

White Paper on IPR Protection (full text)

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The State Council Information Office published on April 21, 2005, a white paper titled New Progress in China's Protection of Intellectual Property Rights. The nine-chapter report discusses the policies adopted and actions taken by the government to protect IPR during the past decade. The last white paper on this topic was published in 1994.

New Progress in China's Protection of Intellectual Property Rights

Foreword

I. Basic Situation of the Protection of Intellectual Property Rights

II. Patent Protection

III. Trademark Protection

IV. Copyright Protection

V. Intellectual Property Rights Protection for Audio and Video Products

VI. Protection of New Varieties of Agricultural and Forestry Plants

VII. Customs Protection of Intellectual Property Rights

VIII. Public Security Organs Act on Criminal Infringement on Intellectual Property Rights

IX. Judicial Protection of Intellectual Property Rights

Conclusion

Foreword

The intellectual property system is a basic legal system that promotes mankind's economic development, social progress, scientific and technological innovation, and cultural prosperity. As science and technology is developing rapidly worldwide and the pace of economic globalization is accelerating, the status of the intellectual property system in economic and social life has reached a historical high. The protection of intellectual property rights (IPR) has drawn wide attention of the international community.

China is a country with a long history of civilization. Over the past several thousand years, vast numbers of outstanding Chinese scientists, inventors, men of letters and artists have made enormous contributions to mankind's development and progress with their splendid intellectual achievements. The Chinese government and people are keenly aware of the value of inventions, creations, and science and technology.

The IPR protection system was established at a comparatively late date in China, but has developed rapidly. Major progress has been made in IPR protection since the late 1970s, when China initiated the reform and opening-up policies. An IPR system has been gradually established, and is promoting healthy economic development and overall social progress.

In order to help the international community have a better understanding of the real situation regarding China's IPR protection and make a proper judgment, we hereby give a brief introduction to and explanation of related issues.

I. Basic Situation of the Protection of Intellectual Property Rights

China has always adopted a responsible attitude to actively promoting IPR protection. While adhering to the international rules on IPR protection, China has decided on a level of IPR protection appropriate for its own national situation, and made great efforts to balance the interests among intellectual property creators, users and the general public, so as to create a benign circle for the creation and use of intellectual property.

Major progress has been made on IPR protection in China over the past years thanks to concerted efforts made by people from all walks of life.

- A relatively complete system of laws and regulations that covers a wide range of subjects and is in line with generally accepted international rules has been established and keeps improving. Since the 1980s, the state has promulgated and put into effect a number of laws and regulations covering the major contents in IPR protection. These include the "Patent Law of the People's Republic of China," "Trademark Law of the People's Republic of China," "Copyright Law of the People's Republic of China," "Regulations on the Protection of Computer Software," "Regulations on the Protection of Layout Designs of Integrated Circuits," "Regulations on the Collective Management of Copyright," "Regulations on the Management of Audio-Video Products," "Regulations on the Protection of New Varieties of Plants," "Regulations on the Protection of Intellectual Property Rights by the Customs," "Regulations on the Protection of Special Signs," and "Regulations on the Protection of Olympic Logos." China has also promulgated a series of relevant rules for the implementation of these laws and regulations, and their legal interpretation. As a result, the system of laws and regulations on IPR protection in China has been continuously improved. In 2001, around the time when China was admitted into the WTO, in order to provide effective legal protection to IPR, the country made comprehensive revisions to the laws and regulations regarding IPR protection and their legal interpretation. While more emphasis is given to promoting the progress of science and technology and innovation with regard to legislative intent, content of rights, standards of protection and means of legal remedy, the revisions brought the laws and regulations into conformity with the WTO's "Agreement on Trade-related Aspects of Intellectual Property Rights" and other international rules on IPR protection.

- A coordinated and efficient work system and a law enforcement mechanism have been established and improved. In its practice of IPR protection, a two-way parallel protection mode, namely, administrative and judicial protection, has emerged in China. Several departments in China are assigned with the duty to protect IPR. They include primarily the State Intellectual Property Office, State Administration for Industry and Commerce, Press and Publication General Administration, State Copyright Bureau, Ministry of Culture, Ministry of Agriculture, State Forestry Administration, Ministry of Public Security, General Administration of Customs, Supreme People's Court and Supreme People's Procuratorate. For many years these departments have done effective work in their respective fields. To further strengthen IPR protection, in 2004 China established the State IPR Protection Work Team headed by a vice-premier of the State Council, responsible for planning and coordinating the work regarding IPR protection throughout the country. Its office, located in the Ministry of Commerce, handles the routine work of the team.

In recent years, the state has increased work contacts between administrative law enforcement organs and public security organs and people's procuratorates with respect to IPR protection. In October 2000, the relevant departments jointly issued the "Notice on Strengthening Cooperation and Coordination in the Work of Investigating and Dealing with Criminal Cases that Infringe Intellectual Property Rights," which contains clear provisions on relevant issues. In July 2001, the State Council promulgated the "Regulations on the

Transfer of Suspected Criminal Cases by Administrative Law Enforcement Organs," which includes clear provisions on how the administrative law enforcement organs should transfer suspected criminal cases to public security organs in a timely fashion. In March 2004, the relevant departments jointly issued the "Opinions on Increasing Work Contacts between Administrative Law Enforcement Organs and Public Security Organs and People's Procuratorates." A work mechanism involving the coordination of administrative law enforcement and criminal law enforcement has been established, creating a joint power to deal with IPR infringements. This ensures that suspected criminal cases enter the judicial process promptly. In recent years, the judicial organs have adjudicated a large number of IPR infringement cases according to law. In civil cases, the infringed parties have received timely compensation for their financial losses, and IPR-related crimes have been effectively combated.

