, available at [www.isinolaw.com](http://www.isinolaw.com)

The Copyright Law of the People's Republic of China and the rules for its implementation explicitly protect the copyright and other legitimate rights and interests of the authors of literary, artistic and scientific works. The law provides that in addition to protecting the copyright of myriad written and oral works and a variety of art, China also protects computer software. China is among a select group of countries that explicitly list computer software as the object of protection by copyright laws. China's Regulations on the Protection of Computer Software provides details of how the laws protecting computer software are implemented. These regulations, a necessary adjunct to the Copyright Law, came into effect in October 1991. The Regulations on the Implementation of the International Copyright Treaty took effect Sept. 25, 1992. They provide specific regulations on protecting foreign authors' copyrights in accordance with the international treaty.

The Chinese government became a member of The Berne Convention on Protection over Literary and Artistic Works (Berne Convention) and The International Copyright Convention to the International Intellectual Property Rights Organization and the Educational and Scientific Cultural Organization of the United Nations in October of 1992.

Another major event demonstrates China's resoluteness on copyright protection -- the stipulation of forging copyright as a crime in The Penal Code of the People's Republic of China, passed. The inclusion of intellectual property rights (and thus copyright) in The Penal Code is very significant and indicates the determination of the Chinese government to protect IPR.

### **The Enforcement of Copyright Protection in China**

China not only has a strong legal system for copyright protection, it also continues to strengthen enforcement. In recognition of the specialized nature of intellectual property rights cases and the advanced nature of the technology often involved, the higher people's courts in several provinces and municipalities directly under the central government such as Beijing, Shanghai, Guangdong, Fujian and Hainan have since 1992 established intellectual property rights courts as needs demand. The intermediate people's courts in all the special economic zones as well as Beijing and Shanghai have also established intellectual property rights courts. Intermediate people's courts in the capitals of other provinces,

municipalities and autonomous regions have set up collegial panels specializing in cases involving intellectual property rights protection. This centralized the hearing of intellectual property rights cases, creates several advantages. It ensures unity in executing the law, amasses experience in dealing with the law, and strengthens the quality of judicature in intellectual property rights cases.<sup>2</sup>

China has tried a number of important copyright infringement cases under great public attention, producing undeniable social effects. These specific cases greatly increased knowledge and awareness of the laws. The People's Court seriously fulfills the international conventions and pacts regarding international copyright protection that China has promised to undertake. Twenty-three multinational companies, including Microsoft, Walt Disney, and Polygram of Hong Kong have sued and won in the People's Courts.<sup>3</sup>

A more recent example of China upholding international copyright law is Cisco v. Huawei. On Jan 23, 2003, after an eight-month investigation Cisco launched a sweeping lawsuit against Huawei, alleging a host of intellectual-property violations and pushing for an injunction to remove certain Huawei products from the market.<sup>4</sup> In December 2002, before suing, Cisco lined up support in China. Chief Counsel Mark Chandler said he notified the Chinese government of the pending suit and sounded out its reaction. It turned out that the government would let Huawei fend for itself. Says an official at China's Ministry of Information Industry: "The government will not give any political help to Huawei."<sup>5</sup>

### **Administrative Protection**

Aside from adopting legal measures under international practices, China has also used administrative power to protect copyright effectively. In recent years, the Chinese government has mobilized many

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<sup>2</sup> *Administrative Management and Enforcement of Copyright in China*, Chen Zhaokuan, Duke Journal of Comparative & International Law, 9 L 249.

<sup>3</sup> *Infringement and Protection of Copyright, Intellectual Property Law in China*, Isinolaw Research Center, available at [www.isinolaw.com](http://www.isinolaw.com)

<sup>4</sup> *Cisco: In Hot Pursuit of a Chinese Rival*, By Peter Burrows in San Mateo, Calif., with Bruce Einhorn in Hong Kong, available at [www.businessweek.com](http://www.businessweek.com)

<sup>5</sup> Id.

sources to crack down on abuses of copyright and to strengthen the administrative protection of copyright with excellent results.

