

## Protecting Intellectual Property in China: A Selective Bibliography and Resource for Research\*

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*This bibliography is intended to help American law students, attorneys, legal scholars, and law librarians to conduct research on Chinese intellectual property law, a topic of increasing importance, both theoretically and practically. The bibliography gathers together books, book chapters, and law review articles to facilitate research in this subject area. Selected web sites are included to aid easy access to the Chinese IP laws, regulations, cases, and other relevant information.*

### Introduction

¶1 China is experiencing a historic transformation in establishing a modern system of intellectual property rights (IPR).<sup>1</sup> The passage of the Trademark Law in 1982<sup>2</sup> marked the beginning of this lengthy process, which was continued by the enactment of the Patent Law in 1984<sup>3</sup> and the promulgation of the Copyright Law in 1990.<sup>4</sup> Since the initial passage of these statutes, IPR legislation has been amended and re-amended, and relevant rules and regulations have been issued and revised. Government agencies and departments have been set up to administer the laws, regulations, and policies. Judicial organizations, in the form of IP divisions or tribunals within the court system, have been installed to adjudicate IPR disputes. Judges have been recruited and trained to hear IPR cases. International treaties and agreements governing IPR have been joined or signed by China.<sup>5</sup> This kind of intensity in lawmaking is truly unprecedented in contemporary Chinese history.

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1. Intellectual property rights (IPR) as used throughout this bibliography refers to the legal regime that protects the rights holders of patents, copyrights, trademarks, and computer software.

2. Trademark Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 23, 1982) (P.R.C.).

3. Patent Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 12, 1984) (P.R.C.).

4. Copyright Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 7, 1990) (P.R.C.).

5. For a Chinese government report summarizing legislative and other activities and achievements, see INFO. OFFICE OF THE STATE COUNCIL, PEOPLE'S REPUBLIC OF CHINA, NEW PROGRESS IN CHINA'S PROTECTION OF INTELLECTUAL PROPERTY RIGHTS (April 2005), available at <http://www.fmprc.gov.cn/ce/cegv/eng/bjzl/t193102.htm>.

However, infringement of IPR in China has been a huge problem despite China's efforts to fight it and international pressures to curb it.<sup>6</sup> Today, copyright piracy, trademark counterfeiting, and patent violation are still widespread in China, causing severe concern over China's economic relations with the international community. This phenomenon has generated much debate among the business, government, legal, and academic communities.<sup>7</sup>

¶2 The explosion of actions, initiatives, diplomacy, and political debates in the Chinese IPR arena has resulted in a proliferation of literature and scholarship, much of it in the English language, focusing on Chinese IPR issues. Dozens of books on Chinese IPR have been published; hundreds of articles, in the form of law reviews, magazine essays, newspaper editorials, and electronic postings have appeared. This publishing phenomenon provides a great environment for scholarly communications and investigations.

¶3 This bibliography is written to facilitate access to scholarly literature and writings on the topic of Chinese IPR. The intended users include American law students, law professors, law practitioners, and law librarians. The bibliography gathers together books, chapters, journal and law review articles, and free web sites. Each item includes a brief annotation to help the reader decide how useful the work might be for a particular purpose. The bibliography is organized into five sections: general topics on Chinese IPR, copyrights, patents, trademarks, and selected web sites.

¶4 The bibliography is selective in three ways: (1) it contains only works published from 1997 to 2009;<sup>8</sup> (2) it includes only works in English; and (3) it lists only works that are, in the view of the author, worthwhile.<sup>9</sup>

### General Topics on Chinese IPR

¶5 This section includes publications that discuss, examine, or analyze Chinese IPR in a comprehensive way. These materials do not deal with one specific subject area, for example, copyright, but cover all aspects of IPR. Typically, these materials include overviews of the Chinese IPR system, international agreements and compliance, enforcement issues, and business and legal strategies.

Athanasakou, Konstantina K. "China IPR Enforcement: Hard as Steel or Soft as Tofu? Bringing the Questions to the WTO under TRIPS." *Georgetown Journal of International Law* 39 (2007): 217–45.

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6. See Robert H. Hu, *International Legal Protection of Trademarks in China*, 13 MARQ. INTELL. PROP. L. REV. 142, at 174–76 (2009).

7. *Id.*

8. The cutoff date for this bibliography was April 2009. For earlier works on this topic, see Haibin Hu, *Protection of Intellectual Property in China: A Selected Bibliography*, 5 U. BALT. INTELL. PROP. L.J.135 (1997).

9. For additional bibliographies on Chinese IPR, users may consult the author's other works: GUIDE TO CHINA COPYRIGHT LAW STUDIES (2000), RESEARCH GUIDE TO CHINESE PATENT LAW AND PRACTICE (2000), and RESEARCH GUIDE TO CHINESE TRADEMARK LAW AND PRACTICE (2008), all of which are included in the bibliography, *infra*.

In 2007 the United States lodged two complaints against China before the World Trade Organization (WTO)—the first accusing China of non-compliance with its TRIPS<sup>10</sup> duties and the second charging China with restricting market access to foreign IPR-related goods. This article analyzes some of the potential issues with lodging a U.S. complaint against China under TRIPS. It contemplates the wide-ranging impact of a WTO ruling on the world trading system with different scenarios, e.g., what happens if China prevails, or fails? It argues that the timing of the U.S. cases against China might raise more issues for the multilateral trading system than it would resolve. It urges the United States and other developed nations to continue helping China to improve its IPR legal regime while pressuring China to enhance its enforcement.

Chen, Chun-Hsien. "Explaining Different Enforcement Rates of Intellectual Property Protection in the United States, Taiwan, and People's Republic of China." *Tulane Journal of Technology and Intellectual Property* 10 (2007): 211–58.

The adoption of the TRIPS agreement in 1994 was intended to harmonize IP laws of WTO members by providing minimal, uniform standards. This article suggests that since then the WTO members have achieved limited uniformity in IP regulations. However, data from the last decade show national variance in the enforcement rates of IPR. A survey suggests that the software piracy rates in the China, United States, and Taiwan were 86%, 21%, and 43%, respectively. After examining the reasons for the national variance, the article concludes that while multiple factors, such as cultural attitudes, economic development, and foreign pressure, affect the national level of IP protection to some degree, the sub-factors correlating and contributing to socioeconomic development are the most decisive in determining the level of IP protection.

Cheng, Julia. "China's Copyright System: Rising to the Spirit of TRIPS Requires an Internal Focus and WTO Membership." *Fordham International Law Journal* 21 (1998): 1941–2013.

This student note studies the then-current state of Chinese protection of copyright. It first looks at the existing rules that could be used by foreign copyright holders to enforce their copyrights in China, which included the General Agreement on Tariffs and Trade (GATT), the TRIPS agreement, and U.S. trade sanctions. The note then discusses major Chinese copyright policies and addresses the inherent factors, such as lack of cultural and economic incentives and administrative difficulties, that undercut China's efforts to enforce the law. Alternatives to effective enforcement of the copyright law would include an enhanced judicial system, education of Chinese citizens to raise their legal awareness, and establishment of joint ventures between Chinese and foreign partners. The note ends by arguing that China's entry into the WTO would prove beneficial to future protection of copyright in the land.

*China Intellectual Property Law Guide*. The Hague: Kluwer Law International, 2005.

This book offers an overview of the Chinese IP system, along with practical information and advice. Written primarily by Chinese lawyers, the book covers

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10. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 33 I.L.M. 81, 1869 U.N.T.S. 299.

topics such as trademarks, copyrights, patents, enforcement of the IPR, Internet, trade secrets, technology transfer, and unfair competition. The book includes an index.

Cohen, Mark A., A. Elizabeth Bang, and Stephanie J. Mitchell, eds. *Chinese Intellectual Property Law and Practice*. Boston, Mass.: Kluwer Law International, 1999.

This book consists of a series of articles authored by leading American and Chinese legal scholars and practitioners. Designed to show the complex nature of protecting IPR in China, the book covers broad topics: an overview of intellectual property laws, Chinese IPR and the world, legal measures to protect IP rights, and case studies. There is a bibliography, an index, and a list of Chinese IP web sites.

Dahman, Samire B. "Protecting Your IP Rights in China: An Overview of the Process." *Entrepreneurial Business Law Journal* 1 (2006): 63–85.

This article gives practical advice to business executives and corporate attorneys operating in China. It offers an overview of the Chinese IP protection system and briefly discusses the Chinese judicial system and sources of IP law. The author argues that to effectively protect IPR, rights holders should seek local counsel in China, enforce their trademark rights as part of the IP strategy, and take advantage of the cost-effective administrative means to enforce their rights by government agencies. There are two noteworthy features: a chart showing profiles of major Chinese IP law firms and a map depicting major distributors and producers of counterfeit goods in China.

Dimitrov, Martin K. *Piracy and the State: The Politics of Intellectual Property Rights in China*. Cambridge: Cambridge University Press, 2009.

Based on extensive field work in China and five other nations, the author put together an original study of China's IPR in relation to state capacity by systematically examining all Chinese IPR enforcement mechanisms in all sub-areas (copyrights, patents, and trademarks). He compares China's experience in IPR enforcement with that of Russia, Taiwan, and the Czech Republic. In doing so, Dimitrov develops a theory of state capacity regarding China. The book includes statistical tables and maps.

Ellis, Gregory C. "Intellectual Property Rights and the Public Sector: Why Compulsory Licensing of Protected Technologies Critical for Food Security Might Just Work in China." *Pacific Rim Law & Policy Journal* 16 (2007): 699–723.

This student comment analyzes the issue of licensing technologies to create genetically modified (GM) crops in China. The article states that while the public sector in developing countries, like China, is creating GM crops to ensure food security, the IPRs of the many technologies required to create a single GM crop are often fragmented across the private and public sectors. This fragmentation of IPRs poses obstacles. The article argues, "China should not hesitate to grant compulsory licenses against foreign agricultural biotechnology companies. . . . The result would provide for protection against the limitations on the availability of technologies critical for food security that may result from the recent strengthening of China's IP laws and enforcement" (p.723).

Feder, Gregory S. "Enforcement of Intellectual Property Rights in China: You Can Lead a Horse to Water, But You Can't Make It Drink." *Virginia Journal of International Law* 37 (1996–1997): 223–54.