- Administrative law enforcement has been strengthened in IPR protection. As gradual improvements are made in the legal system on IPR protection, China has shifted its focus from legislation to law enforcement. Administrative law enforcement has been enhanced through the combination of routine management and supervision with special crackdown campaigns. In August 2004, the Chinese government decided to launch a special one-year campaign to protect IPR across the country from September 2004 to August 2005. It was decided at the national TV and telephone conference on rectification and standardization of the market economic order convened by the State Council on March 31, 2005 that the campaign was extended to the end of 2005. With unified planning, the relevant departments have investigated and dealt with major IPR infringement cases, focusing on major fields in the protection of trademark rights, copyrights and patent rights, on major links in the import and export of goods, all types of exhibitions and wholesale markets of commodities, and on key places where producers and sellers of counterfeit goods were known to be concentrated. Their quick action and strict law enforcement efforts have dealt a blow on IPR offenders, achieving positive results.

- Efforts are being made to heighten the awareness of the general public about IPR. The Chinese government attaches great importance to publicity concerning IPR. Beginning in 2004, the state designated the week from April 20 to 26 every year as the "week for publicizing the importance of IPR protection." By making wide use of newspapers, magazines, television, radio and the Internet, and through holding seminars and knowledge contests, and making public interest advertisements, the government carries out publicity and education among the general public regarding IPR protection. The aim is to create a social atmosphere in which labor, knowledge, talent and creation are respected, and heighten the awareness of the general public regarding IPR.

- Actively fulfilling the international obligations to protect IPR. China has taken an active approach to joining major international conventions and agreements on IPR protection. Following its accession to the World Intellectual Property Organization in 1980, China joined in succession more than ten international conventions, treaties, agreements and protocols, such as the "Paris Convention for the Protection of Industrial Property," "Patent Cooperation Treaty," "Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure," "Locarno Agreement Establishing an International Classification for Industrial Designs," "Madrid Agreement Concerning the International Registration of Marks," "Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks," "Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks," "Agreement on Trade-related Aspects of Intellectual Property Rights," "International Convention for the Protection of New Varieties of Plants," "Berne Convention for the Protection of Literary and

Artistic Works," "Universal Copyright Convention," and "Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication."

While strictly executing its international obligations in IPR protection, China has devoted great efforts to adjusting and improving international rules regarding IPR protection in order to let all countries of the world share the fruits and benefits brought about by the progress of science and technology. In recent years, China has held talks, and engaged in exchanges and cooperation with other countries, international organizations and foreign-invested enterprises in the field of IPR. At the suggestion of the United States, starting in 2003, China and the US have held a round-table conference on IPR every year, and reached agreement on many IPR-related issues at the two round-table conferences. In 2004, China and Europe held their first round of talks on IPR in Beijing. Initial agreement was reached between the two sides on matters of cooperation related to IPR. Relevant Chinese departments have established good cooperative relations with corresponding departments in several countries, and international organizations such as World Intellectual Property Organization and International Union for the Protection of New Varieties of Plants. In September 2003, a mechanism was established for regular contact and coordination between relevant Chinese departments and foreign-invested enterprises. Under the mechanism, a meeting is held every three months to solicit comments and suggestions from the foreign-invested enterprises on issues related to IPR protection.

II. Patent Protection

With the establishment of the China Patent Office in 1980, China's patent work has developed continuously over 25 years. In April 1, 1985, the "Patent Law of the People's Republic of China" went into effect. Following that, China promulgated several patent-related laws and regulations, such as the "Rules for the Implementation of the Patent Law," "Regulations on Patent Commissioning," "Procedures for the Administrative Enforcement of Laws Concerning Patents," and "Regulations on the Implementation of Customs Protection of Patent Rights." China has twice made revisions to the "Patent Law" in the light of the requirements of social and economic development so as to enable it to improve continuously.

By mainly relying on its own resources, China has established a relatively complete and independent patent examination system in a short period of time. On January 1, 1994, China became a member state of the "Patent Cooperation Treaty." The China Patent Office is China's agency dealing with cases involving the Patent Cooperation Treaty, performing international patent searches and preliminary examinations. Meanwhile, China has established a fairly comprehensive system for patent work. Relevant departments of the State Council and local governments have established patent administrative organs in accordance with the provisions of the "Patent Law." China now has more than 5,000 people working in patent agencies, and a service system mainly providing patent commissioning, patent information, patent technology transfer intermediary and patent technology evaluation services has taken initial shape.

China's patent work has realized leapfrogging development. From April 1, 1985 to the end of 2004, the State Intellectual Property Office handled 2,284,925 patent applications with an average annual increase of 18.9 percent. Of these, 1,874,358 were domestic applications, and 410,567 came from other countries, accounting for 82 and 18 percent, respectively. Patent applications in China had exceeded two million by March 17, 2004. It took China 15 years for patent applications to reach one million. But it took only four years for the number to double. In 2004, the State Intellectual Property Office handled 353,807 applications, an increase of 14.7 percent over the previous year, which saw 308,487 applications. Of these,

278,943 were domestic applications, accounting for 78.8 percent of the total and an increase of 11 percent over the previous year, which saw 251,238 applications. Foreign applications numbered 74,864, accounting for 21.2 percent of the total and an increase of 30.8 percent over the previous year, which saw 57,249 applications. From 1994 to 2004, the State Intellectual Property Office handled, in total, 7,131 international applications for patent rights, of which 1,592 such applications were handled in 2004. International patent applications that entered China via the channel of the Patent Cooperation Treaty totaled 157,770. Of these, 32,438 applications were submitted in 2004.

