

**Working Party on the
Accession of China**

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inglés

COMMUNICATION FROM CHINA

In preparation for the Working Party meeting to be held on 19-27 July 2000, the Chinese delegation has submitted the following documentation on TRIPS.¹

**Groupe de travail de
l'accession de la Chine**

COMMUNICATION DE LA CHINE

En vue de la réunion du Groupe de travail qui aura lieu du 19 au 27 juillet 2000, la délégation chinoise a communiqué la documentation ci-après concernant les ADPIC.¹

**Grupo de Trabajo sobre la
Adhesión de China**

COMUNICACIÓN DE CHINA

Para preparar la reunión del Grupo de Trabajo que se celebrará del 19 al 27 de julio de 2000, la delegación china ha presentado la siguiente documentación sobre los ADPIC.¹

¹ In English only./En anglais seulement./En inglés solamente.

Report on the Contrast of the Trademark Law and TRIPS

TRIPS	Trademark Law of China
<p>Article 3: Each member is required to accord to the nationals of other members national treatment</p>	<p>Trademark Law Article 9: Where a foreigner or foreign enterprise applies for trademark registration in China, the matter shall be handled in accordance with any agreement concluded between the country to which the applicant belongs and the People's Republic of China, or any international treaty to which both countries are parties, or on the basis of the principle of reciprocity.</p>
<p>Article 15: Protectable Subject Matter</p> <p>1. Definition of trademark. The lowest standard is set as "visually perceptible" i.e. to include combinations of colours and volumetric trademark. But exclude the Members' mandatory obligation to register smell and acoustics trademark.</p> <p>3. Actual use of a trademark shall not be a condition for filing an application for registration.</p> <p>4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.</p> <p>5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.</p>	<p>Trademark Law Article 7: Any word or design, or combination thereof, used as a trademark, shall have distinctive characteristics so as to facilitate identification.</p> <p>Remarks: The Law in force does not provide that combination of colours or volumetric trademark could be registered as trademark. But it is under consideration of the draft Trademark law under revision.</p> <p>Trademark Law Article 4: Any enterprise, institutions or self-employed industrialist or businessman that needs to acquire the right to exclusive use of a trademark for the goods it or he produces, manufactures, processes, selects or markets shall file an application for registration of goods trademark with the Trademark Office</p> <p>The law in force does not have prohibitive rules. Any goods and services listed in the International Classification can register trademarks.</p> <p>Trademark Law Article 16: When an application has been made to register a trademark that is in conformity with the relevant provisions of the Law, the Trademark Office shall make a preliminary examination and approval of that trademark and shall publicly announce it.</p> <p>Article 19: Any person may file an opposition to a trademark which has been given preliminary examination and approval, within three months from the day it was publicly announced. If no opposition is filed, or if it is determined that the opposition is not justified, registration shall be granted, a trademark registration certificate shall be issued and trademark shall be publicly announced. If it is determined that the opposition is justified, no registration shall be granted.</p> <p>Article 27: If a registered trademark contravenes the provisions of Article 8 of this Law, or the registration thereof is obtained through fraudulent or other unfair</p>

TRIPS	Trademark Law of China
	<p>means, the Trademark Office shall cancel such registered trademark; other entities or individuals may request the Trademark Review and Adjudication Board to make a ruling canceling such registered trademark.</p> <p>If a dispute arises over a registered trademark, with the exception of the circumstances specified in the preceding paragraph, the disputant may, within one year from the date the trademark is registered after due verification, apply to the Trademark Review and Adjudication Board for a ruling.</p>
<p>Article 16: Rights Conferred</p> <p>1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for identical or similar goods or services.</p> <p>2. Article 6bis of the Paris Convention (1967) shall apply, mutatis mutandis, to services. In determining whether a trademark is well known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.</p> <p>3. Protection of a registered well-known trademark shall be extended to goods or services which are not similar to those in respect of which a trademark is registered.</p>	<p>Trademark Law</p> <p>Article 38: Any of the following acts shall be an infringement of the right to exclusive use of a registered trademark:</p> <p>(1) using a trademark which is identical with or similar to the registered trademark on the same kind of goods or similar goods without a license from the owner of that registered trademark;</p> <p>Rules for the Implementation of the Trademark Law of the People's Republic of China</p> <p>Article 41: Any of the following acts shall be an infringement of the right to exclusive use of a registered trademark referred to in Article 38 (4) of the Trademark Law:</p> <p>(1) omitted</p> <p>(2) Use of words, designs identical or similar to the registered trademark of others as name or package of the same kind of goods or similar goods, which is enough to cause confusion;</p> <p>Trademark Law</p> <p>Article 4: Provisions regarding the goods trademark in this Law shall be applicable to service trademarks.</p> <p>Provisional Regulation Concerning the Determination and Administration of Well-known Marks (Order No. 56 of the State Administration for Industry and Commerce)</p> <p>Remarks: At present the protection of well-known marks is implemented through administrative regulations and has been written in the draft Trademark Law under revision.</p>
<p>Article 17: Exceptions.</p> <p>Members may provide limited exceptions to the</p>	<p>It has already been written in the draft Trademark Law under revision.</p>