This student note examines IP enforcement in China from a historical perspective. In part one, the author introduces the development of the international IP protection regime, consisting of the Paris Convention<sup>11</sup> and other major instruments. Part two of the article looks at the Chinese IP regime and how it has developed. This section offers a historical and detailed examination of the establishment of the Chinese IP system. Part three examines the Sino-U.S. IP disputes in the 1990s and their resolution, and part four predicts the scope of future IP protection in China. The article concludes that China must continue to improve its enforcement of international IP agreements, and that Chinese IP protection can be deemed acceptable to the international community only when China can show its commitment to enforce international law without the threat of foreign pressures.

Ganea, Peter, Thomas Pattloch, and Christopher Heath, eds. *Intellectual Property Law in China*. The Hague: Kluwer Law International, 2005.

This book is authored by two legal scholars and practitioners affiliated with the Max Planck Institute for Patent, Copyright and Competition Law in Munich, Germany. The goal of the book is to provide comprehensive coverage of the IP system in China and to “combine academic standards with usefulness for practitioners” (p.vii). Topics covered are: patents, utility models, and designs; trademarks and related rights; copyright; technology transfer; enforcement; and antitrust law. An index is included.

Guo, Lulin. “China’s Intellectual Property Protection System in Progress.” In *China in the World Trading System: Defining the Principles of Engagement*, edited by Frederick M. Abbott, 127–37. Boston, Mass.: Kluwer Law International, 1998.

This chapter is authored by a former Commissioner of the China Patent Office, who now heads a large Chinese IP law firm. Therefore the writing closely reflects the official views of the Chinese government. The chapter consists of three sections: legal system for the protection of IP; enforcement of IPR; and future tasks. The author argues that China has made great progress in protecting patent, trademark, and cultural and artistic works since the implementation of the IP system.

Hanzlik, Mary. “The Implications of China’s Anti-Monopoly Law for Investors: Problematic Protection of Intellectual Property.” *Entrepreneurial Business Law Journal* 3 (2008): 75–94.

In 2007, China passed the Anti-Monopoly Law (AML), which became effective in August 2008. This student note examines the AML with a focus on the IP provision. It argues that, contrary to what many Western commentators fear, it is not likely that the new law and its IP provision will have much effect on foreign businesses due to China’s history and its problems with enforcement of its own laws, especially in the IP arena.

Harris, Daniel P. “The Honeymoon Is Over: The U.S.-China WTO Intellectual Property Complaint.” *Fordham International Law Journal* 32 (2008): 96–187.

Part I of this article lays down the background for the Sino-U.S. IP dispute and traces the negotiations and agreements between both nations and the failed efforts to induce China to protect IPR. This part also examines China’s WTO accession and adoption of the TRIPS. Part II of the article analyzes the U.S. com-

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11. Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, as last revised at Stockholm, July 14, 1967, 21 U.S.T. 1583, 828 U.N.T.S. 305.

plaints before the WTO and their merits, predicting how the WTO might rule. Part III discusses the reasons behind the U.S. actions and the possible concessions by China.

Heiberg, Carl E. "American Films in China: An Analysis of China's Intellectual Property Record and Reconsideration of Cultural Trade Exceptions Amidst Rampant Piracy." *Minnesota Journal of International Law* 15 (2006): 219–62.

This student note deals with the problem of piracy of American movies in China. The first section of the note looks at the present status of copyright and other IPR protection in China. The second section examines the approaches used by China to limit market access to foreign movies. The next section briefly considers the history of cultural exemptions to free trade. The last section analyzes China's IP enforcement and questions whether cultural exemptions are justifiable due to widespread Chinese enforcement problems. The note concludes by urging the United States to negotiate a formal agreement for international trade in cultural products and to ensure market access for foreign producers.

Henderson, Finnegan. "Develop Your China Enforcement Strategy." *Managing Intellectual Property*, December 2007/January 2008, 48–54.

For this article, the author and the magazine hosted a roundtable in Beijing of Chinese attorneys, law scholars, and foreign experts to discuss how to develop an IP enforcement strategy for foreign companies operating in China. The discussions focus on five issues: effective investigation, involvement by business leaders, dealing with flexibility, incentivizing improvement, and international cooperation.

Hunter, Kate Colpitts. "Here There Be Pirates: How China Is Meeting Its IP Enforcement Obligations under TRIPS." *San Diego International Law Journal* 8 (2007): 523–58.

The booming Chinese economy results in tremendous business opportunities for the United States and others. However, widespread piracy in China threatens the economic welfare of U.S. and foreign businesses. Against this background, this article discusses whether China is meeting its obligations under the TRIPS agreement to protect foreign IP, and explores whether China's heightened IP law provisions are equal to actual increased protection. The author describes Chinese enforcement of IP laws from Chinese viewpoints and those of the developed countries. The article suggests how China can improve its IP enforcement to implement the TRIPS, how foreign governments can encourage China to do so, and how foreign businesses can better protect their rights under the existing regime.

*Intellectual Property Law Guidebook: China*. Lanham, Md: Bernan Press, 2007.

This book, compiled from various U.S. government data sources, is a simple, practical book for American companies doing business in China, advising them how to protect IPR in China. As the introduction states: "This book is intended to provide quick and thorough access to information on Chinese IP law, trade policies, customs law, and enforcement strategies for keeping counterfeit goods out of the U.S. and for protecting the intellectual property rights of U.S. companies doing business in China" (p.iv). The section on Chinese IP gives a quick introduction, covering topics such as China's IPR commitments, IPR climate, enforcement strategies and systems, patents, copyrights, trademarks, trade secrets, semiconductor layout designs, regulation of technology licensing, protection at trade fairs, and resources.

Levine, Jeffrey F. "Meeting the Challenge of International Brand Expansion in Professional Sports: Intellectual Property Right Enforcement in China through Treaties, Chinese Law and Cultural Mechanisms." *Texas Review of Entertainment & Sports Law* 9 (2007): 203–29.

This article takes a fresh look at an old issue. Using a comparative analysis, the article examines various schemes that sports teams can use to protect their IPR in China while developing a brand. It looks at Chinese culture and how the Confucian values underlining the Chinese legal system and social framework affect the society's views on IPR. It concludes that foreign sports entities can achieve effective protection of their IPR by working within the existing Chinese social and legal framework, rather than relying exclusively on China's IPR laws and international agreements.

Li, Jian. "Debating the Specialized Intellectual Property Court in the People's Republic of China." *Intellectual Property & Technology Law Journal* 19 (December 2007): 17–19.

In this short note, the author, a judge on China's Supreme Court, gives a quick overview of patent jurisdiction and parallel procedures under the Chinese law—the two core issues currently under discussion in the context of whether specialized IP courts should be set up to handle patent disputes. Presently, patent disputes and IP matters are handled by the IP division of a court. There are about 1600 IP judges and 172 specialized IP divisions in the Chinese courts. The author concludes that there are both pros and cons to specialized IP courts, and thus more research and practice experience is needed to provide a basis for this decision.

Li, Yahong. "The Wolf Has Come: Are China's Intellectual Property Industries Prepared for the WTO?" *UCLA Pacific Basin Law Journal* 20 (2002): 77–112.

China's entry into the WTO in 2001 ushered in a new era of challenges and opportunities for IPR protection. This article focuses on Chinese IP industries' responses to the challenges posted by China's accession to the WTO. The essay first looks at the major Chinese industries involving IP protection to evaluate the problems facing them. It then examines the challenges raised by the WTO status, such as closer scrutiny of IPR infringement and fiercer foreign competition, and explores the industries' strategies to cope with such matters. Finally, the article assesses what role China would play in the WTO in shaping and reforming the TRIPS and IP policies.

Li, Yahong. "Pushing for Greater Protection: The Trend Toward Greater Protection of Intellectual Property in the Chinese Software Industry and the Implications for Rule of Law in China." *University of Pennsylvania Journal of International Economic Law* 23 (2002): 637–61.

China's entry into the WTO will have profound implications for the Chinese industries in the IPR area. This article "first summarizes a theoretical debate on what degree of IP protection for software is most beneficial to the growth of China's software industry. It then surveys the development of China's indigenous software industry to see what its strengths and weaknesses are and how China's government and the software industry have dealt with problems plaguing the industry. Finally, [it] examines the implications of the industry's efforts in pushing for greater IP protection with regards to the establishment of the rule of law in China" (p.638).

Long, Doris Estelle. "Intellectual Property: Protection in China, Post Olympics." *The National Law Journal*, August 18, 2008, S1.

Written by a law professor, this article suggests that hosting the 2008 Beijing Olympic Games has established new legal infrastructures in China for IP protection because of unprecedented mobilization of enforcement resources to protect Olympic symbols. This represents a remarkable advance in Chinese IP enforcement standards. However, foreign rights-holders can only convert the advances in protecting Olympic symbols into lasting benefits for their IP protection if they undertake aggressive new marketing and enforcement strategies that are rational and meaningful in the Chinese context.

Long, Weiqu. "Intellectual Property in China." *St. Mary's Law Journal* 31 (1999): 63–98.

This article, written by a Chinese law professor, offers a broad overview of and introduction to IP protection in China and includes fundamental principles of Chinese IP, China's attitude toward international cooperation standards, distinct characteristics of Chinese IP, basic international protection of IP in China, recent developments, and China's achievement of the standard set by TRIPS.

Low, Ting. "The China IP Syndrome." *Entertainment Law Review* 19 (2008): 12–14.

In 2007 the United States filed two complaints with the WTO against China for China's alleged failure to carry out its obligations under TRIPS. This brief note covers this trade dispute about China's copyright protection for foreign media. It discusses whether China has taken sufficient steps to prevent copyright counterfeiting and piracy and examines the U.S. complaints about Chinese restrictions of market access for foreign copyright products. The article also contemplates the prospects of the two WTO cases.

*Managing Intellectual Property: China IP Focus*. 6th ed. London: Euromoney Institutional Investor, 2008.

This brief book contains interviews and articles that focus on cutting-edge issues and development in the Chinese IPR, such as patent prosecution, online copyright, costs of infringement, law enforcement strategies, and suing the Trademark Office. The short articles that explain in detail the Chinese legal framework for IPR protection and offer practical strategies for IPR holders as to how to use the laws to the best result are written by China's leading lawyers and IP agents. The book can be viewed as a kind of "Who's Who in Chinese IP law and practice."

Massey, Joseph A. "The Emperor Is Far Away: China's Enforcement of Intellectual Property Rights Protection, 1986–2006." *Chicago Journal of International Law* 7 (2006): 231–37.