By the end of 2004, the State Intellectual Property Office had approved 1,255,499 patents. Of these, 1,093,268 were domestic ones, and 162,231 were from other countries, accounting for 87.1 and 12.9 percent of the total number of approved patents, respectively. The numbers of invention patents, utility model patents and exterior design patents that had been approved were 185,412, 651,224 and 418,863, accounting for 14.8, 51.9 and 33.3 percent respectively. In 2004, the State Intellectual Property Office approved 190,238 patents, an increase of 4.4 percent over the previous year, which had 182,226. It approved 151,328 domestic patents, an increase of 1.2 percent, compared with 149,588 in the previous year. At the same time, it approved 38,910 foreign patents, an increase of 19.2 percent over the previous year, which saw 32,638.

The "Regulations on the Protection of Layout Design of Integrated Circuits" went into effect in China on October 1, 2001. By the end of 2004, the State Intellectual Property Office had received 682 applications for the registration of layout design of integrated circuits. It registered 571 of them, and issued related public notices as well as certificates to the applicants. In 2004 alone, the State Intellectual Property Office received 244 applications for the registration of layout design of integrated circuits. It registered 205 of them, and issued related public notices as well as certificates to the applicants.

In recent years, patent administration departments at all levels have strengthened administrative enforcement of the law in this respect. In particular, they have launched crackdowns on infringements of patent rights of food and medicines, which are closely connected with people's health and lives. They have made great efforts to investigate and deal with cases that infringe upon the patent rights of key technologies and cases that had widespread repercussions. They have also conscientiously investigated and dealt with infringements and counterfeits of patent rights of inventions, utility models and exterior designs. Following the State Council's unified plan, in August 2004, the State Intellectual Property Office issued the "Work Program on Strengthening Enforcement of the Laws on Intellectual Property Rights and Launching a Special Law Enforcement Campaign." All subsidiary departments under the State Intellectual Property Office were mobilized to participate in the campaign. By the end of that year, local intellectual property offices had checked 10,251 industrial venues and examined 2,081,537 commodity items. By the end of 2004, local patent administration departments across the country had accepted 12,058 cases involving patent infringement and patent disputes, and 10,411 of the cases, or 86.3 percent, were resolved. In 2004, local patent administration departments accepted 1,455 cases involving patent disputes, and 1,215 of them were resolved. They also dealt with 3,965 cases of patent counterfeits, and 358 cases of unauthorized use of others' patents.

III. Trademark Protection

Great progress has been made in China's trademark protection work since November 1, 1979, when China resumed the unified registration of trademarks. The "Trademark Law" went into effect on March 1, 1983. The Chinese government promulgated the "Rules for the

Implementation of the Trademark Law" in March 1983 to help with the implementation of the law, and in 1988 revised it for the first time. In February 1993, the Standing Committee of the National People's Congress (NPC) made the first revision to the "Trademark Law" to include service trademarks in the work of trademark protection, strengthen efforts to crack down on trademark infringement and counterfeiting, and improve the trademark registration procedures. In July 1993, the Chinese government made revisions to the "Rules for the Implementation of the Trademark Law" for the second time to bring collective trademarks and certification trademarks into the scope of legal protection of trademarks, and added to it provisions on the protection of "trademarks well known to the public."

In October 2001, the NPC Standing Committee made revisions to the "Trademark Law" for the second time to include three-dimensional trademarks and color combination trademarks in the scope of trademark protection and offer greater protection to well-known trademarks. The revised "Trademark Law" also stipulates that the trademark system shall be used to protect geographical marks, judicial examination shall be added for the certification process of trademark rights, and greater efforts shall be made to crack down on trademark infringement and counterfeiting, thus bringing the relevant provisions of China's "Trademark Law" in line with the principles of WTO's "Agreement on Trade-related Aspects of Intellectual Property Rights." In August 2002, the Chinese government again revised the "Rules for the Implementation of the Trademark Law" and renamed it "Regulations for the Implementation of the Trademark Law."

In accordance with the provisions of the "Trademark Law" and the "Regulations for the Implementation of the Trademark Law," the State Administration for Industry and Commerce formulated or revised several administrative rules and regulations, including the "Trademark Assessment Rules," "Provisions on the Recognition and Protection of well-known Trademarks," "Procedures for the Management and Registration of Collective Trademarks and Certification Trademarks," "Procedures for the Implementation of Madrid Agreement for the International Registration of Trademarks," and "Procedures for the Administration of the Printing of Trademarks."

