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China Mulls Heavier Criminal Penalties for Intellectual Property Infringements

China's new draft amendment to its Criminal Law has proposed stricter punishment for intellectual property crimes.

The draft Amendment XI proposes that the maximum prison term for trademark and copyright infringements will be increased from seven years to 10 years. Particularly,

- Whoever, without permission of the owner of a registered trademark, uses a trademark which is identical to the registered one on the same kind of commodities or services shall, if the circumstances are especially serious, be sentenced to fixed-term imprisonment of not less than three years but not more than 10 years and shall also be fined.
- Convicted criminals who knowingly sell commodities bearing counterfeit registered trademarks, who forge or make representations of registered trademarks without authorization or sell such representations shall be jailed for 3-10 years and fined, if the amount of sale is huge or if the circumstances are especially serious.
- Those who commit acts of infringement on copyright or other rights related to copyright for the purpose of making profits shall be sentenced to 3-10 years of imprisonment and fined, if the amount of illegal gains is huge or if there are other especially serious circumstances.

In a report submitted to the legislature, the NPC Constitution and Law Committee

suggested the draft amendment be passed at the current session of the NPC Standing Committee which will close in this week.

<http://english.ipraction.gov.cn/article/ns/202012/331309.html>

Latest Progress in IPR Protection of China

China's top leadership has reiterated the importance of intellectual property rights (IPR) protection in spurring innovation and supporting the country's high-quality development.

The following facts and figures offer a glimpse of the latest progress the country has made in IPR protection:

- ◆ The number of invention patent applications in China amounted to 1.23 million from January to October, up 11.2 percent year on year.
- ◆ China saw 55,000 applications filed via the Patent Cooperation Treaty accepted during the 10-month period.
- ◆ By the end of October, the country had approved geographical indications on 2,385 products and seen the registration of 5,935 geographical indication trademarks.
- ◆ The total amount of financing raised by pledging patents and trademarks nationwide reached 166.4 billion yuan (about 25.37 billion USD) during the first 10 months this year, up 35 percent year on year, and is expected to exceed 200 billion yuan for the whole year.

- ♦ China has approved the establishment of two new centers to reduce the processing time and cost of IPR protection, bringing the number of IPR protection centers to 40 across the country.
- ♦ China promised to protect IPR in an all-around manner in the Regional Comprehensive Economic Partnership, the first such commitment in a free trade pact.
- ♦ The number of institutions and professionals involved in IPR protection saw a significant increase. In 2019, the number of patent and trademark agencies rose to 51,000 and practicing patent agents exceeded 20,000.
- ♦ China is formulating the five-year plan for IPR protection and mulling guidelines on strengthening IPR protection through the year 2035.

<http://english.ipraction.gov.cn/article/ns/202012/329637.html>

Applications Blossom for New Plant Varieties

The number of applications for new plant varieties has risen in China over the past seven years, with the country becoming the largest destination of NPV filings in the world for two consecutive years.

Chinese authorities received 4,351 NPV applications in 2019, compared to 1,465 in 2013.

From 1999 to the end of October this year, the total number of NPV filings in China stood at 33,673 and 13,389 of them were approved.

<http://english.ipraction.gov.cn/article/ns/202012/330232.html>

CNIPA & KIPO to Switch to WIPO DAS for Electronic Priority Document Exchange

Due to the migration and integration plan of the Korean Intellectual Property Office (KIPO),

the access to electronic priority documents through the bilateral agreement between KIPO and the CNIPA will be shut down from January 1, 2021.

In order to continue the services, the CNIPA and the KIPO have through consensus decided to switch the electronic retrieval for priority documents to WIPO Digital Access Service (DAS) platform. As of January 1, applicants shall perform the deposit and inquiry procedures via DAS.

https://www.cnipa.gov.cn/art/2020/6/5/art_1549_99779.html

Copyright Dispute over NBA Games Came to an End

Recently, the Beijing Higher People's Court has brought to an end a six-year copyright dispute involving the National Basketball Association (NBA) competition.

Seeing that Shanghai Zhongyuan Network Co., Ltd. and Beijing iQiyi Technology Co., Ltd. have played NBA on the PPS software and websites owned and operated by them without authorization. American NBA Properties Co., Ltd. sued the two companies to court, requesting the defendants to stop the copyright infringement and unfair competition and compensating 36 million yuan for economic losses.

After the Beijing No. 1 Intermediate People's Court made a first-instance judgment that the defendant constituted an infringement and jointly compensated 3.6 million yuan in economic losses, both parties refused to accept it and appealed separately.

Recently, the Beijing Higher People's Court made a second-instance judgment on the case and determined that Shanghai Zhongyuan Company constituted copyright infringement and compensated NBA Properties Company for economic losses and reasonable expenses of 3.8 million yuan.