The Chinese saying, "The mountains are high and the emperor is far away," is a classical way to describe the situation where local authorities can effectively ignore or resist laws and policies of the central government when doing so benefits the localities. In this short comment, the author discusses the changes in China regarding IPR protection over the past twenty years, and argues that today's Chinese central government is serious about IPR protection, but that the national government must implement its laws and international obligations over the resistance of regional and local authorities.

Mertha, Andrew. *The Politics of Piracy: Intellectual Property in Contemporary China*. Ithaca, N.Y.: Cornell University Press, 2005.

This unprecedented work is based on empirical studies undertaken in China from 1998 to 2003, during which the author visited several Chinese regions to study the IP issue first-hand. The author interviewed many Chinese government officials and agencies responsible for protecting IP, and participated in government raids on suspected pirate factories. The personal experiences and data collected from the fieldwork allow him to speak powerfully and authoritatively about Chinese IP. The book offers a fresh perspective and the tools with which to study and analyze Chinese IP issues effectively. It includes statistical tables and an index.

Nie, Jianqiang. *The Enforcement of Intellectual Property Rights in China*. London: Cameron May, 2006.

This book is the published version of a doctoral dissertation written by a Chinese law professor trained in both China and Switzerland. The book “explores, in an intellectually very stimulating manner, the impact of procedural rules in the area of intellectual property protection on more general good governance related institutional and societal concerns” (p.13). “Overall, the thesis represents an impressive intellectual effort to come to grips with the diverging legal cultures and to place the significance of procedural rules in the center of attention” (p.14). The book includes a bibliography, and appendixes contain the text of selected Chinese legislation, rules, cases, WTO reports, and documents.

Ollier, Peter. “China’s Controversial Amendment Plans.” *Managing Intellectual Property*, December 2007/January 2008, 26–28.

China passed its initial trademark law in 1983 and patent law in 1984. Both laws have since been amended twice. The last revision of the patent law was in 2000, whereas the trademark law revision took place in 2001. As recently as spring 2008, legislative proposals were being drawn up to revise the laws again, in response to both domestic and international needs, generating a great debate among Chinese and foreign law and business circles. In this article, the author looks at the key provisions in the amendment proposals for patent law and the trademark law, and gives his opinion of the pros and cons of the proposed changes.

Ordish, Rebecca, and Alan Adcock. *China Intellectual Property—Challenges and Solutions: An Essential Business Guide*. Singapore: John Wiley & Sons (Asia), 2008.

This is a practical book, offering suggestions for IP management, and presenting case studies and checklists based on the authors’ experience in dealing with multinational firms. The book consists of four parts: dispelling the myth, entering the China market, protecting your IP in China, and looking to the future. There is an index.

Riley, Mary L., ed. *Protecting Intellectual Property Rights in China*. Hong Kong: Sweet & Maxwell Asia, 1997.

Written by four lawyers in the Hong Kong office of a Swedish law firm, this book presents a practical perspective on Chinese IPR. The chapters include how to protect IPR in China, the protection of business secrets and other IPR, strategies for enforcing IPR, enforcement in a nutshell, selected cases on software infringement, criminal sanctions in the enforcement of IPR, IP issues in media and entertainment, the censorship and approval process for media products, and taxation of income derived from licensing IP. An index is included.

Ruichun, Duan. "China's Intellectual Property Rights Protection Towards the 21st Century." *Duke Journal of Comparative & International Law* 9 (1998): 215–18

Authored by then-director general of the Office of Intellectual Property Working Conference under the State Council of China—the central government body responsible for coordinating nationwide IPR policies, legislation, and enforcement—this short article presents the official position of the Chinese government on IP policy and law. It advances three points from the government's perspective: China has set up a basic IPR legal system over the last decade; China has continuously built up an IPR enforcement infrastructure made up of law enforcement, government administration, and related functional departments; and further efforts are needed to strengthen the IPR enforcement despite the achievements already made.

Schiappacase, Mikhaelle. "Intellectual Property Rights in China: Technology Transfers and Economic Development." *Buffalo Intellectual Property Law Journal* 2 (2004): 164–85.

According to the author, much has been written to discuss China's poor record in IP protection and to suggest organizational or cultural changes to improve the IP regime. This note takes a different view by "addressing the underlying economic factors that should encourage such change, particularly in light of China's need to acquire growth-enhancing IP through technology transfers" (p.166). The article examines the current debate on the relationship between IPR and economic development, and then it considers the TRIPS as the existing international standard for IP protection. The role of technology transfers in economic development is considered in depth. The article also "explores the history and current practice of China in recognizing, protecting, and enforcing IPRs" (p.166). Finally, the article argues "that China's economy will suffer if the country fails to pursue stronger IP protection" (p.166).

Schwabach, Aaron. "Intellectual Property Piracy: Perception and Reality in China, the United States and Elsewhere." *Journal of International Media & Entertainment Law* 2 (2008): 65–83.

In 2006, L.E.K Consulting, commissioned by the Motion Picture Association, completed a study of twenty-two countries and territories regarding the global cost of movie piracy. Upon reviewing the piracy-related economic data from the study, this article argues that contrary to the common notion that China is the worst nation in the world when it comes to movie and music piracy, the United States, United Kingdom, and other developed countries hold worse records than China. For instance, based on per capita loss of revenues by U.S. movie studios, China accounts for only 19 cents, compared to \$6.77 in the United Kingdom, \$6.33 in Spain, \$5.37 in France, \$4.60 in Mexico, and \$4.47 in the United States. The author calls this phenomenon a "perception gap" (p.65), which he claims will negatively affect U.S. trade policy, trade laws, and foreign relations.

Shi, Wei. "Incurable or Remediable? Clues to Undoing the Gordian Knot Tied by Intellectual Property Rights Enforcement in China." *University of Pennsylvania Journal of International Law* 30 (2008): 542–83.

This article "seeks to capture the significance and dilemmas associated with IPR protection in China and to demystify the enforcement problems" (p.543). It "assesses shortcomings of the IPR enforcement regime by discussing various obstacles . . ." (p.543) and offers a four-stage approach to mitigating the enforcement situation, arguing that "the West should try to foster and facilitate shifts of China to initiate a virtuous circle of improved IPR protection" (p.543).

Speight, Clare, ed. *IP Protection in China: The Law*. 2nd ed. Hong Kong: Asia Law & Practice, 1998.

This book is a compilation of Chinese IP law documents and comments written by Hong Kong and British lawyers as well as a Canadian scholar. A companion to *IP Protection in China: Practical Strategies*, the book covers trademark and service mark law, patent law, copyright law, computer software law, technology transfer law, the Internet, customs law, and treaties and bilateral agreements. For each topic, there is a brief introduction or comment, followed by the actual text of the statute or regulation. There is no index.

Speight, Clare, ed. *IP Protection in China: Practical Strategies*. 2nd ed. Hong Kong: Asia Law & Practice, 1998.

A companion to *IP Protection in China: The Law*, this book is written by Chinese and British lawyers to give concise advice on IP protection in China. The book covers topics such as the current and future climate, enforcement, trademarks and service marks, patents, copyright, computer software, technology transfer, and trade secrets. Application and transactional forms are included in the appendixes.

Stewart, Daniel, and Brett G. Williams. "The Impact of China's WTO Membership on the Review of the TRIPS Agreement." In *China and the World Trading System: Entering the New Millennium*, edited by Deborah Z. Cass, Brett Williams, and George Robert Barker, 363–83. New York: Cambridge University Press, 2003.

China's WTO membership will have a crucial impact on future negotiations and directions of the WTO, particularly regarding the TRIPS agreement. This chapter looks at all the topics of the WTO negotiations and the issues concerning the Doha Declaration on the TRIPS Agreement and Public Health.<sup>12</sup> The authors argue that China will likely play a key role in the deliberations of the TRIPS Council in determining future boundaries of international IP law, and urge negotiators and policy makers to be aware of the Chinese perspective on TRIPS and other WTO-related issues.

Taubman, Anthony S. "TRIPS Goes East: China's Interests and International Trade in Intellectual Property." In *China and the World Trading System: Entering the New Millennium*, edited by Deborah Z. Cass, Brett Williams, and George Robert Barker, 345–62. New York: Cambridge University Press, 2003.

This chapter discusses China as an emerging producer and beneficiary of IP in the broader framework of TRIPS implementation. It investigates how this process has been undertaken within the context of China's domestic legal change and argues that TRIPS implementation offers opportunities for China to employ the agreement as a means of economic development and to redefine IP-based foreign trade interests at the same time.

Torremans, Paul, Hailing Shan, and Johan Erauw, eds. *Intellectual Property and TRIPS Compliance in China: Chinese and European Perspectives*. Northampton, Mass.: Edward Elgar, 2007.

China's accession to the WTO and the TRIPS agreement in 2001 resulted in significant changes to Chinese IP law. This book offers broad perspectives from lead-

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12. World Trade Org., Declaration on the TRIPS Agreement and Public Health, Nov. 14, 2001, WT/MIN(01)/DEC/2, 41 I.L.M. 755 (2002).

ing European and Chinese academics, judges, politicians, and practitioners, and attempts to answer the question of whether China has complied with the TRIPS agreement. By examining Chinese IP law in detail, the contributors conclude that the changes in China have been far reaching and that TRIPS compliance has been accomplished. They also agree that of equal importance is the enforcement of the IP law and TRIPS, and that in this respect further work remains to be done. The book includes a table of cases, a table of legislation, and a table of international treaties and conventions. Also included are a bibliography and index.

Volper, Thomas E. "TRIPS Enforcement in China: A Case for Judicial Transparency." *Brooklyn Journal of International Law* 33 (2007): 309–46.

The first part of the article describes certain TRIPS clauses germane to IP enforcement. The second part discusses IP protection in China under TRIPS. The third part analyzes adjudication of a U.S. complaint before the WTO as a way for achieving improved IP enforcement in China. The fourth part argues that while rights holders are eventually responsible for IP enforcement in China, their success is limited by the Chinese judicial system. The final part proposes a solution for better enforcement that focuses on better transparency in the Chinese judicial system.

Wei, Shilin. "Proving Network Copyright and E-Commerce Claims in Chinese Courts." *International Law News* 37 (Summer 2008): 14–16.