TRIPS	Trademark Law of China
rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.	
<p>Article 18: Term of Protection</p> <p>Initial registration, and each renewal of registration of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.</p>	<p>Trademark Law</p> <p>Article 23: The period of validity of a registered trademark shall be ten years, counted from the day the registration is approved.</p> <p>Article 24(2): The period of validity for each renewal of registration shall be ten years.</p>
<p>Article 19: Requirement of Use</p> <p>1. If use is required to maintain a registration, the registration may be canceled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.</p> <p>2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.</p>	<p>Trademark Law</p> <p>Article 30: In the event of any of the following acts concerning the use of a registered trademark, the Trademark Office shall order rectification of the situation within a specified period or shall revoke the registered trademark: if the registered trademark has not been used for three consecutive years.</p> <p>Valid reasons for non-use are not explicitly provided.</p> <p>No contrary stipulations.</p>
<p>Article 20: Other Requirements</p> <p>The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.</p>	<p>Trademark Law</p> <p>Article 7: Any word or design, or combination thereof, used as a trademark, shall have distinctive characteristics so as to facilitate identification. Wherever a registered trademark is used, it shall bear the words “Registered trademark” or a sign indicating that it is registered.</p> <p>Remarks: The requirement that a registered trademark shall bear the words “Registered trademark” is intended to be deleted in the draft law under revision.</p>
<p>Article 21: Licensing and Assignment</p> <p>Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.</p>	<p>Trademark Law</p> <p>Article 25: When a registered trademark is to be assigned, the assignor and the assignee shall jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods on which the registered trademark is to be used. After the assignment of a registered trademark has been approved, it shall be publicly announced.</p>

TRIPS	Trademark Law of China
	<p>Article 26: a trademark registrant may, by concluding a trademark licensing contract, authorize another person to use its registered trademark. The licensor shall supervise the quality of the goods on which the license uses the licensor's registered trademark, and the licensee shall guarantee the quality of the goods on which the registered trademark is to be used.</p>
Article 22: Protection of Geographical Indications	<p>Trademark Law</p> <p>Article 8 (10): The following words or designs may not be used in trademarks: (10) Geographic names of administrative divisions at or above the county level or foreign geographic names known to the public shall not be used as trademarks, with the exception, however, of those geographic names having other meanings. Registered trademarks in which geographic names are used shall remain valid.</p> <p>Article 34: In the event of any of the following acts concerning the use of an unregistered trademark, the local administrative department for industry and commerce shall stop the use of the trademark, order rectification of the situation within a specified period and may, in addition, circulate a notice on the matter or impose a fine: (2) if the trademark violates the provisions of Article 8 of this Law.</p> <p>Rules for the Implementation of the Trademark Law of P.R.C</p> <p>Article 6: Pursuant to the stipulation of Article 3 of the Trademark Law, the registered collective trademark and certified trademark ratified by the Trademark Office shall be protected by law.</p> <p>Remarks: Stipulations concerning the protection of relevant geographical indications have been written in the draft law under revision.</p>
Article 23: Addition Protection for Geographical Indications for Wines and Spirits	It has been written in the draft law under revision.
Article 24: International Negotiations, Exceptions	

**IMPLEMENTATION OF THE AGREEMENT ON
TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS
THE PEOPLE'S REPUBLIC OF CHINA
13 JULY 2000**

