



Protecting Intellectual Property Right in China: Risk and Challenges

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Definition of IPR

- Definition
- Scope of IPR
 - Convention Establishing the World Intellectual Property Organization (Art.8 Paragraph 2)

General Review of the Development of China's IPR System

- **Traditional China: Not hospitable to IPR system**
 - **Economic reasons: Agricultural Country**
 - **Cultural reasons:**
 - **Stressing agriculture over commerce**
 - **Preferring reputation to material benefits**

- **China Today: The establishment of modern IPR system**
 - **First introduction of modern IPR system at the beginning of 20 century**
 - **Re-establishing the IPR system after cultural revolution**

China's Key IPR Laws and Regulations

- Domestic
 - Copyright Law (Amended on 2001/10/27)
 - Patent Law (Amended on 2000/08/25)
 - Trademark Law (Amended on 2001/10/27)
 - Anti-Unfair Competition Law (Effective on 1993/12/01)
 - Affiliated legislations

International Treaties

Treaties	PRC's Status	Entry into Force
Berne Convention	In Force	Oct. 1992
Madrid Agreement	In Force	Oct. 1989
Madrid Protocol	In Force	Dec.1995
PCT	In Force	Jan. 1994
Paris Convention	In Force	Mar. 1985
Nice Agreement	In Force	Aug. 1994
TRIPS Agreement	In Force	Dec. 2001
UPOV	In Force	Apr. 1999
WCT	Non-Member	
WPPT	Non-Member	
Rome Convention	Non-Member	

IPR Protection: Obtaining Protection

- **Trademark**
 - **National application vs. international application**
 - **Protection and recognition of well-known trademark**
- **Patents, Utility Models and Designs**
 - **International Registration under PCT vs. Registration with the PRC IP office**
- **Copyright**
 - **Automatic protection**
 - **Software copyright**
 - **Effect of registration**

IPR Protection: Criminal Remedies

- **Legal Basis**
 - **Section 7, Chapter III, Part II Criminal Law**
 - **Interpretation by the Supreme Court on Handling Criminal Cases of Infringing Intellectual Property Rights (effective 2004/12/22)**
 - **Interpretation II jointly by the Supreme Court and the Supreme Procuratorate on Various Questions Concerning Application of Law in Handling Criminal Cases of Infringing Intellectual Property Rights (effective 2007/4/5)**
- **Crimes and punishments**
- **Enforcement**
- **Initiating the prosecution procedure**

IPR Protection: Civil Remedies

- Remedies available
 - Cessation of infringing activities
 - Compensation
 - Removal of impact
 - Other remedies
- Preliminary measures
 - Legal basis
 - Conditions on initiating this procedure

IPR Protection: Administrative Remedies

- Remedies available
 - Cessation of infringing activities
 - Fine
 - Confiscating the infringing products, instruments, etc.
 - Other remedies
- Seeking administrative remedies
 - Conditions and procedure
- Customs protection

Risks and Challenges

- Difficulties in enforcing courts' rulings
- Difficulties in seeking administrative remedies

Latest Developments

- Property Law: Provisions on pledge using IPR
- China joins WCT and WPPT: will become effective on June 9, 2007.
- China issues the 2007 Action Plan for Protecting Intellectual Property Rights



Thank you very much for
your attention.