This essay claims that nowadays software and e-commerce cases are increasingly brought in China, but it is hard to prove that rights are being or have been infringed upon. Under Chinese rules of evidence, the burden of proof is mainly on the plaintiff. The key, therefore, is to prepare evidence of infringement before the lawsuit and be able to present the evidence at trial. The article discusses a number of strategies for proving a claim in the Chinese courts, including using multiple sources of evidence and comparative evidence.

Xue, Hong, and Chensi Zheng. *Chinese Intellectual Property Law in the 21st Century*. Hong Kong: Sweet & Maxwell Asia, 2002.

Co-authored by two prominent Chinese legal scholars, this book gives a comprehensive overview of the Chinese IP system and its development in three parts: part I concerns copyright and related rights, part II is on patent and related legal protection, and part III is about trademark and unfair competition. The book references many Chinese court decisions relating to IP disputes. There are several appendixes containing the major Chinese statutes on IP. An index is included.

Yang, Deli. *Intellectual Property and Doing Business in China*. Boston: Pergamon, 2003.

An empirical study of IP, this book is intended to give practical guidance to Chinese and multinational firms, to be an informative source for scholars, and to be a reference book for government and international organizations. A bibliography, author index, and subject index are included.

Yonehara, Brent T. "Enter the Dragon: China's WTO Accession, Film Piracy and Prospects For Enforcement of Copyright Laws." *DePaul-LCA Journal of Art and Entertainment Law* 12 (2002): 63–108.

China joined the WTO in 2001 after years of hard work to negotiate and comply with the WTO requirements, including passing national legislation on copyrights, patents, and trademarks. In this article, the author examines China's "historical and cultural indifference towards pirated goods" (p.67), and discusses the need to

protect American movies from Chinese piracy. The article analyzes and criticizes the current Chinese regime for enforcement of international copyright treaties and agreements to protect American movies. It reviews some steps that can be taken by the United States and China to improve the effectiveness of Chinese IP enforcement and concludes that China will not get the kind of respect it deserves as an economic power unless it becomes a nation of the rule of law by protecting copyrights and other IPR.

Yu, Peter K. "From Pirates to Partners: Protecting Intellectual Property in China in the Twenty-First Century." *American University Law Review* 50 (2000): 131–243.

The current U.S. policy toward China on IP, which is characterized by threats of economic sanctions, trade retaliation, and opposition to China's entry into the WTO, is ineffective, according to this article. The author argues that a new conceptual framework is needed under which U.S. policy makers can reformulate a constructive partnership with China on IP matters. The article first looks back at the confrontational U.S. foreign policy toward China regarding IP in the early 1990s. It then examines the formulation of a new U.S. bilateral IP policy toward China characterized by constructive partnership, which was embedded in the 1997 joint statement issued by both countries.<sup>13</sup> Finally, the article articulates a twelve-step plan that aims to cultivate a more stable and harmonious Sino-U.S. relationship, to foster better understanding between both nations, and to promote a self-sustainable IP regime in China.

Yu, Peter K. "From Pirates to Partners (Episode II): Protecting Intellectual Property in Post-WTO China." *American University Law Review* 55 (2006): 901–1000.

This article discusses Chinese IP protection in four parts. Part one looks at the IP law amendments introduced by China at the turn of the new millennium. The author suggests that these amendments were not undertaken only to meet the WTO standards, but also to satisfy China's domestic need for an improved IP environment. Part two makes five arguments to assert the author's view that the United States should not sue China before the WTO for violating international IP laws. Part three investigates alternative strategies for foreign rights-holders to protect their IPR effectively in China. And part four explains the progress that China has made in the IP area despite continuing problems, and argues that a new perspective should be used to analyze Chinese IP.

Yu, Peter K. "Intellectual Property, Economic Development, and the China Puzzle." In *Intellectual Property, Trade & Development: Strategies to Optimize Economic Development in a TRIPS Plus Era*, edited by Daniel J. Gervais, 173–220. New York: Oxford University Press, 2007.

In this chapter, the author discusses the relationship of IP protection to promoting economic development in China. He argues that a better knowledge of the role of the IP protection in economic development will more accurately predict when China will reach a point where the country recognizes its self-interest in providing stronger IP protection.

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13. Joint United States-China Statement, 33 WEEKLY COMP. PRES. DOC. 1680 (Oct. 29, 1997).

Yu, Peter K. "Piracy, Prejudice, and Perspectives: An Attempt to Use Shakespeare to Reconfigure the U.S.-China Intellectual Property Debate." *Boston University International Law Journal* 19 (2001): 1-87.

In an attempt to redirect the Sino-U.S. debate, this article addresses the cultural and other differences between China and the West, and explains how the differences may have contributed to the repeated U.S. failures in converting the Chinese IP regime. By comparing China's experience in the international community to Shylock's predicament in the play *The Merchant of Venice*, the author seeks to challenge readers' cultural assumptions and invites them to rethink the U.S.-China IP conflict in a new way. He concludes that Shakespeare's lessons in *The Merchant of Venice* offer invaluable lessons for us to understand the conflict and for policymakers to reshape their foreign IP policy.

Yu, Peter K. *The Second Coming of Intellectual Property Rights in China*. Benjamin N. Cardozo School of Law Occasional Papers in Intellectual Property, No. 11, 2002, <http://www.peteryu.com/2dcoming.pdf>.

This paper concerns the development of Chinese IP in the context of Sino-U.S. relations. Part one traces the history of the Chinese IP regime and examines the IP disputes between the United States and China between the late 1980s and the early 1990s. The author contends that the modern Chinese IP system reemerged in the late 1970s when the country opened up to the outside world. Part two explains the causes of Chinese piracy and counterfeiting, as viewed in terms of significant political, socio-economic, cultural, and ideological differences between China and the West. Part three discusses the improvements in Chinese IP protection since the mid-1990s, and concludes with some insights into the potential impact on China's IP protection of its entry into the WTO.

Yu, Peter K. "Still Dissatisfied After All These Years: Intellectual Property, Post-WTO China, and the Avoidable Cycle of Futility." *Georgia Journal of International and Comparative Law* 34 (2005): 143-58.

This article discusses the debate on whether the U.S. government should file a complaint with the WTO against China on the grounds that China has failed to adequately protect American IPR. Taking a view contrary to some U.S. policymakers and trade groups, the author explains why the United States should not file a case against China and examines the consequences of such a case if filed. The article argues that a U.S. complaint will likely result in a new round of futile diplomatic exercises without achieving the desired outcome. It concludes with observations that provide insight into the piracy and counterfeiting problems in China and the difficulty of alleviating them.

Yu, Peter K. "Three Questions That Will Make You Rethink the U.S.-China Intellectual Property Debate." *John Marshall Review of Intellectual Property Law* (2008): 412-32.

This article examines the decade-long debate about U.S.-China relations in IPR protection, and takes a new approach by arguing that "the failure to resolve piracy and counterfeiting problems in China can be partly attributed to the lack of political will on the part of U.S. policymakers and the American public to put intellectual property protection at the very top of the U.S.-China agenda" (p.413). The article illustrates the argument by using three questions to "underscore the policy complexities involved in the U.S.-China intellectual property debate" (p.413).

## Copyright

¶6 Copyright is one of the three primary pillars of the Chinese IPR system. The current legislation governing copyrights is the Copyright Law of the People's Republic of China, last revised in 2001.<sup>14</sup> Under articles two and three of this statute, any works, published or not, may be protected by the copyright law, including written and oral works; musical, dramatic, and choreographic works; works of fine art and photographic works; cinematographic, television, and videographic works; drawings of engineering designs and product designs as well as their descriptions; maps, sketches, and other graphic works; and computer software.<sup>15</sup> A personal author's copyright is protected for the author's lifetime plus fifty years after death; and a corporate author's copyright is protected for fifty years upon publication of the work.<sup>16</sup> Certain uses (e.g., fair use) of a copyrighted work are permissible. These uses may include personal study, research, commentary, news reporting, teaching and educational programs, libraries, archives, and museums.<sup>17</sup> The following publications and materials cover all aspects of the Chinese copyright law and administration.

Chen, Zhaokuan. "Administrative Management and Enforcement of Copyright in China." *Duke Journal of Comparative & International Law* 9 (1998): 249–52.

In this short comment, the author, a senior official of the National Copyright Administration of China (NCAC), gives an overview of the administrative procedure for protecting copyrights under the Chinese copyright law. The comment focuses on the internal organization, functions, and enforcement authorities of the NCAC, as provided by the law, but does not contain analysis or discussion.

Cornish, Jordana. "Cracks in the Great Wall: Why China's Copyright Law Has Failed to Prevent Piracy of American Movies within Its Borders." *Vanderbilt Journal of Entertainment and Technology Law* 9 (2006): 405–38.

This student note discusses the current state of IPR protection in China in the context of movie piracy. The note analyzes "the different types of film piracy occurring in China and the current severity of the problem for the United States motion picture industry" (p.409). It "traces the history of copyright law in China and examines China's commitments under the international copyright treaties it has signed with the United States and other nations through its recent accession to the WTO" (p.409). The article "argues that pressure tactics in the form of U.S. trade sanctions against China are ineffective to combat these problems and proposes solutions that can operate effectively from within China, obviating the need for outside pressure" (p.409).

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14. Copyright Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Sept. 7, 1990, amended Oct. 27, 2001, effective Nov. 1, 2001) (P.R.C.), *English translation available at* [http://portal.unesco.org/culture/en/files/30384/11424207963cn\\_copyright\\_2001\\_en\\_.pdf/cn\\_copyright\\_2001\\_en%2B.pdf](http://portal.unesco.org/culture/en/files/30384/11424207963cn_copyright_2001_en_.pdf/cn_copyright_2001_en%2B.pdf).

15. *Id.* arts. 2 & 3.

16. *Id.* art. 21.

17. *See id.* art. 22.

Donatuti, Jennifer L. "Can China Protect the Olympics, or Should the Olympics Be Protected from China?" *Journal of Intellectual Property Law* 15 (2007): 203–37.

In 2008 Beijing was to host the summer Olympic games. Set against this background, this article examines issues relating to the games: the IPR challenges inherent in hosting the Olympics, the history and current state of IP protection in China, the protection measures typically used by the host nation, the measures taken by China to protect Olympic IP to date, and the challenges facing China in protecting Olympic IP. The article argues that China must take different approaches to protect the Olympic IP due to the country's special history and circumstances.

Haber, Jessica. "Motion Picture Piracy in China: Rated AARRRH!" *Brooklyn Journal of International Law* 32 (2006): 205–29.