Part 2

TRIPS AGREEMENT	TRADEMARK LAW OF CHINA
<p>Article 3 Each member is required to accord to the nationals of other members national treatment</p>	<p>Article 9 Where a foreigner or foreign enterprise applies for trademark registration in China, the matter shall be handled in accordance with any agreement concluded between the country to which the applicant belongs and the People's Republic of China, or any international treaty to which both countries are parties, or on the basis of the principle of reciprocity.</p>
<p>Article 15 Protectable Subject Matter 1. Definition of trademark. The lowest standard is set as "visually perceptible" i.e. to include combinations of colours and volumetric trademark. But exclude the Members' mandatory obligation to register smell and acoustics trademark.</p>	<p>Article 7 Any word or design, or combination thereof, used as a trademark, shall have distinctive characteristics so as to facilitate identification.</p> <p>Remarks: The Law in force does not provide that combination of colours or volumetric trademark could be registered as trademark. But it is under consideration of the draft Trademark law under revision.</p>
<p>Article 15 Protectable Subject Matter 3. Actual use of a trademark shall not be a condition for filing an application for registration.</p>	<p>Article 4 Any enterprise, institution or self-employed industrialist or businessman that needs to acquire the right to exclusive use of a trademark for the goods it or he produces, manufactures, processes, selects or markets shall file an application for registration of goods trademark with the Trademark Office</p>
<p>Article 15 Protectable Subject Matter 4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.</p>	<p>The law in force does not have prohibitive rules. Any goods and services listed in the International Classification can register trademarks.</p>

TRIPS AGREEMENT	TRADEMARK LAW OF CHINA
<p>Article 15 Protectable Subject Matter</p> <p>5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.</p>	<p>Article 16</p> <p>When an application has been made to register a trademark that is in conformity with the relevant provisions of the Law, the Trademark Office shall make a preliminary examination and approval of that trademark and shall publicly announce it.</p> <p>Article 19</p> <p>Any person may file an opposition to a trademark which has been given preliminary examination and approval, within three months from the day it was publicly announced. If no opposition is filed, or if it is determined that the opposition is not justified, registration shall be granted, a trademark registration certificate shall be issued and trademark shall be publicly announced. If it is determined that the opposition is justified, no registration shall be granted.</p> <p>Article 27</p> <p>If a registered trademark contravenes the provisions of Article 8 of this Law, or the registration thereof is obtained through fraudulent or other unfair means, the Trademark Office shall cancel such registered trademark; other entities or individuals may request the Trademark Review and Adjudication Board to make a ruling canceling such registered trademark.</p> <p>If a dispute arises over a registered trademark, with the exception of the circumstances specified in the preceding paragraph, the disputant may, within one year from the date the trademark is registered after due verification, apply to the Trademark Review and Adjudication Board for a ruling.</p>
<p>Article 16 Rights Conferred</p> <p>1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for identical or similar goods or services.</p>	<p>Article 38</p> <p>Any of the following acts shall be an infringement of the right to exclusive use of a registered trademark:</p> <p>(1) using a trademark which is identical with or similar to the registered trademark on the same kind of goods or similar goods without a license from the owner of that registered trademark;</p> <p><i>Rules for the Implementation of the Trademark Law of the People's Republic of China</i></p> <p>Article 41</p> <p>Any of the following acts shall be an infringement of the right to exclusive use of a registered trademark referred to in Article 38 (4) of the Trademark Law:</p> <p>(1) omitted</p> <p>(2) Use of words, designs identical or similar to the registered trademark of others as name or package of the same kind of goods or similar goods, which is enough to cause confusion;</p>