As improvements are made in the legal system concerning trademarks and as the general public's awareness about trademarks is heightened, applications for trademark registration in China have soared in recent years. In 1980, applications for trademark registration were only a little more than 20,000. The number reached 132,000 in 1993. In the five years from 2000 to 2004, applications for trademark registration quickly exceeded the key marks of 200,000, 300,000, 400,000 and 500,000, and came to 1,906,000 finally. It means an additional 256,000 applications were submitted in these five years over the total submitted during the 20 years from 1980 to 1999. It accounts for 53.6 percent of the total number of applications submitted from 1980 to 2004. In 2004, 588,000 applications were filed for trademark registration, 136,000 more than the previous year and an increase of 30 percent. The number of applications in 2004 was 2.17 times that in 2001, when China joined the WTO. By the end of 2004, China had had 2,240,000 registered trademarks.

As the investment environment in China is constantly improved, especially after China joined the WTO, both the number of applications for trademark registration from foreigners and the number of registered foreign trademarks have kept increasing. In 1982, there were 1,565 foreign applications for trademark registration in China. The number exceeded 20,000 in 1993 and exceeded 60,000 in 2004. Before 1979, only 20 countries and regions had 5,130 trademarks registered in China. By the end of 2004, 129 countries and regions had 403,000 trademarks registered in China. This represents almost an 80-fold increase

over that in 1979, accounting for 18 percent of the total number of registered trademarks in China.

China has actively fulfilled its obligations to protect internationally well-known trademarks since it joined the "Paris Convention for the Protection of Industrial Property." In handling cases involving objections and disputes over ownership of trademarks as well as trademark management, the State Administration for Industry and Commerce has certified more than 400 well-known trademarks, effectively protecting according to law the legitimate rights and interests of owners of foreign and Chinese well-known trademarks. In 2004 alone, it certified and offered protection to 153 well-known trademarks, of which 28 were brand-names of foreign enterprises. Meanwhile, administrative organs of industry and commerce at all levels regard the protection of well-known trademarks as their priority and have made greater efforts to protect them. They have severely cracked down on all kinds of illegal acts that have infringed upon the rights and interests of well-known trademarks.

For years, administrative organs of industry and commerce at all levels across China have fully exploited their advantages in trademark administrative law enforcement - complete networks, simple procedures and high efficiency. Focusing on the protection of the right to exclusive use of registered trademarks, and dutifully carrying out their responsibilities, they have investigated and dealt with a large number of trademark infringement and counterfeiting cases, effectively protecting the right to exclusive use of registered trademarks of both foreign and domestic trademark owners, and safeguarding the legitimate rights and interests of consumers. From 2001 to 2004, administrative organs of industry and commerce at all levels across China dealt with 169,600 cases that violated the trademark laws and regulations. Of these, 113,000 cases involved trademark infringement and counterfeiting (12,000 cases involved foreign trademarks), and 56,600 cases were other types of violations of trademark laws and regulations. They confiscated and destroyed 529 million pieces (sets) of counterfeiting trademark logos, and transferred 286 cases involving 300 people to judicial organs to pursue their criminal responsibilities. In 2004, in accordance with the unified plan and arrangement of the State Council on IPR protection and that of the State Administration for Industry and Commerce on the protection of the right to exclusive use of registered trademarks, administrative organs of industry and commerce at all levels across China launched three special campaigns that focused on the protection of well-known and foreign-related trademarks, and on dealing with infringements of trademarks of food and medicine. The campaigns effectively protected the right to exclusive use of registered trademarks. According to statistics, in 2004, administrative organs of industry and commerce across China investigated and dealt with 51,851 law-violation cases involving trademarks. Of these, 5,494 concerned foreign trademarks, a 2.6-fold increase of that in 2003. Of the 51,851 cases they investigated, 11,680 were common violations of the trademark laws and regulations. The rest of the cases, altogether 40,171, involved trademark infringement or counterfeiting, an increase of 51.66 percent over 2003. They confiscated and disposed of 38,951,800 pieces (sets) of illegal trademark logos, confiscated 280,800 tools such as moulds and press plates used for the infringement, and confiscated and destroyed 5638.53 tons of items that had been used for the infringement. They transferred to judicial organs 96 cases involving 82 people to pursue their criminal responsibilities.

IV. Copyright Protection

China's legal system for copyright protection was gradually established in the 1990s, with the implementation of the "Copyright Law" as a hallmark in this process. In recent years, China has made revisions to the "Copyright Law." It has also promulgated a number of

regulations with legal effect, such as "Regulations on the Protection of Computer Software," "Regulations for the Implementation of the Copyright Law," "Procedures for the Implementation of Administrative Sanctions Concerning Copyright," and "Regulations on the Collective Management of Copyright." The promulgation and implementation of these legal documents have laid a solid legal foundation for copyright protection.

At present, China has formed a three-level copyright administrative management system: the State Copyright Bureau, copyright bureaus at the provincial level and the prefectural (city) level. Governments of various provinces, autonomous regions and municipalities directly under the central government have constantly consolidated their copyright administrative management departments and made improvements to the system of copyright administrative management and law enforcement.

In recent years, China's copyright administrative management departments at all levels have strengthened their administrative enforcement of the copyright law. They have increased cooperation with other government departments, such as the departments of public security, industry and commerce, the customs, press and publications, and cultural departments. As a result, a mechanism of law enforcement whereby different departments are coordinated in combating copyright infringement and piracy has gradually taken shape. The copyright administrative management departments have always maintained the pressure on copyright infringement and piracy. They have launched several campaigns to crack down on pirated discs, textbooks, reference books, software, illegal duplication and selling of audio-video products, selling of smuggled audio-video products and Internet infringement practices. Positive achievements have been made. According to incomplete statistics, from 1995 to 2004, copyright administrative management departments at all levels confiscated 350 million pirated copies, accepted 51,368 cases of infringement and resolved 49,983 of them. In 2004, they accepted 9,691 cases of infringement, resolved 9,497 of them and imposed administrative sanctions on the infringers in 7,986 cases. These included the investigation and punishment of two Chinese enterprises that had infringed upon the copyright of the Microsoft Corporation of the United States and other major cases.