Piracy of American movies in China presents a huge problem for the American movie industry. This student note "examine(s) the flaws inherent in the TRIPS Agreement, focusing on China's criminal code and motion picture piracy as illustrations of where the Agreement went wrong" (p.208). The note argues that the WTO should revise TRIPS to better protect motion pictures. It concludes that the piracy problem is unlikely to be fixed without intervention by the WTO.

Hu, Robert H. *Guide to China Copyright Law Studies*. Buffalo, N.Y.: W.S. Hein & Co., 2000.

This book was written with two goals in mind: to facilitate the systematic study of China's copyright law and to serve as a reference manual for scholars and researchers interested in particular aspects of Chinese copyright law. It includes a quick overview of the Chinese law on copyright, followed by descriptions of resources for research. It includes a lengthy bibliography, and major Chinese legal documents, in both English and Chinese, are included as appendixes.

Jacobson, Anna-Liisa. "The New Chinese Dynasty: How the United States and International Intellectual Property Laws Are Failing to Protect Consumers and Inventors from Counterfeiting." *Richmond Journal of Global Law and Business* 7 (2008): 45–63.

This article focuses on copyright law as a way of addressing Chinese counterfeiting and IP issues. After a brief history of IP law in the United States, the article briefly describes the history of international IP law. It then discusses Chinese counterfeiting in pharmaceuticals and considers the protections available to combat counterfeits. It concludes that China's own law fails to solve the problem due to flaws in the judicial system. On the other hand, international IP laws are too hard to enforce in a sovereign nation like China unless non-legal measures, for example trade sanctions, are applied to force policy changes, and these may or may not work. The article suggests that real improvement in Chinese IP protection must come from within, and that China is on the right track.

Lara, Gerardo. "The Piracy of American Films in China: Why the U.S. Art Form Is Not Protected by Copyright Laws in the People's Republic of China." *UCLA Journal of International Law and Foreign Affairs* 2 (1997): 343–70.

This student note consists of three sections: China's perception of IPR, the clash of economic state interests between China and the United States, and current progress in the fight against the piracy of films in China. The author attempts to investigate the major reasons for piracy of American movies in China and discusses recent actions by the United States to address this matter.

Leung, Tao. "Misconceptions, Miscalculations, and Mistakes: P2P, China, and Copyright." *Hastings International and Comparative Law Review* 30 (2006): 151–71.

This student note purports "to illustrate how both the United States and the RIAA adopted narrow-minded approaches in a desperate attempt to curtail burgeoning intellectual property infringement, and how these approaches not only proved ineffective, but possibly exacerbated the problem" (p.152). The article suggests alternatives to solve the problem.

Liang, Zhiwen. "Beyond the Copyright Act: The Fair Use Doctrine under Chinese Judicial Opinions." *Journal of the Copyright Society of the U.S.A.* 56 (2009): 695–717.

This article, authored by a Chinese law professor, "explores the possibility of reforming fair use through the recognition of Chinese judicial opinions" (p.700). Using judicial opinions as illustrations, the article shows "how the courts harmonize the different provisions about fair use in the Copyright Act and its Regulation to safeguard the interests that balance underlying copyright law" (p.700). The article also examines "how judges have used this doctrine to go beyond the Copyright Act to solve legal disputes between copyright holders and unauthorized users over both published and unpublished works" (p.700). Finally, the article proposes a legislative solution for the fair use doctrine under Chinese law.

Liu, Jiarui, and Fang Fang. "The Idea/Expression Dichotomy in Cyberspace: A Comparative Study of Web Page Copyrights in the United States and in China." *European Intellectual Property Review* 25 (2003): 504–14.

This article compares the American and Chinese courts in their approaches toward the distinction between an idea, not protectable by copyright, and the expression of an idea, protected by copyright, as it applies to web pages. After discussing the U.S. cases involving copyright infringement in the user interfaces of software programs, the article compares them to the Chinese cases involving the appearance of web sites. It analyzes the influence of computer networks and the trend toward standardization in the computer and Internet sector. It argues that "copyright law must strike a delicate balance between providing incentives to intellectual creation and securing the public interest in the free flow of information" (p.514).

Liu, Jiarui. "New Development in Digital Copyright Protection in China—The Landmark Case of Zheng Chengsi v. Shusheng." *European Intellectual Property Review* 28 (2006): 299–304.

This is a short comment on the significance of a Chinese court decision involving digital copyright protection, where a web site allowed users to read and download the text of books using a special browser. The case determined whether this web site infringed the authors' copyright or whether such use was fair use protected by the law. The essay reviews the facts of the case and evaluates the policy arguments raised by the defendants. The author also discusses the debate over the appropriate level of digital copyright protection in China, and makes recommendations for improving the existing system.

Miao, Felix. "Protection of Intellectual Property Rights in Software Products and How to Accomplish a Technology Transfer Transaction in China." *Fordham Intellectual Property, Media & Entertainment Law Journal* 18 (2007): 61–115.

China is a large importer of computer software technology. Foreign software companies must protect their underlying technology when transferring software

products to China. Written by a Chinese-American lawyer, this article deals with the practical aspects of protecting IPR in technology transfers, covering topics such as protection of IPR in software under China's legal system, statutory requirements on license or registration of technology transfer contracts, and considerations for drafting license agreements for the transfer of technology. The article concludes by arguing that a well-drafted license agreement is the best way to avoid costly and needless litigation involving an IPR breach in technology transfers.

Patel, Nilay. "Open Source and China: Inverting Copyright?" *Wisconsin International Law Journal* 23 (2005): 781–805.

"This Note [argues] that China's turn to open source is the logical solution to software-related IPR enforcement in the aftermath of WTO accession . . . Part II [gives] an overview of the open source philosophy. Part III [provides] background on the current IPR situation in China. Part IV [discusses] the potential effects of open source on enforcement of IPR in the Chinese software market, using the example of Linux, an open source operating system. Finally, Part V [concludes] that recognizing open source as an important policy reason for strong copyright law will allow China to implement TRIPS-compliant laws and regulations addressing IP while avoiding a massive and ideologically uncomfortable crackdown on IPR violations" (p.783).

Priest, Eric. "The Future of Music and Film Piracy in China." *Berkeley Technology Law Journal* 21 (2006): 795–871.

This article purports to give cultural and historical context to the copyright piracy in China and suggest realistic policy options to fight piracy and protect domestic music and film industries. After examining the present legal framework in China for protecting copyright and the goals of the copyright law, the article contemplates three approaches to addressing the piracy problem: (1) cracking down hard on piracy; (2) staying the course; and (3) adopting a tax-funded, Internet-based compensation system for sharing music and movies online. The article gives several reasons why the third option could prove to be the optimal one.

Qu, Sanqiang. *Copyright in China*. Beijing: Foreign Language Press, 2002.

Authored by a Chinese law professor educated in both China and Australia, this book, based on the author's doctoral dissertation, conducts a comprehensive study of the Chinese copyright law, emphasizing both the external conditions and internal organization that may affect the formation and growth of the Chinese copyright law and policy. The book contends that the main obstacles to the development and operation of copyright law in China are a result of the continuing conflict between notions inherent in the legal system and those embodied in social values—and that the conflict between these has affected the enforcement of copyright law. A bibliography is included.

Shi, Wei. "Cultural Perplexity in Intellectual Property: Is Stealing a Book an Elegant Office?" *North Carolina Journal of International Law and Commercial Regulation* 32 (2006): 1–47.

China's poor record in IPR protection is, to many Western commentators, partially due to historical Confucian values held by the general population. In this article, the author attempts to show "that counterfeiting and piracy are not problems caused by the Confucian ethics, as the mainstream view states, but rather common, inevitable consequences of inadequate economic development and a by-product of a unique set of socioeconomic crises deriving from the development of a dysfunctional institutional regime" (p.4).

Slate, Robert. "Judicial Copyright Enforcement in China: Shaping World Opinion on TRIPS Compliance." *North Carolina Journal of International Law and Commercial Regulation* 31 (2006): 665–701.

Mr. Jiang Zhipei, then a chief judge of the IPR Tribunal of the Supreme People's Court of China, has created and kept a personal web site "to disseminate information to the public, and illustrate his attempts to positively influence public opinion on China's compliance with the enforcement provisions of TRIPS" (p.667). This article "evaluates the copyright enforcement-related material presented on the Chinese and English versions of the website" (p.667). The article concludes that: "The analysis of the website suggests high-ranking, politically influential IPR judges support the creation of laws that comply with TRIPS, but lean toward applying them in a "forgiving" manner that meets China's economic realities—that is, TRIPS 'with Chinese characteristics'" (p.700) .

Sun, Haochen. "Reconstructing Reproduction Right Protection in China." *Journal of the Copyright Society of the U.S.A.* 53 (2005–2006): 223–86.

In the digital environment, to access a work over the Internet requires a temporary storage of the work into the computer's memory, therefore creating a temporary copy of the work. This phenomenon raises the issue of whether the control over making temporary copies should be given to the rights holders. The existing Chinese copyright law does not protect temporary copies. The article investigates the issues of Chinese law and relevant international agreements on how to protect broad-based reproduction rights.

Ting, Oliver. "Pirates of the Orient: China, Film Piracy, and Hollywood." *Villanova Sports and Entertainment Law Journal* 14 (2007): 399–444.

Rampant movie piracy in China costs the American movie industry millions of dollars a year. The article examines the Chinese copyright law, China's WTO commitments, the level of movie piracy in China, and the reasons for piracy's success there, which may include access, price, and quality. The article analyzes three possible U.S. responses to Chinese film piracy: (1) government referral to the WTO, (2) lawsuits against Chinese retailers in the Chinese courts, and (3) highlighting piracy's severe damage to China's own movie industry. In conclusion, the article suggests pressuring the Chinese government to curb film piracy.

Wan, Yong. "Legal Protection of Performers' Rights in the Chinese Copyright Law." *Journal of the Copyright Society of the U.S.A.* 56 (2009): 669–94.

This article, written by a Chinese law professor, examines Chinese copyright law regarding the legal protection of performers' rights in the context of standards established by international conventions and agreements (e.g., the WIPO Copyright Treaty,<sup>18</sup> the WIPO Performances and Phonograms Treaty,<sup>19</sup> and TRIPS) in which China participates. Issues under discussion include the definition of performers, rental rights, and remuneration rights for broadcast and communications to the public.