TRIPS AGREEMENT	TRADEMARK LAW OF CHINA
<p>Article 16 Rights Conferred 2. Article 6bis of the Paris Convention (1967) shall apply, <i>mutatis mutandis</i>, to services. In determining whether a trademark is well known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.</p>	<p>Article 4 Provisions regarding the goods trademark in this Law shall be applicable to service trademarks. Provisional Regulation Concerning the Determination and Administration of Well-known Marks (Decree No. 56 of the State Administration for Industry and Commerce)</p>
<p>Article 16 Rights Conferred 3. Protection of a registered well-known trademark shall be extended to goods or services which are not similar to those in respect of which a trademark is registered.</p>	<p>Remarks: At present the protection of well-known marks is implemented through administrative regulations and has been written in the draft Trademark Law under revision.</p>
<p>Article 17 Exceptions Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.</p>	<p>It has already been written in the draft Trademark Law under revision.</p>
<p>Article 18 Term of Protection Initial registration, and each renewal of registration of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.</p>	<p>Article 23 The period of validity of a registered trademark shall be ten years, counted from the day the registration is approved.</p> <p>Article 24(2) The period of validity for each renewal of registration shall be ten years.</p>
<p>Article 19 Requirement of Use 1. If use is required to maintain a registration, the registration may be canceled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.</p>	<p>Article 30 In the event of any of the following acts concerning the use of a registered trademark, the Trademark Office shall order rectification of the situation within a specified period or shall revoke the registered trademark: (4) if the registered trademark has not been used for three consecutive years.</p> <p>Valid reasons for non-use are not explicitly provided.</p>
<p>Article 19 Requirement of Use 2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.</p>	<p>No contrary stipulations.</p>

TRIPS AGREEMENT	TRADEMARK LAW OF CHINA
<p>Article 20 Other Requirements</p> <p>The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.</p>	<p>Article 7</p> <p>Any word or design, or combination thereof, used as a trademark, shall have distinctive characteristics so as to facilitate identification. Wherever a registered trademark is used, it shall bear the words “Registered trademark” or a sign indicating that it is registered.</p> <p>Remarks: The requirement that a registered trademark shall bear the words “Registered trademark” is intended to be deleted in the draft law under revision.</p>
<p>Article 21 Licensing and Assignment</p> <p>Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.</p>	<p>Article 25</p> <p>When a registered trademark is to be assigned, the assignor and the assignee shall jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods on which the registered trademark is to be used. After the assignment of a registered trademark has been approved, it shall be publicly announced.</p> <p>Article 26</p> <p>A trademark registrant may, by concluding a trademark licensing contract, authorize another person to use its registered trademark. The licensor shall supervise the quality of the goods on which the license uses the licensor’s registered trademark, and the licensee shall guarantee the quality of the goods on which the registered trademark is to be used.</p>

TRIPS AGREEMENT	TRADEMARK LAW OF CHINA
<p>Article 22 Protection of Geographical Indications</p>	<p>Article 8 (10) The following words or designs may not be used in trademarks: (10) Geographic names of administrative divisions at or above the county level or foreign geographic names known to the public shall not be used as trademarks, with the exception, however, of those geographic names having other meanings. Registered trademarks in which geographic names are used shall remain valid.</p> <p>Article 34 In the event of any of the following acts concerning the use of an unregistered trademark, the local administrative department for industry and commerce shall stop the use of the trademark, order rectification of the situation within a specified period and may, in addition, circulate a notice on the matter or impose a fine: (2) if the trademark violates the provisions of Article 8 of this Law.</p> <p>Rules for the Implementation of the Trademark Law of P.R.C. Article 6 Pursuant to the stipulation of Article 3 of the Trademark Law, the registered collective trademark and certified trademark ratified by the Trademark Office shall be protected by law.</p> <p>Remarks: Stipulations concerning the protection of relevant geographical indications have been written in the draft law under revision.</p>
<p>Article 23 Additional Protection for Geographical Indications for Wines and Spirits</p>	<p>It has been written in the draft law under revision.</p>
<p>Article 24 International Negotiations, Exceptions</p>	

(to be continued)

**IMPLEMENTATION OF THE AGREEMENT ON
TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS
THE PEOPLE'S REPUBLIC OF CHINA
13 JULY 2000**