While establishing and improving its copyright legal system and strengthening its copyright administrative management, China also attaches great importance to the establishment of a copyright public service system. At present, China has established a copyright public management and service system consisting of copyright collective management organs, copyright agencies, copyright protection associations, professional associations and organizations of copyright holders. In 1988, the Copyright Agency of China was established. In 1990, the Copyright Research Society of China was established and its name was changed to Copyright Society of China in 2002. In 1993 the China Copyright Society of Works of Music was established. And in 1998, the Copyright Protection Center of China was established. At present, writers' associations, such as China Federation of Literary and Art Circles, China Writers' Association and China Film Association as well as professional associations of book publishers, producers of audio-video products and software developers have established their own copyright protection organizations. Copyright societies have been established in more than 20 provinces (autonomous regions, municipalities directly under the central government) and some major cities. Preparatory work is under way to establish China's collective copyright management organizations of works of the written language and of audio-video products.

V. Intellectual Property Rights Protection for Audio and Video Products

Persistent piracy of audio and video products in spite of repeated bans is a problem of international significance. The Chinese government attaches great importance to IPR protection for audio and video products, treats crackdown on piracy of audio and video products as an important task in IPR protection and has made continuous efforts to carry it out. In recent years, China has gradually established a whole set of systems for the management of audio and video products, which mainly includes an IPR protection system, audio and video business license system, exclusive publication right system, duplication authorization system, SID code system, censorship system for imported audio and video products, the system of awards for informants, the system of uniform anti-counterfeit labels for audio and video products, the system of registration and filing of audio and video products in storehouses, and the system of inspection of, report on and keeping the public informed of illegal audio and video products.

In August 1994, the government promulgated the "Regulations on the Administration of Audio and Video Products," and amended it in December 2001. In accordance with the relevant laws and regulations, including the "General Principles of the Civil Law," "Copyright Law," "Criminal Law" and "Regulations on the Administration of Audio and Video Products," the Press and Publication General Administration, Ministry of Culture, General Administration of Customs and Ministry of Commerce respectively and jointly issued a series of administrative regulations, such as the "Regulations on the Administration of Publication of Audio and Video Products," "Measures for the Administration of Wholesale, Retail and Renting of Audio and Video Products," "Measures for the Administration of Import of Audio and Video Products" and "Measures for the Administration of China-Foreign Cooperative Distribution Enterprises of Audio-video Products," providing both legal and administrative groundwork for the business and protection of audio and video products.

In light of the rapidly developing audio-video market, the government has step by step readjusted its administration of the audio-video industry. The "Regulations on the Administration of Audio and Video Products" provides for the division of functions in the administration of the industry. In 1998, the State Council further sorted out the administrative system on the principle of "streamlining, efficiency and unification," clearly assigning the administration of audio-video products' production, publication and duplication to the Press and Publication General Administration; and that of wholesale, retail, renting, showing and import of audio-video products to the Ministry of Culture. Following the suit of the central government, the local governments have also readjusted their administrative systems in this regard. So far, China has initially established market management networks at the central, provincial, prefectural and county levels. In most areas, investigation squads have been set up to keep watch on cultural markets, including the market for audio and video products. They sincerely perform the duties of supervision and administration on the audio-video market.

Since the 1990s, the publication market supervision authorities and cultural administration authorities have cooperated closely with other relevant departments in making sustained efforts to enforce order in the audio-video market. As a result, the order of the audio-video market has been gradually improved, the number of pirated audio-video products clearly reduced, and the circulation of original copies greatly increased. According to incomplete statistics, from 1994 to 2004, nine CD duplicating enterprises had their duplication business licenses revoked, and 200 illegal CD production lines were discovered. In August 2004, under the unified arrangement of the special IPR protection campaign, the Ministry of Culture drew up an overall plan for an intensive crackdown on infringements in the audio-video industry, in accordance with which it guided and coordinated with key cities and areas in strengthening law enforcement, and discovering and closing down a large number of

underground storehouses and distribution networks of illegal audio-video products. In 2004, cultural market inspecting and management authorities throughout the country inspected audio-video businesses on 555,368 occasions, confiscating 154 million copies of audio-video works. On January 12, 2005, the Ministry of Culture and the Office of the National Working Group on Intellectual Property Rights Protection launched a nationwide campaign to destroy illegal audio-video products, during which over 63.35 million copies of such products were destroyed.

VI. Protection of New Varieties of Agricultural and Forestry Plants

Proceeding from the actual conditions of China and on the basis of earnestly summing up and borrowing from international experience, the Chinese government has set up and carried out a series of systems and measures for the protection of new varieties of plants, thus fully guaranteeing the legitimate rights and interests of the investment bodies involved. On October 1, 1997, the government began implementing the "Regulations on the Protection of New Varieties of Plants," greatly expanding the scope of IPR protection in China.