Wan, Yong. "A Modest Proposal to Amend the Chinese Copyright Law: Introducing a Concept of Right of Communication to the Public." *Journal of the Copyright Society of the U.S.A.* 55 (2008): 603–22.

This article explores the definitions of certain exclusive rights of copyright, i.e.,

18. WIPO Copyright Treaty, Dec. 20, 1996, S. Treaty Doc. No. 105-17, 2186 U.N.T.S. 152.

19. WIPO Performances and Phonograms Treaty, Dec. 20, 1996, S. Treaty Doc. No. 105-17, 2186 U.N.T.S. 245.

the right of performance, the right of recitation, and right of broadcasting, as stipulated by major international agreements—the Berne Convention,<sup>20</sup> TRIPS, and the WIPO Copyright Treaty, and compares these instruments to the current Chinese copyright law. The author argues that because there are ambiguities and gaps in the Chinese copyright law in light of the international definitions, the Chinese copyright law should be amended. The author proposes introducing a new concept, “the right of communication to the public,” to the Chinese law to harmonize with the international standards.

Wan, Yong. “China’s Regulations on the Right of Communication through the Information Network.” *Journal of the Copyright Society of the U.S.A.* 54 (2007): 525–44.

In 2006, the Chinese government issued the Regulations on the Protection of the Right of Communication through the Information Network (RPRCIN),<sup>21</sup> which adopts new anti-circumvention rules and tries to harmonize different parties’ interests in digital copyright. This article gives a comprehensive, detailed overview of the new regulations, consisting of the following sections: the definition of the right of communication through the information network, technological measures, electronic rights management information, limitations and exceptions, safe harbors, notification and taking-down system and counter-notification system, and legal liabilities.

Wang, Shujen. *Framing Piracy: Globalization and Film Distribution in Greater China*. Lanham, Md.: Rowan & Littlefield, 2003.

This book concerns film distribution in the digital environment. “It focuses on film piracy and Hollywood’s global film distribution networks in Greater China (including the Mainland, Hong Kong, and Taiwan), and it examines the functional and regulatory roles of the state in an age of transnational trade and intellectual property regimes” (p.1). The first section of the book offers historical, theoretical, political, economical, and technological context, while the second part supplies cases studies of film piracy and distribution in Greater China. Photographs, statistics, and tables are included. The book has an index and bibliography.

Xie, Huijia. “The Regulation of Anti-Circumvention in China.” *Journal of the Copyright Society of the U.S.A.* 54 (2007): 545–63.

This article explains the creation of the RPRCIN and their development. The article explores the prohibitions in the new rules and highlights the scope and remedies contained therein. The author discusses the exceptions to the new rules, offering proposals for further regulation.

Xie, Huijia. “The Regulation of Digital Rights Management in China.” *IIC: International Review of Intellectual Property and Competition Law* 39 (2008): 662–79.

In the digital environment, an effective model for distributing information and creative contents is by way of Digital Rights Management (DRM), consisting of the interaction of technology, law, and commercial licenses. This article addresses

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20. Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, Paris Act of July 24, 1971, as amended on Sept. 28, 1979, S. Treaty Doc. 99-27, available at [http://www.wipo.int/export/sites/www/treaties/en/ip/berne/pdf/trtdocs\\_wo001.pdf](http://www.wipo.int/export/sites/www/treaties/en/ip/berne/pdf/trtdocs_wo001.pdf).

21. Measures for the Administrative Protection of Internet Copyright, Apr. 29, 2005, available at <http://en.cnci.gov.cn/Law/LawDetails.aspx?ID=6772>.

the various aspects of DRM in the context of Chinese copyright law. The essay covers such topics as the protection of DRM, the limitations and exceptions to DRM protection, and recommendations on the regulation of DRM in China.

Xu, Chao. "Collective Administration of Copyright in China." *IIC: International Review of Intellectual Property and Competition Law* 37 (2006): 586–99.

Collective administration of copyright is a relatively new phenomenon in China, brought in by the revision of the copyright law in 2001. This article gives an overview of the system of collective administration of copyright in the context of the Chinese copyright law and regulations. The article also introduces several Chinese groups involved in collective copyright administration, such as the Music Copyright Society of China, the China Literary Works Copyright Society, and the China Audio-Visual Products Copyright Society.

Xue, Hong, and Zheng Chengsi. *Software Protection in China: A Complete Guide*. Hong Kong: Sweet & Maxwell Asia, 1999.

Authored by two leading Chinese legal scholars, this is a major work that gives an introduction and overview of the Chinese law on computer software protection. The book consists of three parts: an introduction to Chinese IP law related to computer software protection, copyright protection for computer software, and other legal protections for computer software. Throughout the book, Chinese judicial decisions are cited and discussed to illustrate relevant points of law. Included is a table of cases, a table of legislation, and an index. Appendixes include the text of major Chinese copyright laws and regulations.

Yonehara, Brent T. "Enter the Dragon: China's WTO Accession, Film Piracy and Prospects for Enforcement of Copyright Laws." *DePaul University Journal of Art and Entertainment Law* 12 (2002): 63–108.

This student note examines "China's historical and cultural indifference towards pirated goods, the current need to protect American film from piracy overseas, and to review and critique the enforcement mechanisms in place in China's current legal system to properly monitor and enforce international intellectual property (i.e., copyright) treaties and agreements as it specifically applies to the piracy of American films" (p.67). The article contends China will not become a respected economic power if its system of enforcing copyright laws continues to be ineffective.

Yu, Peter K. "Four Common Misconceptions about Copyright Piracy." *Loyola of Los Angeles International and Comparative Law Review* 26 (2003): 127–50.

Copyright piracy is one of the most difficult yet important international problems of the new century. However, the current debate on this issue tends to oversimplify the complex nature of the problem. This oversimplification will result in public misconceptions and mislead policy makers into adopting policies that fail to address the real issue. In response, this article seeks to redirect the debate by challenging four common misconceptions: (1) copyright piracy is merely a cultural problem, (2) copyright piracy is primarily a development issue, (3) copyright piracy is a phenomenon of the past in technologically advanced countries, and (4) copyright piracy is a necessary by-product of authoritarian rule. The author argues that the United States might be unable to eradicate piracy unless the legislators and policymakers are willing to consider the many interests of stakeholders and non-stakeholders in this debate.

Zhang, Jing. "Pushing Copyright Law in China: A Double-Edged Sword." *DePaul University Journal of Art and Entertainment Law* 18 (2007): 27–77.

In this student comment, the author "explores the true reasons why piracy is rampant in China since it is important to understand the context of the phenomenon" (p.29). The article analyzes the negative effect of current U.S. copyright policy toward China as well as its potential threat to human rights, free speech, and public access. The author offers short- and long-term solutions to the problem. While promoting copyright law in China, the article argues "the U.S. should consider the balance it has struck in enforcing copyright law domestically regarding the value of free speech, the right of public access, and the danger of human rights abuse" (p.27).

Zhang, Yiman. "Establishing Secondary Liability with a Higher Degree of Culpability: Redefining Chinese Internet Copyright Law to Encourage Technology Development." *Pacific Rim Law & Policy Journal* 16 (2007): 257–84.

This article suggests that China's current legal regime, which premises copyright liability upon a direct infringement and joint liability theory, has caused significant confusion within both the judiciary and the affected industries. The theory of joint liability has been particularly troublesome for China's technology industry. The article argues that "Chinese copyright law needs to provide safe harbor to well-defined online services and technologies and, more important, adopt a secondary-liability theory that requires a higher-than-negligence standard of culpability" (p.284).

## Patents

¶7 Patent law is another primary cornerstone of the Chinese IPR regime. The currently effective legislation governing patents is the Patent Law of the People's Republic of China, last amended in 2008.<sup>22</sup> Under the law, a patent can be granted to three types of creations—inventions, utility models, and designs.<sup>23</sup> The terms of protection are twenty years for inventions and ten years for utility models and designs, respectively.<sup>24</sup> An invention or utility model, in order to be granted a patent, must possess the characteristics of novelty, inventiveness, and practical applicability.<sup>25</sup> Certain subjects cannot be patented, including scientific discoveries; rules and methods for mental activities; methods for diagnosis or treatment of diseases; animal and plant varieties; substances obtained by means of nuclear transformation; and two-dimensional designs of pattern, color, or a combination of the two that mainly serve as indicators.<sup>26</sup> Compulsory licensing of granted patents is permissible under certain conditions.<sup>27</sup> The following publications deal with all aspects of Chinese patent law and administration.

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22. Patent Law of the People's Republic of China (adopted by the Standing Comm. Nat'l People's Cong., Mar. 12, 1984, last amended Dec. 27, 2008, effective Oct. 1, 2009) (P.R.C.), *English translation available at* <http://www.lilon.com/ipdata/Patent%20Law.pdf>.

23. *Id.* art. 2.

24. *Id.* art. 42.

25. *Id.* art. 22.

26. *Id.* art. 25.

27. *Id.* ch. 6.

Bai, Benjamin, Peter J. Wang, and Helen Cheng. "What Multinational Companies Need to Know about Patent Invalidation and Patent Litigation in China." *Northwestern Journal of Technology & Intellectual Property* 5 (2007): 449–63.

Written by American and Chinese lawyers, this article gives a detailed, practical overview of the administrative procedures for patent invalidation before the Chinese patent agency and the processes of patent litigation in the Chinese courts. The article argues that contrary to the widespread belief that China lacks IP protection, multinational firms can successfully enforce their patents in China with sufficient skill, experience, and understanding of the Chinese system.

Davidson, Justin, and Connie Carnabuci. "Chinese Twists—Preliminary Injunctions in China: Fact or Fiction?" *Patent World* 166 (October 2004): 22–25.

In 2001, the Chinese patent law was amended with the addition of pre-litigation injunctions. Although the form of the new measure is not very different from that in many other countries, it does have some unique characteristics. This short piece, authored by two attorneys based in Hong Kong, describes and discusses in detail the practical requirements for this new provision and how it works.

Gechlik, Mei Y. *Protecting Intellectual Property Rights in Chinese Courts: An Analysis of Recent Patent Judgments*. Carnegie Paper No. 78, January 2007, <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=18984>.

