

## **Managing Intellectual Property in the Far East — the case of China**

Dr Ruth Taplin  
Director of The Centre for Japanese and East Asian Studies

*The standardization of China's laws, policies and legal training, together with publication of intellectual property information on the Internet, reflects China's policy of opening up to the world. This article takes a look at recent changes in China's IP laws, with some initial advice on approaching IP issues in this part of the world.*

### **Amendments to China's intellectual property laws**

Chinese intellectual property (IP) changed substantively just before, and after, China's accession to the World Trade Organization in 2001. Over 147 laws concerning all facets of intellectual property have been amended, and out of the 343 paragraphs of the Working Party Report on China's accession, 55 cover trade-related IP rights.

The standardization of China's laws, policies and legal training have been a prerequisite of China's policy of opening up to the world. All China's administrative agencies have now made information on their rules and regulations available on the Internet. This is to provide greater transparency of the workings of each agency, and of the application of Chinese laws.

Within the context of IP, all major areas of the law have been amended to comply with TRIPs. The regulations under these laws have also been amended to remove arbitrariness, improve efficiency and reduce bureaucracy. The laws and the regulations can be found on the websites for the State Intellectual Property Office ([www.sipo.gov.cn](http://www.sipo.gov.cn)) in the patent area, SAIC Trademark Bureau in the trademark area and the National Copyright Administration in the copyright area.

### **The People's Supreme Court**

The People's Supreme Court has now assumed more authority over the way the courts administer the law. Judiciary interpretations have been issued on how specific provisions may apply to guide the lower courts on how to try cases and make decisions. A draft concerning the Judicial Protection of Intellectual Property Rights in China was made available in July 2003. This Judges law, and the regulations on attorneys and law firms, have been strengthened to improve the previously-uneven qualifications of Chinese judges and lawyers.

## **The challenges of copyright law**

The first Copyright Law was enacted in China in October 2001, directly before China's accession to the WTO. Copyright is a contentious issue in China, where authors and artists are considered to lack power and prestige compared to scientists. The copying of the works of great masters is inherent to Chinese brush work painting: learning and then incorporating their styles was never seen traditionally as the infringement of anyone's rights. There is in addition the entrenched cultural idea that advice and ideas are free of charge, and charging for this is still considered inappropriate.

IP is generally viewed in China as a system for protecting the Western world and its products, and as not being particularly helpful to China. However, once R&D progresses to a more advanced stage—as in Japan—China is likely to view IP as important for the development of its own economy.

## **Venue decisions**

Copyright Law has punitive provisions for infringers, such as a penalty of up to 500,000 Yuan (around \$60,000) when the plaintiff's loss/defendant's gain is difficult to quantify. Jurisdiction and venue are based on the locus where the infringer resided, or where the infringing products are sold. A Judicial interpretation was issued in 1999 for determining a proper venue for cases involving the use of computers: this venue is where the infringer resides, where the servers are found, or where the computers are operated.

The venue for an IP action is determined in accordance with Article 29 in the Civil procedure Law, promulgated in 1982 and revised in 1991. Generally, the venue is in the People's Court located where the infringement took place or where the defendant resides. The place where infringement took place includes the place where the infringing products are manufactured, used, or sold. For a patented product, venue also includes the place where the product is offered for sale. For a patented process, it is where the process is carried out. Chinese authorities in charge of enforcement of IP laws are often frustrated, as infringers move so quickly and the population is so large that it is difficult to even know where they resided once the offending products have been found.

For foreign entities, the venue is the Intermediate Court in the provincial capitals, or in the municipalities where the infringement took place or where the defendant resides.

## **Software protection**

In light of the regulations on Computer Software protection, the National Copyright Administration (NCA) issued the Software Copyright Registration Measures ("registration measures") on 20 February, 2002, effective on the same date. Under the registration measures, the NCA is responsible for overseeing the administration of software copyrights, while the China Copyright Protection Centre is charged with processing applications to register software copyright. The registration measures detail the voluntary system for the registration of software copyright provided for in the Regulations on Computer software protection, as well as registration of software copyright licence and assignment contracts. Software that is developed independently or improved significantly with the permission of the original copyright owner may be registered under the registration measures.

## **Advice for manufacturers and investors**

It is essential for businesses that manufacture in—and export from—China, who are concerned that their products may be infringing copyright or trademark, to obtain patent protection or register their copyrights/trademark in China. They should then register these rights with the Chinese Customs Office.

Before embarking on a business venture in China it may be preferable to use a Chinese patent lawyer—based in Hong Kong for example—or to consult patent lawyers in Western countries, especially at preliminary stages of establishing Intellectual Property Rights for a product. It is also important to have all legal documents expertly translated into Chinese, as Chinese officials almost always demand well-translated documents in a readable, bureaucratic style.

Despite the great improvements in IP rights since China's entry into the WTO, it pays to be wary and to make an effort to understand who are the appropriate people and administrative bodies that can deal with your IP query!

### **About the author**

Dr Ruth Taplin is Director of The Centre for Japanese and East Asian Studies. The Centre won Exporter of the Year for the Partnership in Trading/Pathfinder category for the UK in 2000. She received her doctorate from the London School of Economics and is the author/editor of nine books. The most recent are, *Exploiting Patent Rights and a New Climate for Innovation in Japan* (2003 Intellectual Property Institute) and *Valuing Intellectual Property in Japan, Britain and the United States* (2004 Routledge Curzon). She is currently working on two new books; one is Emerging Risk Management and Innovation in Japan, Britain and the United States and Japanese Telecommunication Markets in Transition.

Dr. Taplin has been Editor of the Journal of Interdisciplinary Economics and the East Asian Focus Features for The Times Newspaper (UK) for nearly 10 years. She has been on television and radio around the world speaking on topics dealing with economics, law and cross-cultural matters in relation to East Asia. You can contact her by email: [Ruth.Taplin@btinternet.com](mailto:Ruth.Taplin@btinternet.com)