To supplement the implementation of the "Regulations on the Protection of New Varieties of Plants," the Chinese government has in succession promulgated and implemented such regulations as the "Rules for the Implementation of the Regulations on the Protection of New Varieties of Plants (Agriculture)," "Rules for the Implementation of the Regulations on the Protection of New Varieties of Plants (Forestry)," "Regulations on Agency of New Agricultural Plant Variety Rights," "Regulations on Handling Cases of Infringement of New Agricultural Plant Variety Rights," and "Regulations of the Ministry of Agriculture on the Work of the Reexamination Board for New Varieties of Plants," providing legal guarantees for the rapid development of new varieties of plants.

In recent years, the government has set up the Office of Protection of New Varieties of Plants and the Reexamination Board for New Varieties of Plants at the Ministry of Agriculture and State Forestry Administration, respectively, forming an institutional protection system combining examination and approval agencies, law-enforcement organizations, intermediary service organizations and other rights protection organizations. Meanwhile, a technological support system has been established, which includes the Center for the Preservation of Breeding Materials of New Varieties of Agricultural Plants, Center for Testing of New Varieties of Plants and its 14 sub-centers, and the Center for the Testing of New Varieties of Forest Plants and its five sub-centers and two molecule determination labs. To ensure scientific and authoritative examination of plant variety rights, and drawing on the international standards for testing new varieties of plants, the relevant authorities have, based on the actual conditions of China, formulated guides for testing 57 new varieties of plants, including corn, rice, poplar and peony, of which 18 have been promulgated and implemented as national or industrial standards.

The government has issued and implemented five lists of protected new varieties of agricultural plants and four lists of protected new varieties of forest plants, which cover 119 genera and species, including 41 agricultural plants and 78 forest plants. The numbers are far higher than the minimum numbers required by the "International Convention for the Protection of New Varieties of Plants."

By the end of 2004, the Ministry of Agriculture had handled 2,046 applications for plant variety rights. The number of applications handled in 1999 was 115, and by 2004 it reached 735, indicating an average annual increase of 44.9 percent. Among all the applications,

there were 1,875 for field crops, 87 for vegetables, 52 for fruit trees and 32 for decorative plants. A total of 2,174 applications were from scientific, technological and educational institutions, and 772 from enterprises and individuals, which included 32 from foreign enterprises and individuals. After examination, 503 applications were granted the variety rights.

By the end of 2004, the State Forestry Administration had handled 305 applications for variety rights, including 64 from France, Germany, the Netherlands, Belgium and the United States, and granted 72 new plant variety rights. The involved plants included Chinese rose, peony, Christmas flower, azalea, poplar, Chinese chestnut, apricot, eucalyptus and walnut. Of them, 253 applications were for decorative arbors, accounting for 82.95 percent of the total. The applications were mainly from Chinese research institutions, foreign individuals engaging in breeding and Chinese universities, which respectively accounted for 50.2 percent, 14.4 percent and 11.1 percent of the total.

Since 2001, the government began experimental law enforcement on the protection of new varieties of plants in 12 selected provinces and municipalities, and then gradually spread the work across the country. By the end of 2004, 17 provinces (autonomous regions and municipalities directly under the central government) had handled 863 cases of infringement of new agricultural plant variety rights and of faking new agricultural plant varieties.

VII. Customs Protection of Intellectual Property Rights

In September 1994, China began to carry out border protection of IPR. At present, the Chinese customs houses have established a complete system of IPR-related law enforcement measures, which includes such links as examination of customs declaration bills and certificates, inspection of imported and exported goods, detention and investigation of right-infringing goods, punishment of illegal importers and exporters, and disposal of right-infringing goods.

In October 1995, China promulgated and implemented its first ever "Regulations on the Protection of Intellectual Property Rights by the Customs," and began to establish its system of IPR customs protection in accordance with WTO rules. In 2000, the NPC Standing Committee amended the "Customs Law of the People's Republic of China," defining the functions of IPR customs protection from the legal perspective. In December 2003, the Chinese government promulgated the revised "Regulations on the Protection of Intellectual Property Rights by the Customs," which strengthened the customs houses' power in investigating and dealing with right-infringing goods, reduced the burden on the proprietors of intellectual properties in seeking customs protection, and defined the functions of the customs houses, the judicial and other administrative organizations. Later, the General Administration of Customs formulated the "Measures for Implementation" of the revised regulations, which clearly provided for such issues mentioned in the revised regulations as keeping business secrets, filing of international registered trademarks, collecting and returning of security deposit, and the payment of relevant fees by the proprietors. In September 2004, the Chinese government promulgated the "Regulations on Implementation of Administrative Penalties," which clearly provided administrative penalties for infringements on IPR in importation and exportation. The "Interpretations on Several Issues in Practical Application of Laws in Criminal Cases of Infringement on Intellectual Property Rights" was promulgated by the Supreme People's Court and the Supreme People's Procuratorate in December 2004, which further clearly stipulated the criminal responsibilities of agencies importing or exporting right-infringing goods. By then, a legal

system for IPR customs protection geared to the needs of economic and social development had been basically established.