This paper, authored by a Hong Kong lawyer with extensive experience in Chinese law and business, analyzes approximately five hundred Chinese patent cases decided by the courts, and determines how likely foreign parties are to apply for judicial review to protect their patent rights in China, the chances of their winning the cases, and factors that influence their success in these lawsuits. Through this empirical study and analysis, the paper discusses the trends of successful and failed patent litigation in Chinese courts and suggests strategies for foreign patent owners to take for better protection of their IPR in China.

Hu, Robert H. *Research Guide to Chinese Patent Law and Practice*. Buffalo, N.Y.: W.S. Hein & Co., 2002.

This book was written as a guide book to help American and other Western scholars and practitioners to access Chinese legal information and conduct research on China's patent law system. With these goals in mind the book gathers all the relevant information sources for research in one place—laws, regulations, cases, and commentaries in both print and electronic formats. It includes a broad overview of the Chinese law on patent, followed by descriptions of resources for further research. It includes a lengthy bibliography. Major Chinese legal documents and Sino-U.S. agreements, in both English and Chinese, are included as appendices. There is an index.

Li, Xuan. "Novelty and Inventive Step: Obstacles to Traditional Knowledge Protection under Patent Regimes: A Case Study in China." *European Intellectual Property Review* 29 (2007): 134–39.

This note examines whether patent law can give adequate protection to traditional knowledge, in light of the criteria of novelty and inventive steps under Chinese patent law. The article discusses whether traditional Chinese medicine or medical knowledge forms part of the prior art as defined under the patent law. It offers a description of the patent examination criteria for medicines as applied by the China Patent Office.

Li, Yahong. "Utility Models in China." In *Industrial Property in the Bio-medical Age: Challenges for Asia*, edited by Christopher Heath and Anselm Kamperman Sanders, 257–68. The Hague: Kluwer Law International, 2003.

The number of Chinese patent applications grew dramatically every year from 1985 to 2000, and most of these applications (over 60%) are utility models as opposed to inventions. This chapter examines three issues: "(1) the social and economic conditions, as well as legal factors that have nurtured the utility model; (2) the impact of the utility models on China's science and technology development; and (3) the reform of the Chinese utility model system" (p.258).

Yu, Xiang, and Yurong Zhang. "The Patent Protection for Business Method Inventions in China." *European Intellectual Property Review* 30 (2008): 412–19.

This article examines the patentability of business methods within the Chinese patent law, and it "considers excluded subject matter, the technical requirements for inventions to be patentable, the examination procedures, and how the Chinese approach to business method patents compares with that of the European Patent Office" (p.412). Using the banking industry as an example, this article gives illustrations of the patents applied for and awarded.

Yu, Xiang, and Liu Shan. "The New Developments in Patent Protection for Invention Involving Computer Programs in China—A Study Based on the Newly Amended Chinese Patent Examination Guidelines." *IIC: International Review of Intellectual Property and Competition Law* 38 (2007): 659–68.

This essay discusses the 2006 Chinese official guidelines on the examination of patent applications, with a focus on applications for inventions involving computer programs. It also describes the current practice of patent examinations as conducted by the China Patent Office, and compares the Chinese practice with that of the U.S. government and the European Union. Finally, the article offers practical, detailed advice to foreign businesses on how they can successfully obtain patents for their inventions in China.

## Trademarks

¶8 Trademarks are another of the three cornerstones of the Chinese IPR regime. The currently effective legislation governing trademarks is the Trademark Law of the People's Republic of China, last revised in 2001.<sup>28</sup> Under the law, a registered trademark is protected by law and enjoys certain exclusive rights. When registering a trademark with the Trademark Office of China, the person who first files an application will get the registration.<sup>29</sup> Certain signs are prohibited from registration as trademarks.<sup>30</sup> A registered trademark is protected for a term of ten years from the time of approval, and the registration is renewable.<sup>31</sup> A registered trade-

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28. Trademark Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 23, 1982, amended Oct. 27, 2001, effective Dec. 1, 2001) (P.R.C.), *English translation available at* <http://www.chinaiprlaw.com/english/laws/laws11.htm>.

29. *Id.* art. 29.

30. *Id.* art. 11.

31. *Id.* arts. 37–38.

mark can be assigned by the owner to another party through a licensing contract, but the assignment must be approved by the government.<sup>32</sup> Infringement of a registered trademark may include unauthorized use of the mark, sale of the mark, or counterfeiting.<sup>33</sup> The following publications discuss all aspects of the Chinese trademark law and administration.

Alexander, Mary K. "The Starbucks Decision of the Shanghai No. 2 Intermediate People's Court: A Victory Limited to Lattes?" *Case Western Reserve Law Review* 58 (2008): 881–931.

In December 2005, a Shanghai court ruled against a Chinese company for infringing on Starbucks's trademark. In this student note, the author "illustrates the limited importance of the Starbucks decision to the greater overall climate of foreign trademark protection in China, in light of the nature of Starbucks' goods and the other problems China faces regarding the protection of foreign well-known marks. Part I of this Note provides a brief history of trademark protection in China, the various attempts China has made in recent years to strengthen protection for foreign brands, in order to better comply with its international obligations, and the trademark infringement problems China continues to face despite implementation of new protection laws. Part II outlines the details of the Starbucks decision. Finally, Part III discusses the likely impotence of the Starbucks decision, given the uniqueness of Starbucks' goods, the rampant problems of enforcement in China, and the benefits China receives from continued trademark infringement" (p.885).

Bashaw, Bradley M. "Geographic Indications in China: Why Protect GIs with Both Trademark Law and AOC-Type Legislation?" *Pacific Rim Law & Policy Journal* 17 (2008): 73–102.

Geographic indications (GIs) are valuable business assets. As a WTO member, China is required to protect GIs under the TRIPS agreement, but it is free to protect GIs by relying on its trademark law, GI-specific laws called appellation of controlled origin (AOC), or unfair competition law. In fact, China has chosen to use both its trademark system and the AOC regime to protect GIs. This article argues that China would be better off if it abandoned the AOC system and relied solely on the trademark system.

Carter, Connie. *The Law of Trademarks, Brands and Domain Names in China*. Richmond, Va.: Curzon, 2001.

This book offers an introduction to Chinese trademark law, especially relating to protecting brands and domain names. It covers topics such as assignments and licensing agreements, trademark infringement, legitimacy, enforcing trademark law in China, and translating foreign trademarks. There is an index as well as appendixes covering Chinese trademark statutes, rules, cases, and international agreements.

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32. See *id.* art. 39.

33. *Id.* art. 52.

Gregory, Angela. "Chinese Trademark Law and the TRIPS Agreement—Confucius Meets the WTO." In *China and the World Trading System: Entering the New Millennium*, edited by Deborah Z. Cass, et al., 321–44. New York: Cambridge University Press, 2003.

This chapter examines China's implementation of the provisions of TRIPS concerning trademarks and the problem of trademark counterfeiting. The chapter concludes that the Chinese trademark law roughly meets the TRIPS standards, although certain provisions of the statute, such as criminal and civil penalties, need expansion; thus for the time being foreign trademark holders must defend their rights in China.

Hu, Robert H. "International Legal Protection of Trademarks in China." *Marquette Intellectual Property Law Review* 13 (2009): 142–92.

The article describes and examines the Chinese obligations under certain international treaties and agreements, both multilateral and bilateral, and uses some Chinese court decisions to illustrate how these obligations are fulfilled in its judicial practice. Finally the article gives an assessment of the effectiveness of these international regimes in China and offers observations on future developments in protection through better enforcement. Three arguments are made: (1) international trademark law is taking root in China; (2) China is taking its international obligations to protect trademarks seriously, and it has achieved much in harmonizing its domestic law with the international standards on trademarks; and (3) China should still do more to improve its enforcement of international and domestic rules aimed at protecting trademarks.

Hu, Robert H. *Research Guide to Chinese Trademark Law and Practice*. Durham, N.C.: Carolina Academic Press, 2008.

This book is intended to provide a roadmap for conducting research in Chinese trademark law and serve as a handy reference and tool for legal scholars, law professors, lawyers, and others interested in learning about Chinese trademark law. It offers essential information for understanding the Chinese legal regime for trademark registration and administration. All major aspects of the Chinese trademark law are covered. Various tables, indexes, appendixes, and web sites facilitate easy access to critical documents, such as trademark statutes, regulations, court decisions, statistics, and official interpretations.

Nastase, Laura C. "Made in China: How Chinese Counterfeits Are Creating a National Security Nightmare for the United States." *Fordham Intellectual Property, Media & Entertainment Law Journal* 19 (2008): 143–78.

This student note exposes the failures of the United States "to address and monitor national security threats caused by the Chinese counterfeit industry, as well as the weakness of the statutory tools in addressing this problem" (p.146). Part one "highlights the four areas of national security left vulnerable by a failure to address the trade in counterfeits stemming from China: consumer safety, economic safety, the financing of criminal organizations and terror groups and the proliferation of sensitive technologies" (p.147). Part two "discusses China's response to the production of counterfeits within its borders, and its history of enforcement of intellectual property laws" (p.147). Finally, part three offers suggestions for changes.

Paglee, Charles D. "Chinese Trademark Law Revised: New Regulations Protect Well-Known Trademarks." *University of Baltimore Intellectual Property Law Journal* 5 (1996–1997): 37–81.

This article begins with an examination of prior Chinese legislation on trademarks and international trademark treaties to which China is a party, with an analysis of the impact of such legislation on the protection of well-known trademark rights in China. The article next examines the newly issued trademark regulations and analyzes their impact on trademark protection. Several court cases dealing with well-known trademark rights in China are discussed to assess their potential effect. The essay ends with a general assessment of the present state of trademark protection in China and possible future developments.

Shi, Wei, and Robert Weatherley. "Harmony or Coercion? China-EU Trade Dispute Involving Intellectual Property Enforcement." *Wisconsin International Law Journal* 25 (2007): 439–90.

Co-authored by a Chinese law professor and a British lawyer, this essay takes a fresh look at the relationship between international pressures and IPR protection in China. The article claims that though conventional wisdom asserts a positive correlation between greater international pressure and better domestic compliance with the international rules of IPR, a growing body of empirical evidence shows that "a coercive policy towards IPR protection is misconceived and ineffective in obtaining the desired results" (p.439). In the authors' view, much of the literature on international IPR protection in China concentrates primarily on China-U.S. issues, but very little has been written about the significance of IPR in China-EU relations. "By examining areas of compatibility between European and Chinese culture and analyzing the mistakes made during China-U.S. negotiations over IPR, this article uses the prism of China-EU trade relations to suggest ways to reconcile the minimum standards imposed by international standards and the specific conditions of particular states; and provide insight into the unresolved issues as to how and when China's WTO commitments will be implemented" (p.440).