<http://english.ipraction.gov.cn/article/tc/202011/328871.html>

SUPPLEMENTARY ISSUE

Copyright and Related Rights Better Protected by the Newly-Amended Copyright Law

In recent years, the rapid development of technology, especially information network technology, has greatly transformed the cultural industry and has given rise to the emergence of new genres and changes in the way of communication. The Copyright Law needs to be continuously adjusted and improved to adapt to and promote the development of emerging cultural industries. As the *Decision of the Standing Committee of the National People's Congress (NPC) on Amending the Copyright Law of the People's Republic of China* was approved at the 23rd session of the 13th NPC Standing Committee on November 11, 2020, the newly-revised China's Copyright Law is formally issued, which is a third amendment after the amendments in 2001 and 2010. To keep pace with the developments of our times, the Third Amendment demonstrates major changes in three aspects: expansion of the scope of works, strengthened protection of right owners and intensified crackdown on infringement, which are briefly introduced and discussed below.

1. Adopting “audio-visual works” to define the subject matter accurately and relevantly

Under the current Copyright Law, practically a work has to be fixed in a medium to be identified as “a cinematographic work and works created by a process analogous to cinematography”. However, as the technology advances, new types of works like short videos and animations, which are not filmed or stored with conventional methods, are proliferating on the internet. The Third Amendment revises the wording “cinematographic and works created by a process analogous to cinematography” to “audio-visual works”, eliminating the limitation of filming method and medium to affirm that these new forms of works will also be within the protection scope of the Copyright Law.

2. Specifying concerned owners' right to take technical measures to protect their works, infringers' legal liability for circumventing the technical measures & the exemptions

The Third Amendment adds provisions on technical measures, supporting right owners to use technical measures to protect their copyrights and copyright-related rights and, with exceptions prescribed, prohibiting others from deliberately circumventing or destroying technical measures. The added provisions encourage the right owners to take legal measures to defend their rights and interests, which protects the creative enthusiasm of right owners while taking into account the legitimate use of the works by the public.

3. Elevating the maximum of statutory compensation to 5 million RMB & introducing punitive compensation

In practice, an infringer's unlawful gains and a right owner's actual loss in a copyright infringement disputes are hard to determine due to the difficulty in evidence collection. As the value of copyright becomes increasingly prominent in the era of information network, the maximum statutory compensation of 500,000RMB (approx. 76,000 USD) provided by the Second Amendment can no longer meet the needs of defending the right owner's legitimate rights and interests. Moreover, since litigation can be taxing and expensive, the right owner often forgo defending his right after weighing the compensation against the litigation costs, and the infringing acts are thus left unstopped.

The Third Amendment defines a minimum compensation of 500 RMB (approx. 76 USD), augments the maximum tenfold from 500,000 RMB (approx. 76,000 USD) to 5 million RMB (approx. 760,000 USD) and states explicitly that the compensation should include the reasonable expenses paid by the right owner to stop the infringement. These revisions give incentive for right holders to defend their rights. In addition, for serious infringement, the Third Amendment introduces punitive compensation ranging from one to five times the amount of losses suffered by a right owner, profits earned by an infringer or that by reference to the exploitation fee. Compared with the Second Amendment, the new revision demonstrates the determination to crack down infringement acts, to increase the costs of violating the law and to deter the infringers.

While laws are increasingly lagging behind social development in the internet era, the making and amendment of laws as affairs of national significance still require extensive and repeated discussion and deliberation. The amended Copyright Law keeps up with the developments of our society and is more applicable to the solution of controversial issues appearing recently. It is believed that the Copyright Law will be further perfected with the progress of society and development of economy.

Holiday Notice 2021

The New Year is around the corner. Here we would like to inform you of the Chinese public holidays in 2021 and the adjusted working days.

Holiday/Adjusted Working Day	Date	Office status
New Year Day Holiday	Jan. 1 -Jan. 3	closed
Adjusted Working day	Feb 7 (Sunday)	<i>open</i>
Chinese New Year Holiday (Spring Festival Holiday)	Feb 11 - Feb 17	closed
Adjusted Working day	Feb 20 (Saturday)	<i>open</i>
Qingming Festival Holiday	Apr 3 - Apr 5	closed
Adjusted Working day	Apr 25 (Sunday)	<i>open</i>
Labor Day Holiday	May 1-May 5	closed
Adjusted Working day	May 8 (Saturday)	<i>open</i>
Dragon Boat Festival Holiday	Jun 12 - Jun 14	closed
Adjusted Working day	Sep 18 (Saturday)	<i>open</i>
Mid-Autumn Festival Holiday	Sep 19 - Sep21	closed
Adjusted Working day	Sep 26 (Sunday)	<i>open</i>
National Day Holiday	Oct 1 – Oct 7	closed
Adjusted Working day	Oct 9 (Saturday)	<i>open</i>

The CNIPA and our firm will close during the holidays and you may check if any important deadlines in 2021 are falling in the holidays.

We attached an icalendar file which you may import to you Apple Calendar, Outlook Calendar or Google Calendar for your ease of reference (please be assured that there is no alarm).

<http://afdip.com/index.php?ac=article&at=read&did=3760>