China has established and improved its law enforcement mechanism for IPR customs protection. First, it has established a central filing system for IPR customs protection. As long as the IPR proprietors have filed their IPR with the General Administration of Customs, the port customs have the power to detain imported or exported goods that infringe on the filed IPR. By the end of 2004, the General Administration of Customs had confirmed 6,257 files of IPR for customs protection. Second, a model combining active protection with passive protection is implemented in law enforcement. Besides detaining import or export goods suspected of IPR infringement, the customs can also investigate and deal with illegal import and export of right-infringing goods within the scope of their powers and duties. Third, law enforcement organizations have been founded and improved, and the building of IPR law enforcement teams enhanced. By the end of 2004, all the customs houses directly under the General Administration of Customs had set up relevant departments for the management of IPR protection, and 11 of them had set up special organizations for IPR protection. Some customs houses with adequate conditions had stationed liaison officers on site. A system of IPR law enforcement has taken shape on three levels, namely, the General Administration of Customs, customs houses directly under it, and grass-roots customs posts.

To curb right infringements and piracy in import and export links, the port customs all over China focus law enforcement on import and export of fake and pirated products. From 1996 to 2004, the Chinese customs ferreted out 4,361 cases of right infringement in import and export, which involved 630 million yuan. Since 2000, the number of cases discovered by the customs has increased by 30 percent annually. The customs have effectively cracked down on the illegal import and export of right-infringing goods, preserving order at ports, and safeguarding the interests of proprietors.

In offering IPR border protection, the Chinese customs attach great importance to liaison and cooperation with proprietors and relevant organizations and associations of proprietors, and have enhanced their communication and coordination with IPR authorities and their cooperation and exchanges with foreign border law enforcement authorities. So far, the Chinese customs have signed memorandums of cooperation on IPR protection with such proprietors' organizations as the Motion Picture Association of America, and have cooperated with them successfully. The Chinese customs have cooperated on many occasions in law enforcement with IPR-related administrative and criminal law enforcement authorities, such as IPR management authorities and public security organs, effectively cracking down on illegal and criminal IPR infringement. The Chinese customs have signed agreements of mutual assistance in administrative law enforcement with the customs of the European Union countries, the United States and other countries, which contain the provisions on IPR customs protection. The Chinese customs have also actively conducted information exchange and law enforcement cooperation regarding IPR protection with the customs services of other countries.

VIII. Public Security Organs Act on Criminal Infringement on Intellectual Property Rights

In recent years, the Chinese public security organs have adopted a series of measures to crack down on all kinds of criminal IPR infringement, continuously enhanced their law enforcement standards and abilities, and safeguarded the sound development of the socialist market economy.

In 1998, to step up the fight against criminal IPR infringement, and in accordance with the provisions of the "Criminal Procedure Law," the Ministry of Public Security established a specialized department to organize, guide and coordinate the fight against criminal IPR infringement, and supervise over the handling of serious cases. Local public security organs at all levels, from the top downward, have set up specialized investigation teams for receiving, filing and investigating such criminal cases. From 2000 to 2004, the Chinese public security organs cracked 5,305 cases of criminal infringement on IPR, which involved nearly 2.2 billion yuan, and arrested 7,100 suspects. Among them, there were 4,269 cases concerning infringement on the exclusive rights of trademark ownership, which involved 1.18 billion yuan, and 5,564 suspects were arrested. A number of suspects were found guilty of the production and sale of fake or inferior products and illegal business operation, and sentenced accordingly.

Since November 2004, the Ministry of Public Security has launched a one-year national campaign against criminal infringement on the exclusive rights of trademark ownership, cracking some cases of criminal IPR infringement that were of widespread and baneful repercussions and involved large amounts of money. These cases included: production of fake Gillette razor blades cracked by the public security organs of Zhejiang Province, production of fake Adidas and Nike sports shoes cracked by the public security organs of Fujian Province, production of fake Cisco (USA) electronic products cracked by the public security organs of Guangdong Province, and production of fake brand-name liquors, including Wuliangye, cracked by the public security organs of Sichuan Province.

As more and more foreign companies are investing, selling their products and building enterprises and R&D centers in China, the Chinese public security organs have gradually established a system of regular communication and coordination with IPR proprietors, earnestly listening to their opinions and suggestions. Since December 2002, together with relevant associations of enterprises with foreign investment, the Ministry of Public Security has held three forums on "Protection of Intellectual Property Rights against Crimes" and published forum declarations, improving communication and coordination in this field.

In view of increasing transnational and trans-border criminal cases of IPR infringement, the Chinese public security organs attach great importance to international law enforcement cooperation in the fight against IPR infringement, and have conducted cooperation with the law enforcement organizations of various countries in assistance in investigation and collection of evidence, exchange of information and judicial assistance. In July 2004, working together with the Immigration and Customs Enforcement of the Department of Homeland Security of the United States, the Chinese public security organs successfully cracked a serious case of suspected sale of pirated DVDs in Shanghai, arrested seven suspects headed by an American citizen, raided three places where pirated DVDs were hidden, and confiscated over 210,000 pirated DVDs.

IX. Judicial Protection of Intellectual Property Rights

In recent years, the Chinese procuratorial organs have earnestly exercised their duties of examination of arrests and prosecutions in cases of criminal IPR infringement, as well as legal supervision over relevant criminal lawsuits in accordance with law, handled a large number of cases of suspected criminal IPR infringement. From 2000 to 2004, the procuratorial organs at all levels approved the arrests of 2,533 people suspected of criminal IPR infringement, and instituted prosecutions against 2,566 suspects. In 2004, the arrests of 602 people suspected of criminal IPR infringement were approved, and prosecutions against 638 suspects were instituted. In the same year, procuratorial organs around China

launched a special drive to supervise cases involving production of fake products and IPR infringement, during which they urged relevant administrative law enforcement organs to transfer suspected criminal cases to public security organs according to law, supervised the filing of cases that should have been filed by the public security organs according to law, made sure that suspected criminal cases entered judicial proceedings in time, and investigated some criminal cases of conniving and covering up production and sale of fake products and of IPR infringement involving government functionaries abusing their powers.