Sun, Catherine. "Beat the First Filing Blues in China." *Managing Intellectual Property*, May 2008, 40–42.

Under China's trademark law, the first person to apply for a trademark with the government will register the trademark, regardless of actual use of the mark. Once a mark is registered, it enjoys exclusive rights against all others. This is called the principle of "First to File." This poses a serious problem for foreign brand owners because their trademarks can be registered by a Chinese entity having no business connections with the trademark. In this article, the author advises how to deal with the problem, offering specific advice, including to file the trademark in China anyway, to oppose, invalidate, or cancel the rival registration, and to sue in court if necessary.

Tan, Loke-Khoon. *Pirates in the Middle Kingdom: The Ensuing Trademark Battle*. 2nd ed. Hong Kong: Sweet & Maxwell Asia, 2007.

Written by a Chinese trademark law expert<sup>34</sup> and partner in a major American law firm operating in Hong Kong and mainland China, this is the second edition of

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34. Tan has co-written another book on Chinese trademark law and is a frequent speaker and commentator on Chinese trademark law and other Chinese IP issues. See LOKE KHOON TAN & CLIFFORD BORG-MARKS, *TRADE MARK LAW IN THE PEOPLE'S REPUBLIC OF CHINA* (1998).

an earlier work with a slightly different title.<sup>35</sup> Based on personal knowledge and many years' work experience, this publication is a comprehensive, authoritative introduction to Chinese trademark law, processes, and practice. It gives expert advice to lawyers and business leaders about how to protect their trademarks under Chinese law. It also provides an insightful look into the historical and cultural context in regard to the development of Chinese trademark and other IP laws. The book comes with a table of cases and a table of legislation, which can be useful to the reader for identifying relevant information. Numerous appendixes include the texts of major Chinese trademark laws and regulations. There is an index.

Tan, Loke-Khoo, and Clifford Borg-Marks. *Trade Mark Law in the People's Republic of China*. New York: Oxford University Press, 1998.

This book provides detailed information on all practical aspects of enforcing trademark law in the PRC, giving a historical and cultural backdrop to its development and implementation.

Tiefenbrun, Susan W. "Piracy of Intellectual Property in China and the Former Soviet Union and Its Effects upon International Trade: A Comparison." *Buffalo Law Review* 46 (1998): 1-69.

This article compares China with Russia and the causes and effects of the extensive practice of IP piracy in the two countries. The introduction "examines the contradictions inherent in intellectual property legislation, counterbalanced by the negative effects of U.S. efforts to combat intellectual property piracy in the global trade market" (p.2). The next part looks into the development of China's IP legislation and its compliance with international agreements, the causes and effects of IP violations, the extent of piracy in China, and the Sino-U.S. efforts to combat piracy and the effect of these efforts on international trade. Then the article examines the same aspects of Russian IP law. The article concludes by outlining some possible solutions to the piracy of IP in both China and Russia.

[Wilkinson & Grist]. *Practical Guide to IPR Protection in China: How to Protect Your Brand*. Hong Kong: Hong Kong Trade Development Council, 2005.

Compiled by a Hong Kong law firm, this book is intended to help Hong Kong (and by extension, other) companies to protect their brands against counterfeiting and IP infringement in China. As the foreword says, "This practical guide gives a concise account on the ways of protecting intellectual property in relation to building brands in the mainland market, with analyses on the pros and cons of each and every way." Topics covered by this guide include an overview of IPR in China, trademark rights, other IPR and protection related to brand names, how to resolve IP disputes, and brand protection strategy for Hong Kong companies in the mainland. Each topic is written in Q&A format. There is no index.

Yu, Xiang. "The Regime of Exhaustion and Parallel Imports in China: A Study Based on the Newly Amended Chinese Laws and Related Cases." *European Intellectual Property Review* 26 (2004): 105-12.

This essay "compares the recently reformed Chinese legislation on patents, trademarks and copyright with international law on parallel importation and the exhaustion of intellectual property rights" (p.105). Then it "discusses case

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35. See LOKE KHOON TAN, *PIRATES IN THE MIDDLE KINGDOM: THE ART OF TRADEMARK WAR* (2004).

law on proprietors' rights to restrain parallel imports and considers the economic and political implications of parallel importation in the context of China's trade liberalization and industrial development" (p.105). Finally, it "advises on appropriate policies in respect of trade marked consumer goods and patented high technology" (p.105).

### Selected Web Sites

¶9 In recent years, there has been an explosion of web sites that pertain to Chinese IP law, policy, news, and commentary. These eight China-based free web sites are among the best when judged by the richness of the contents, data authoritativeness, update frequency, reliability, and language accessibility. These web sites collectively represent the state of art in Chinese law on the Internet, and provide excellent access to Chinese law and information on IPR.

Web site: Intellectual Property Protection in China

Chinese name: 中国保护知识产权网

URL (Chinese): <http://www.ipr.gov.cn/cn/index.shtml>

URL (English): <http://www.chinaipr.gov.cn>

Sponsor: National Working Group for IPR Protection of China, Ministry of Commerce of China

Languages: Chinese, English

This site is sponsored by top Chinese government agencies, and serves as a gateway to Chinese IP law, regulations, news, and information. The contents include IP news, policies, application guidelines, judicial cases, laws, rules, international treaties, and other information. Both Chinese and English versions seem to be working reliably. However, some contents on this site are not up-to-date. For example, the latest version of the Chinese Patent Law, which was enacted in December 2008, was not on the site as of April 2009.

Web site: China IPR Judgments & Decisions

Chinese name: 中国知识产权裁判文书网

URL (Chinese): <http://ipr.chinacourt.org>

Sponsor: IPR Division of the Supreme People's Court of China

This Chinese-language site is by far the best source of information for Chinese IPR court decisions and opinions. The site contains thousands of actual decisions and judgments written by Chinese judges. The case documents are organized into seven categories—(1) copyright and related rights, (2) trademarks, (3) patents, (4) new varieties of plants, (5) unfair competition, (6) technology contracts, and (7) others (discovery and innovation, layout design of integrated circuits). The user can browse cases by category. The user may search for cases by one or a mix of the following elements: case number, names of the parties, the cause of action, the date of decision, and the name of the court.

Web site: Judicial Protection of IPR in China

Chinese name: 中国知识产权司法保护网

URL (Chinese): <http://www.chinaiprlaw.cn>

URL (English): <http://www.chinaiprlaw.com/english/default.htm>

Sponsor: Judge (Retired) of the Supreme People's Court of China

This site, created and maintained by a retired Chinese judge of the Supreme People's Court, Mr. Jiang Zhipei, offers information on selected IPR judicial judgments and opinions, key case analysis, trial news, and a judge's forum. The site also links to Chinese IPR laws, regulations, and treaties. The user can access the full texts of well-known Chinese IP cases and analysis extracted from actual judgments and opinion. The English version of the site is sparse in contents and not nearly as developed as the Chinese version.

Web site: National Copyright Administration of China

Chinese name: 中国国家版权局

URL (Chinese): <http://www.ncac.gov.cn>

Sponsor: National Copyright Administration of China

This Chinese-language site provides news and information about Chinese copyright law and administration. The contents include Chinese copyright laws, regulations, international agreements, and selected administrative decisions. The site also offers statistics (2001–2007) on copyright imports/exports, infringement, and administrative cases. The site links to Chinese copyright protection associations and organizations.

Web site: State Intellectual Property Office of China

Chinese name: 中华人民共和国国家知识产权局

URL (Chinese): <http://www.sipo.gov.cn>

URL (English): [http://www.sipo.gov.cn/sipo\\_English](http://www.sipo.gov.cn/sipo_English)

Sponsor: State Intellectual Property Office (SIPO), China Patent Office

This site is the best source of information for Chinese patents, patent law, and related matters. It allows the user to search for approved patents and pending patent applications filed with the China Patent Office. Although the site focuses on Chinese patents and legal information, it is invaluable for Chinese IP law and information in general. The types of data offered include the full text of current Chinese IP laws, rules and regulations; full text of international IP agreements applicable to China; selected Chinese judicial decisions; and current events and developments regarding IP law. The English version of the site is not as well developed as its Chinese version; many features available on the Chinese version do not even appear on the English site.

Web site: China Trademark Net

Chinese name: 中国商标网

URL (Chinese): <http://sbj.saic.gov.cn>

URL (English): [http://sbj.saic.gov.cn/english/index\\_e.asp](http://sbj.saic.gov.cn/english/index_e.asp)

Sponsor: Trademark Office of State Administration for Industry and Commerce of China (CTMO)

This site is the best source of information for Chinese trademark law and related information. It allows the user to search the database of trademarks registered in China. It also offers access to full-text Chinese trademark laws and regulations that are currently effective, annual reports of CTMO, statistics on trademark applications, registrations and related topics, *Trademark Gazette* with issues since December 2003, a flow chart of the trademark registration process, frequently asked questions, and news.

Web site: China Court Network

Chinese name: 中国法院网

URL (Chinese): <http://www.chinacourt.org>

URL (English): <http://en.chinacourt.org>

Sponsor: Supreme People's Court of China

This site strives to provide "the most comprehensive, authoritative" text and data about Chinese laws, regulations, court decisions, and legal news (from the front page of the site). One important element of the site is the Case Bank, which contains selected judicial judgments and decisions on IP, civil, criminal, and other topics. Another significant component of this site, so called Law Bank, offers the full text of currently effective statutes and regulations since 1949, the beginning of the Communist government. This Law Bank is searchable by keyword in title and content fields. The English version of this site is as well developed and functional as its Chinese version.

Web site: China Patent Agent (H. K.)

Chinese name: 中国专利代理 ( 香港 ) 有限公司

URL (Chinese): <http://www.cpahkltd.com/cn/home.htm>

URL (English): <http://www.cpahkltd.com/home.htm>

Sponsor: China Patent Agent (H. K.)

This site, with materials in Chinese, English, German, Japanese, and Korean, has been created and maintained by China Patent Agent (H.K.), a quasi-government entity of China. Established in 1984, this firm currently employs a staff of 310, consisting of patent and trademark attorneys. The site is an excellent source of information for Chinese patent laws, regulations, international agreements, selected judicial opinions, and other IP matters in general.