



## **Country Report PR China**

Annual report to the IFLA CLM Committee  
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### **Introduction**

This report is a short account delivered annually to CLM on activities involving in intellectual property dimension of the People's Republic of China. It includes the new amended terms of Copyright Act, new regulations relating to reproduction in libraries, national intellectual property strategy, judicial cases on Google and the drafting of the Public Libraries Act.

### **Legislation**

On February 26, 2010, the Standing Committee of the Eleventh National People's Congress (NPC) passed on its thirteenth session a decision which made an amendment to the Copyright Act. This is the second amendment to the Copyright Act when it was enacted in 1990. The pertinent part of the decision is as follow:

The fourth article is amended as: Copyright owners, in exercising their copyright, shall not violate the Constitution or laws or prejudice the public interests. The State shall be responsible for the supervision and administration of the publication and distribution of the work in accordance with laws.

The former article 4 of the Copyright Act provided in the first clause that "works the publication or distribution of which is prohibited by law shall not be protected by this law". The decision deletes the first clause of Article 4 by affording the same copyright protection to all works, regardless of whether they have been cleared for publication or distribution in China and provided copyright owners the right to prosecute infringers even if the infringed work are not approved for publication or distribution.

This revision of the copyright law aims to bring the copyright protection further in line with the goals outlined in China's National IPR Strategy and to bring it fully in accord with WTO requirements. The newly revised copyright law consists of 61 articles in 6 chapters, including general provisions; copyright; copyright licensing and transfer contracts; publication, performance, sound recording, video recording and broadcasting; legal liabilities and enforcement measures and supplementary provisions.

### **Regulation**

On October 28, 2009, the National Copyright Administration, Ministry of Culture, Ministry of Education, National Anti-pornography Working Group Office jointly issued a circular calling for the cultural and educational departments to strengthen their copyright protection works in libraries affiliated. The circular prescribed, in addition to exceptions specified by laws and

regulations, libraries throughout the country are not allowed to copy or disseminate copyrighted works unauthorizedly through information network.

The notification titled "Circular on Strengthening the Copyright Protection Work in Libraries" requires that libraries, without the permission of copyright owners, are not allowed to reproduce or disseminate through information network the copyrighted works. Illegal activities of unauthorized reproduction or dissemination of copyrighted works through information network, according to the circular, the violators will be confronted with serious punishment. The four ministries require in the notice that the libraries should act in accordance with copyright laws and regulations, establish and perfect the working system and effective mechanisms of legitimate use of works under the principle of "obtaining authorization before dissemination" and eliminate the piracy.

Additionally, in the twentieth meeting of China-US Joint Commission on Commerce and Trade (JCCT) ended on October 29, 2009, the two sides have achieved important results on the protection of intellectual property and reached a consensus especially in strengthening libraries' copyright protection and cracking down on libraries' violations and network infringements.

### ***Intellectual property strategy***

On June 5, 2008, the State Council promulgated and implemented a national program entitled "Outline of the National Intellectual Property Strategy". Over two years' implementation the strategy has achieved remarkable results. In 2009, 54 regulations and normative documents relating to intellectual property protection were enacted or amended; 82 policies and measures concerned were introduced by the central and local governments. Meanwhile, a total of 977,000 patent applications, 830,000 applications for trademark registration, 403,000 copyright registrations and 71,000 software copyright registrations were accepted.

In 2009, China has intensified its legal protection work on intellectual property. According to "2009 Intellectual Property Protection in China", a report released jointly by the State Intellectual Property Office, State Administration for Industry and Commerce and National Copyright Administration on April 29, 2010, the national public security organs cracked 1,624 criminal cases infringing upon the intellectual property, the total illegal amount involved reached 1.038 billion CNY. The national procuratorial organs approved arrest of 2,119 violators of piracy involving 1,256 cases and 2,695 infringers involving 1,535 cases were prosecuted. Local courts throughout the country received, in the first instance, 30,626 civil cases infringing upon the intellectual property and 30,509 cases were finished; in addition, 3,660 criminal cases involving intellectual property were tried, among which 5,832 defendants were convicted.

On September 26, 2009, the State Council approved in principle the "Cultural Industry Promotion Plan" in which the State Council requires to strengthen the legislation and further improve the national intellectual property system, severely crack down on piracy and infringing acts and enhance the national innovation capability.

### ***Judicial case on Google's digital library program***

On May 26, 2010, Wang Shen, a Chinese female writer who uses the pseudonym Mian Mian alleged her copyright on the book, the "Hydrochloric Acid Lover" was infringed upon by Google,

and sued for illegally scanning her book and disseminating it online to Hai Dian district people's court, a local court in Beijing. This is the first lawsuit filed by Chinese writer against Google Digital Library Program in China so far. In indictment the plaintiff said that in April 2000 she authorized Shanghai SDX Joint Publishing Company to publish her collected works, the Hydrochloric Acid Lover which contains her ten essays. But in 2009, she found in Book Search, a part of Google China web site, where her book was collected and provided to public for reading and downloading in the absence of her permit. The plaintiff thinks that Google's action infringed upon her copyright and requires Google stopping its infringement, removing the infringing work from its website, offering a public apology to her and compensating the losses, including mental damage and other costs relating to protecting copyright amount to 61,000 CNY. The two defendants, both based in China, are Google Information Technology (China) and Beijing Guxiang Information Technology Co Ltd, the actual operator of Google.cn. The defendants' lawyer denied copyright infringement and claimed the two China-based companies "did not scan the pictures and the scanned files were not saved in their servers". Now the case is still pending.

### ***Public Libraries Act***

Started in 2001 and suspended in 2004, a new round of legislation on public libraries has re-embarked on its way since early January 2009. According to the National Eleventh Five-Year Development Plan on Culture released in September 2006 and the Legislative Plan of the Eleventh National People's Congress published in October 2008, the Ministry of Culture was responsible for the legislative work of public libraries. The Library Society of China has been entrusted by the Ministry to the pre-legislative research on the libraries law. The Society then set up eleven study groups in charge of legal issues relating to the public libraries, such as, legislative background, necessities and feasibility of public libraries legislation; nature and functions of public libraries; public libraries system; administrative system; performance evaluation mechanism; legal deposit, human resources and finance, intellectual property protection, libraries' resources, readers' right and digital library. Now all the research reports were delivered to the Ministry for deliberation.

### ***Newly published works on reproduction right***

In recently two years there are two monographs published on library's reproduction right in China. One is A Study on Private Reproduction Right in Copyright Law: from Printing Machine to Internet (Zhang Jin, China University of Political Science and Law Press, 2009); the other is A Study on Reproduction Right in American Libraries (Zhai Jianxiong, Intellectual Property Press, 2010).