Part 3

TRIPS AGREEMENT	COPYRIGHT LAW	IMPLEMENTING REGULATION THE COPYRIGHT LAW	REGULATION ON COMPUTER SOFTWARE PROTECTION	INTERNATIONAL COPYRIGHT TREATIES IMPLEMENTING RULES
<p>Article 3 National Treatment 1. Each Member shall accord to the nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual Property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1 (b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.</p>	<p>Article 2 Works of Chinese citizens, legal entities or entities without legal personality, whether published or not, shall enjoy copyright in accordance with this Law. Works of foreigners first published in the territory of the People's Republic of China shall enjoy copyright in accordance with this Law. Any work of a foreigner published outside the territory of the People's Republic of China which is eligible to enjoy copyright under an agreement concluded between the country to which the foreigner belongs and China, or under an international treaty to which both countries are parties, shall be protected in accordance with this Law.</p>	<p>Article 46 Performance by foreign performers taking place in the territory of China shall be protected by the Law. Article 47 Audio and video recordings produced and distributed in the territory of China by foreign producers shall be protected by the Law.</p>	<p>Article 6 In respect of piece software developed by a Chinese citizen or entity, regardless of whether or where the said software has been made public, he or it shall enjoy the copyright in accordance with these Regulations. Where a piece of software developed by a foreigner is first made public in China, he shall enjoy the copyright in accordance with these Regulations. The copyright of the software of foreigner made public outside China shall be protected by these Regulations in accordance with agreements concluded between his country and China with international conventions acceded to by his country and China.</p>	<p>Article 2 Protection of foreign works shall be carried out through application of the Copyright Law of the People's Republic of China (hereinafter referred to as "the Copyright Law"), the Implementing Regulations of the Copyright Law, the Regulations on Computer Software Protection and these Rules. Article 4 Foreign works mentioned in these Rules shall include: (1) works of which the author or one of the co-authors or the other owner of copyright or one of the co-owners of copyright is a national or a permanent resident of a country party to international copyright treaties; (2) works of which the author is not a national or a permanent resident of a country party to international copyright treaties but which have been first published or published simultaneously in a country party to international copyright treaties; (3) works created by others on commission, of which the owner of copyright or one of the</p>

TRIPS AGREEMENT	COPYRIGHT LAW	IMPLEMENTING REGULATION THE COPYRIGHT LAW	REGULATION ON COMPUTER SOFTWARE PROTECTION	INTERNATIONAL COPYRIGHT TREATIES IMPLEMENTING RULES
				co-owners of copyright, by virtue of a contract . is a joint venture enterprise. a cooperative enterprise, or an enterprise with sole foreign investment . Article 3 "International copyright treaties" mentioned in these Rules shall refer to the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as "the Berne Convention") to which (the People's Republic of China (hereinafter referred to as "China") is a party and bilateral agreements relating to copyright which China has concluded with foreign countries.
Article 9 Relation to the Berne Convention 1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix there to. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6 <i>bis</i> of that Convention or of the rights derived there from.	On October 15, 1992 Berne Convention (1971) came in force in China.			Article 3 "International copyright treaties" mentioned in these Rules shall refer to the Berne Convention for the Protection of Literary and Artistic Works (hereinafter referred to as "the Berne Convention") to which the People's Republic of China (hereinafter referred to as "China") is a party and bilateral agreements relating to copyright which China has concluded with foreign countries.
Article 10 Computer Programs and Compilations of Data 1 . Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971) . 2. Compilations of data or other material, whether in machine	Article 3 For the purposes of this law, the term "works" includes works of literature, art, natural science, social science, engineering technology and the like which are expressed in the following forms:	Article 5 (11) compilation is the creation of a work by assembling a number of selected preexisting works, in whole or in part, according to an arrangement designed for a specific purpose;	Article 24 The registration of the copyright of a piece of software with the organ for software registration and administration is the premise to submitting a request for the administrative intervention in, or to instituting legal proceedings	Article 7 Foreign computer programs shall be protected as literary works, shall not be subject to registration and shall enjoy a term of protection of 50 years commencing from the end of the year of their first publication.