For many years, the Chinese people's courts at all levels have continuously strengthened work in IPR-related civil and criminal trials under the principle of "justice and efficiency." Through handling a large number of IPR-related cases, they have protected the legitimate rights and interests of Chinese and foreign IPR proprietors equally, punished acts of IPR infringement and severely cracked down on criminal IPR infringements, making unremitting efforts to realize social fairness and justice.

Since the handling of the first case of a technological contract dispute in 1981, the Chinese courts have continuously expanded the range of IPR-related trials to include cases concerning copyright, trademarks, patents, unfair competition, computer software, new varieties of plants and integrated circuit layout designs, thus establishing the status of court trials in the handling of IPR-related cases. From 1998 to 2004, courts throughout the country concluded 38,228 IPR-related civil cases of first instance and 2,057 criminal cases of first instance involving IPR infringement in accordance with Section Seven, Chapter III of the "Specific Provisions" of the "Criminal Law," handing down sentences to 2,375 criminals. Among these cases, in 2004, 8,332 civil IPR-related cases of first instance and 385 criminal cases of first instance involving IPR infringement in accordance with Section Seven, Chapter III of the "Specific Provisions" of the "Criminal Law" were concluded, and 528 criminals were punished. In the same year, the Chinese courts also concluded 932 criminal cases of production and sale of fake or inferior goods, punishing 1,453 criminals involved, and concluded 1,434 criminal cases of illegal business operation, punishing 2,103 criminals. A considerable proportion of the above two types of cases also involved criminal IPR infringement.

To correctly apply laws and make law enforcement standards coherent, and based on its experience in handling IPR-related cases, the Supreme People's Court of China has formulated a series of relevant judicial interpretations in accordance with the law, and improved a series of important IPR-related law application principles, which have played an important role in the timely settlement of new problems emerging from the handling of IPR-related cases and in guiding the correct handling of IPR-related cases by the people's courts at all levels. For example, the "Several Provisions on Law Application for Stopping Patent Infringement before Litigation" promulgated by the Supreme People's Court in June 2001 provided judicial measures for stopping right infringements and effectively preventing more losses on the part of proprietors. The "Interpretation of Several Issues Regarding Specific Law Application in Handling Cases of Illegal Publications" promulgated by the Supreme People's Court in December 1998 defined the standards of condemnation and penalty for criminal offences of copyright infringement. The "Interpretation of Several Issues Regarding Specific Law Application in Handling Criminal Cases of Intellectual Property Rights Infringement" jointly promulgated by the Supreme People's Court and the Supreme People's Procuratorate in December 2004 properly reduced the condemnation standards for the crimes of IPR infringement strictly in accordance with the provisions of the "Criminal Law" and in light of China's actual conditions and judicial reality, increased the applicability of the relevant provisions of the "Criminal Law," and provided a concrete applicable legal basis for

handling criminal cases of IPR infringement, and was thus of great significance for effectively cracking down on crimes of IPR infringement.

The Chinese courts put special emphasis on the professional training of IPR judges. After many years of judicial practice and systematic training, a contingent has been formed of highly competent IPR judges who speak foreign languages, and have an intimate knowledge of the law, rich judicial experience and expertise in science and technology. Relatively complete IPR-related judicial departments have been gradually established, providing a strong personnel and organizational guarantee for effective IPR-related judicial work.

The Chinese courts have continuously enhanced international exchanges and cooperation in the field of IPR-related judicature, learning and borrowing from the useful experience and successful practices of foreign countries. The Supreme People's Court actively conducts friendly cooperation with the World Intellectual Property Organization and European Union, and has hosted several seminars and training courses on IPR, the results of which have been encouraging. These seminars and training courses have effectively promoted the enhancement of China's IPR judicial protection, and continuously pushed the level of its IPR-related judicial work to a new high.

Conclusion

Practice over the past two decades and more has shown that the Chinese government has made arduous efforts to protect IPR. China has achieved a noticeably great improvement in IPR protection, which took the developed countries several decades and even over a century to attain. However, the Chinese government is clearly aware that, in a large developing country with a population of 1.3 billion, relatively backward economy and low level of science and technology, a complete IPR protection system cannot be established overnight. China has a long way to go in this regard, and is faced with heavy tasks in IPR protection.

At present, there are still IPR infringements in certain areas and fields in China, some of which are very serious. The awareness of the importance of IPR in Chinese society as a whole needs to be further enhanced. Meanwhile, China's IPR protection work is facing new challenges in the course of economic globalization and rapid development of science and technology worldwide. In accordance with the requirements of the concept of scientific development, the Chinese government will adopt more effective policies and measures in the process of building a well-off society in an all-round way and developing a harmonious society, exerting efforts to raise its IPR protection work to a new level.

For many years China has received active support and assistance from the international community in the establishment of its IPR protection system. In the future, the Chinese government will continue to earnestly execute its international obligations in this regard, enhance its cooperation with various countries and international organizations with a more active, open attitude, and join hands with them in promoting the establishment of a sound system and environment favorable for IPR protection worldwide.