In accordance with the Chinese copyright laws, the country set up the State Copyright Bureau and the provinces, autonomous regions, and municipalities set up copyright administration offices. In the coastal areas that are advanced economically and culturally, including Guangdong, Jiangsu, Shandong, and Liaoning, many cities have also set up copyright administration organizations. According to the copyright laws, the main duties of copyright administration organizations are to defend the legal order of copyright, to settle disputes, to investigate and prosecute copyright infringement cases, and to protect the common interest and the cultural environment of the society.<sup>6</sup>

The Chinese government recently has strengthened the administrative protection of copyright and mobilized many sources to crack down on illegal infringement of copyright. For several successive years, the government has combined trans-departmental law forces to act together. Coordinated by the authoritative departments of the Central Committee, a "national leading group for consolidating the newspaper, magazine, audio and video market" was set up jointly by the Ministry of Public Security, the Ministry of Culture, the Ministry of Broadcast, Film and Television, the Office of Journalism, the State Copyright Bureau, the State Industrial and Commercial Bureau, the Head Office of Customs, the Head Office of Civil Aviation, and the Ministry of Finance.

### **Department Functions Strengthen Daily Administration**

As trans-departmental law enforcement is being carried out, each department has strengthened its daily routine of copyright administration. A series of laws and regulations further demonstrate the enhancement of copyright protection. For example, the Regulations on Audio and Video Production, Regulations on Publication, and Regulations on Printing, all contain respective rules on copyright protection. The Ministry of Culture, the Ministry of Broadcast, Film and Television, and the Office of Journalism also are

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<sup>6</sup> *Administrative Management and Enforcement of Copyright in China*, Chen Zhaokuan, *Duke Journal of Comparative & International Law*, 9 L 249.

preparing a series of rules and regulations. All of these efforts contribute to the effective protection of copyright.

For example, to protect the copyright of audio and video products, measures were taken throughout all steps of publishing, reproduction, and distribution. When a compact disc factory accepts any reproduction business, it must present a trust deed for reproduction provided by an official publishing house and issued by the administrative department of journalism and publication. The SID sign is to be engraved on all molds in compact disc factories. Supervisors from the administrative departments are assigned to compact disc factories. The publication of foreign books needs an authentication document from the State Copyright Bureau. Even the marketing sector must present a trust deed for distribution provided by an official publishing house for the distribution unit of audio and video products. In addition, an anti-forgery label must be put on the product.

Since the enforcement of copyright law, and especially since China joined in the Berne Convention and the International Copyright Convention, copyright trade has continued to expand in China. The number of international copyright trades totaled over 200 in 1993, and the number keeps rising each year: 1,600 in 1995 and 3,000 in 1996. The international copyright trade in China has been successful. Many popular foreign books, films, audio, and video products have been published in China through copyright trade, including, for example, Bill Gates' *The Road Ahead* and Nicholas Negroponte's *Being Digital*.<sup>7</sup> Some Chinese publishing houses have even established ongoing relationships with American publishers.

Nonetheless, China is a developing country and still has much work towards optimizing its intellectual property system. This modern system was established only a short time ago, and as a result, awareness of intellectual property rights remains underdeveloped in society at large. In some regions and in some governmental departments there is insufficient appreciation of the importance of intellectual property protection. In terms of legislation, problems keep arising during the course of enforcement and several issues need to be addressed, including:

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<sup>7</sup> IP Rights Protection will improve in China – Eventually, at <http://www.chinabusinessreview.com/0005/clark.html>.

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

### **Looking Toward the Future**

Despite all the difficulties and uncertainties inherent in any legislation and law enforcement, the future of copyright protection in China should inspire strong confidence. China's determination to protect copyright is firm, in both its domestic and international law. Most importantly, however, as a country with over 5,000 years of civilized history, China understands the unparalleled importance of protection of intellectual property rights. In a white booklet titled *The Conditions of the Protection of the Intellectual Property Rights in China* released by Chinese government, it was pointed out that "the Chinese government holds that the protective system of the intellectual property rights plays an important role in the promotion of scientific and technological advancement, the ability of the culture to flourish and creates economic prosperity. It not only is a necessary system ensuring the normal functioning of the modern economy, but also stays one of the basic conditions on which international social communication and cooperation in science, technology, economy and culture are developed. The Chinese government regards the protection of intellectual property rights as an indispensable part of the reform, open policy and the 21<sup>st</sup> century new legal construction."

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