TRIPS AGREEMENT	COPYRIGHT LAW	IMPLEMENTING REGULATION THE COPYRIGHT LAW	REGULATION ON COMPUTER SOFTWARE PROTECTION	INTERNATIONAL COPYRIGHT TREATIES IMPLEMENTING RULES
readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such.. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.	(1) written works; (2) oral works; (3) musical, dramatic, quyi and choreographic works; (4) works of fine art and photographic works; (5) cinematographic, television and videographic works; (6) drawings of engineering designs and product designs and descriptions thereof; (7) maps, sketches and other graphic works; (8) computer software; (9) other works as provided for in laws and administrative regulations.		for , a software right dispute.	Article 8 Foreign works created by compiling non-protected materials shall be protected in accordance with Article 14 of the Copyright Law, provided that originality is shown in the selection and arrangement of such materials. Such protection, however, shall not prevent another person from using the same materials to create works of compilation.
Article 11 Rental Rights In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.		Article 5 (5)distribution is the provision of a certain number of copies of a work to the public through selling, renting or other means, insofar as the said number of copies satisfy the reasonable needs of the public;		Article 14 Copyright owners of foreign works shall retain the right to authorize or prohibit rental of copies of their works after the authorized sale of such copies.

TRIPS AGREEMENT	COPYRIGHT LAW	IMPLEMENTING REGULATION THE COPYRIGHT LAW	REGULATION ON COMPUTER SOFTWARE PROTECTION	INTERNATIONAL COPYRIGHT TREATIES IMPLEMENTING RULES
<p>Article 12 Term of Protection Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication Within 50 years from the making of the work, 50 years from the end of the calendar year of making.</p>	<p>Article 20 The rights of authorship, alteration and integrity of an author shall be unlimited in time.</p> <p>Article 21 The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a work of a citizen shall be the lifetime of the author and fifty years after his death, expiring on December 31 of the fiftieth year after his death. In the case of a work of joint authorship, such term shall expire on December 31 of the fiftieth year after the death of the last surviving author.</p> <p>The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a work where the copyright belongs to a legal entity or entity without legal personality, or in respect of a work created in the course of employment where the legal entity or entity without legal personality enjoys the copyright (except the right of authorship), shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected under this Law.</p>		<p>Article 15 The term of protection for the copyright of piece of software shall be twenty-five years, ending on the 31st day of December of the twenty-fifth year after the software is first made public. Before the expiration of the term of protection, the software copyright owner may apply to the organ for software registration and administration for an extension of twenty-five years, but the total term of protection shall not exceed fifty years at the longest.</p> <p>The term of protection for the right of the developer's authorship of the software shall be unlimited.</p>	<p>Article 5 In the case of unpublished foreign works. the term of protection shall be governed by Article 20 and Article 21 of the Copyright Law.</p> <p>Article 6 In the case of foreign works of applied art, the term of protection shall be 25 years commencing from the creation of the works.</p>

TRIPS AGREEMENT	COPYRIGHT LAW	IMPLEMENTING REGULATION THE COPYRIGHT LAW	REGULATION ON COMPUTER SOFTWARE PROTECTION	INTERNATIONAL COPYRIGHT TREATIES IMPLEMENTING RULES
	The term of protection of the right of publication, the right of exploitation and the right to remuneration in respect of a cinematographic, television, videographic or photographic work shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of such work, provided that any such work that has not been published within fifty years after the completion of its creation shall no longer be protected under this Law.			
Article 13 Limitations and Exceptions Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.	Article 22 In the following cases, a work may be exploited without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work shall be mentioned and the other rights enjoyed by the copyright owner by virtue of this Law shall not be prejudiced: (1) use of a published work for the purposes of the user's own private study, research or self-entertainment; (2) appropriate quotation from a published work in one's own work for the purposes of introduction to, or comments on, a work, or demonstration of a point; (3) use of a published work in newspapers, periodicals, radio programs, television programs or newsreels for the purpose of	Article 26 A published work as mentioned in the Law refers to a work which has been made available by the copyright owner to the public by means stipulated in the Law. Article 27 The following conditions have to be conformed with for an act to be deemed appropriate quotation of published works by others, as mentioned in Article 22(2) of the Law: (1) the quotation is made solely for the purpose of introduction to, or comment on, a work or demonstration of a point; (2) the quotation shall not form a major or substantial part of the work of the quoter; (3) the interests of the copyright owner of the work being quoted shall not be prejudiced. Article 28 Article 22(3) of the law refers to	Article 21 Entities or citizens lawfully holding copies of a piece of software shall enjoy the following rights without the consent of the copyright owner of the software : (1) to install and store the piece of software on a computer according to its/his need and for the purpose of using it; (2) to make backup copies for filing. However, such backup copies shall not be supplied in any way to others for their use. Once the holders lose the right to hold the software lawfully , all the said backup copies must be destroyed ; (3) to make necessary revisions in the piece of software in order to implement it in an actual environment of computer application , or to improve its function and performance. However, except otherwise	Article 10 Prior permission of the copyright owner shall be required to translate a published foreign work, if created in Chinese, into the language of a minority nationality Article 13 Prior permission of the copyright owner shall be required for newspapers and periodicals to reprint a foreign work, except the reprinting of articles on current political. Economic and social topics. Article 16. In the case of public performance, recording and broadcasting of foreign works, the provisions of the Berne Convention shall apply. Where there is a collective administration organization, prior permission of such organization shall be required.

