

# Protection of Intellectual Property Rights in China

A lot of people may think that copyrights are only for the protection of the rights of publications. In fact, copyrights also cover the rights of films, TV programmes, works of art, computer software and product designs, all of which are closely related to the industrial and commercial sectors.

## 1. Automatic enjoyment of copyright

According to the Copyright Law of the PRC (the Copyright Law), works of Chinese citizens, legal and non-legal entities, whether published or not, shall enjoy copyright. Works of foreigners first published in China shall enjoy copyright under the Copyright Law. Works of foreigners first published outside China but are then published in China within 30 days shall be deemed to have been first published in China. Unpublished works of foreigners first published in China upon authorised adaptation or translation shall be deemed to have been first published in China. Copyright enjoyed by the works of foreigners published outside China in accordance with agreements or the Copyright Law shall also protect international treaties to which both countries are parties. As China is a party to the Berne Convention and the WIPO Copyright Treaty, the works published in most countries shall enjoy copyright protection under China's Copyright Law.

Works as defined by the Copyright Law mean original intellectual creations in literature, arts or science that can in some way be reproduced. Creations refer to the intellectual activities that directly generate literary, artistic and scientific works. Works which are protected under the Copyright Law include written works; oral works; musical, dramatic, folk art and choreographic works; artistic and photographic works; cinematographic, television and video works; drawings of engineering designs and product designs and descriptions thereof; maps, sketches and other graphic works; computer software; and other works as provided for in laws and administrative regulations.

The rights to which copyright owners are entitled in respect of their works can be classified into personal rights and property rights. Personal rights include the right of publication, the right of authorship, the right of alteration, and the right of integrity. Property rights refer to the right of use and the right to remuneration, namely, the right of using one's work by reproduction, performance,

broadcasting, exhibition, distribution, making cinematographic, television or video production, adaptation, translation, annotation, compilation and the like; and the right to authorise others to use one's work by the above-mentioned means and of receiving remuneration therefore.

## 2. Term of protection

According to the Copyright Law and its Implementation Rules, the rights of authorship, alteration and integrity of an author shall be unlimited in time. The term of protection of the right of publication, the right of use and the right to remuneration in respect of a work of an individual shall be the lifetime of the author plus 50 years after his death. The term of protection of the right of publication, the right of use and the right to remuneration in respect of a work of a legal or non-legal entity or a work created in the course of the business of a legal or non-legal entity which enjoys the copyright (except the right of authorship), shall be 50 years after publication of the work. However, a work, which remains unpublished for 50 years after its completion, shall not be protected under this Law.

## 3. Legal liabilities

There are civil and criminal sanctions against infringement of copyright. Article 45 of the Copyright Law provides that anyone who commits the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, eliminating the effects of the act, making a public apology or making compensation for damages. The acts of infringement include: (1) publishing a work without the consent of the copyright owner; (2) publishing a work of joint authorship as a work created solely by oneself, without the consent of the other co-authors; (3) having one's name mentioned in connection with a work created by another, in order to seek personal fame or gain, where one has not taken part in the creation of the work; (4) distorting or mutilating a work of others; (5) using a work by performance, broadcasting, exhibition, distribution, making cinematographic, television or video productions, adaptation, translation, annotation, compilation, or by other means without the consent of the copyright owner, unless otherwise provided in this Law; (6) using a work created by another without paying remuneration in accordance with regulations; (7) broadcasting a live performance without the consent of the performer.

According to the newly amended Article 217 of the Criminal Law of the PRC, anyone who, for the purpose of reaping profits, commits the following acts of copyright infringement shall, where the amount of illicit income is fairly large or the

circumstances are grave, be sentenced to fixed term imprisonment of not more than three years or criminal detention as well as a fine, or to only a fine; and where the amount of illicit income is enormous or the circumstances are exceptionally grave, be sentenced to fixed-term imprisonment of four to seven years and a fine. The acts of infringement Include: (1) reproducing and distributing a written work, or musical, cinematographic, television or video work, computer software and other work without the consent of the copyright owner; (2) publishing a book the exclusive copyright of which is owned by another; (3) reproducing and distributing a recording or video without the consent of its producer; (4) producing or selling an artistic work bearing a forged signature. Article 218 of the Criminal Law provides that those who knowingly sell products of infringement as provided in Article 217 shall, where the amount of illicit income is enormous, be sentenced to fixed-term imprisonment of not more than three years or criminal detention as well as a fine, or to only a fine.