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	<p>reporting current events; (4)reprinting by newspapers or periodicals, or rebroadcasting by radio stations or television stations, of editorials or commentators' articles published by other newspapers, periodicals, radio stations or television stations; (5)publication in newspapers or periodicals, or broadcasting by radio stations or television stations, of a speech delivered at a public gathering, except where the author has declared that publication or broadcasting is not permitted; (6)translation, or reproduction in a small quantity of copies, of a published work for use by teachers or scientific researchers, in classroom teaching or scientific research, provided that the translation or reproduction shall not be published or distributed; (7)use of a published work by a state organ for the purpose of fulfilling its official duties; (8)reproduction of a work in its collections by a library, archive, memorial hall, museum, art gallery or similar institution, for the purposes of the display, or preservation of a copy, of the work; (9)free-of-charge live performance of a published work; (10)copying, drawing, photographing or video</p>	<p>unavoidable inclusion of published works as is justified by the purpose of reporting current events. Article 29 The use of published works of other persons by virtue of Article 22 (6) and (7) shall not harm the normal exploitation of the works concerned and shall not unreasonably prejudice the legitimate interests of the copyright owners. Article 31 Article 22 (11) of the Law shall be applicable only to works originally created in Chinese.</p>	<p>agreed, the holder shall not supply the revised version to any third party without the consent of the copyright owner of the software or his lawful assignee. Article 22 A piece of software may be copied in small quantities to serve such non-commercial purposes as education, scientific research , or government business without the consent of, or remuneration to, the copyright owner of the software or his lawful assignee. However, in exploiting the software in such a manner , the title and developer of the piece of software should be made known, and the various other rights enjoyed by the copyright owner or his lawful assignee in accordance with these Regulations must not be infringed. The copies should be properly stored , redeemed or destroyed After use and must not be used for other purposes or supplied to others. . Article 31 Similarity between a piece of software developed by oneself and an existing piece of software caused by one of the following events shall not constitute infringement on the copyright of the existing piece of software : (1)where it is necessary to implement the relevant policies , laws , regulations and rules of the State; (2)where it is necessary to</p>	

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	<p>recording of an artistic work located or on display in an outdoor public place; (11)translation of a published work from the Han language into minority nationality languages for publication and distribution within the country; (12)transliteration of a published work into Braille and publication of the work so transliterated. The above limitations on rights shall be applicable also to the rights of publishers, performers, producers of sound recordings and video recordings, radio stations and television stations.</p> <p>Article 32 Paragraph 2 Except where the copyright owner has declared that reprinting or excerpting is not permitted, other newspaper or periodical publishers may ,after the publication of the work by a newspaper or periodical, reprint the work or print an abstract of it or print it as reference material, but such other publishers shall pay remuneration to the copyright owner as prescribed in regulations.</p> <p>Article 35 Paragraph 2 A performer who for a commercial performance exploits a published work created by another does not need permission from, but shall, as prescribed by regulations, pay remuneration to, the copyright</p>		<p>implement the technical standards of the State ; (3)where there is a limited number of available options in the forms of presentation.</p>	

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	<p>owner; such work shall not be exploited where the copyright owner has declared that such exploitation is not permitted.</p> <p>Article 37 Paragraph 1 A producer of sound recordings who, for the production of a sound recording, exploits a published work created by another, does not need permission from, but shall, as prescribed by regulations, pay remuneration to, the copyright owner; such work shall not be exploited where the copyright owner has declared that such exploitation is not permitted.</p> <p>Article 40 Paragraph 2 A radio station or television station that exploits, for the production of a radio or television program, a published work created by another does not need a permission from the copyright owner, but such a work shall not be exploited where the copyright owner has declared that such exploitation is not permitted. In addition, remuneration shall be paid as prescribed by regulations unless this Law provides that no remuneration need to be paid.</p> <p>Article 43 A radio station or television station that broadcasts, for non-commercial purposes, a published sound recording needs</p>			

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	not obtain permission from, or pay remuneration to, the copyright owner, performer or producer of the sound recording.			
<p>Article 14 Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations</p> <p>1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.</p> <p>2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.</p> <p>3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not</p>	<p>Article 36 A performer shall, in relation to his performance, enjoy the right (1)to claim performership; (2)to protect the image inherent in his performance from distortion; (3)to authorize others to make live broadcasts; (4)to authorize others to make sound recordings and video recordings for commercial purposes, and to receive remuneration therefore.</p> <p>Article 39 A producer of sound recordings or video recordings shall have the right to authorize others to repro-duce and distribute such sound recordings or video recordings and the right to obtain remuneration therefore. The term of protection of such rights shall be fifty years, expiring on December 31 of the fiftieth year after the first publication of the recording .</p> <p>Article 42 A radio station or television station shall, in respect of a program produced by it, enjoy the right (1)to broadcast the program; (2)to authorize others to broadcast the program, and to receive remuneration therefore; (3)to authorize others to</p>	<p>Article 44 No time limit shall be set on the term of protection in relation to the rights provided for in Article 36(1) and (2) of the Law. In the case of the term of protection in relation to the right to remuneration which the performers enjoyed by virtue of the second paragraph of Article 39 and the third paragraph of Article 42 of the Law, the first paragraph of Article 39 and the second paragraph of Article 42 of the law shall apply.</p> <p>Article 48 To object to the performance, recording or making broadcasts of his work by virtue of the second paragraph of Article 35, first paragraph of Article 37 and second paragraph of Article 40 of the Law, the copyright owner is required to make a statement to that effect at the same time when his work is published, or have the statement carried in the copyright bulletin issued by the National Copyright Administration.</p>		<p>Article 18 Articles 5, 12, 14, 15 and 17 of these Rules shall also apply to sound recordings.</p> <p>Article 5 In the case of unpublished foreign works. The term of protection shall be governed by Article 20 and Article 21 of the Copyright Law.</p> <p>Article 12 Copyright owners of foreign cinematographic works, television works and works of video recordings shall have the right to authorize the public performance of their works.</p> <p>Article 14 Copyright owners of foreign works shall retain the right to authorize or prohibit rental of copies of their works after the authorized sale of such copies.</p> <p>Article 15 Copyright owners of foreign works shall have the right to prohibit the importation of the following types of copies of their works: (1) infringing copies; (2) copies coming from a country where their works are not protected.</p> <p>Article 17 Foreign works which, at the date on which international copyright treaties enter into force in China,</p>

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<p>grant such rights to broadcasting organizations , they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971) .</p> <p>4. The provisions of Article 11 in respect of computer programs shall apply <i>mutatis mutandis</i> to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.</p> <p>5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.</p> <p>6. Any Member may , in relation to the rights conferred under</p>	<p>reproduce and distribute the radio or television program, and to receive remuneration therefore.</p> <p>The term of protection of the rights specified in the preceding paragraph shall be fifty years, expiring on December 31 of the fiftieth year after the first broadcasting of the program.</p>			<p>have not fallen into the public domain in their countries of origin shall be protected until the expiration of the term of protection as is prescribed in the Copyright Law and these Rules. Paragraph one of this Article shall not apply to uses of foreign works that took place before international copyright treaties entered into force in China.</p> <p>A Chinese citizen or legal person who owned and used a particular copy of a foreign work for a particular purpose before international copyright treaties entered into force in China may continue to make use of that copy of the work without liability, provided that such copy is neither reproduced nor used in any manner that unreasonably prejudices the legitimate rights and interests of the copyright owner.</p> <p>The application of the above three paragraphs of this Article shall be subject to provisions of bilateral agreement relating to copyright concluded by China with the countries concerned.</p>

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<p>paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, <i>mutatis mutandis</i> , to the rights of performers and producers of phonograms in phonograms .</p>				