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Intellectual Property Rights in China: Evolving Business and Legal Frameworks

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Foreword

Protection of intellectual property remains extremely important to foreign companies contemplating business in China and to China's own efforts to promote the rule of law as a means to spur economic development. China's accession to the World Trade Organization (WTO) on commercially viable terms requires, *inter alia*, compliance with WTO standards for protecting IPR. In the mid-1990s the Chinese government launched a major effort to expand its administrative capabilities to protect intellectual property. Legal and economic institutions (e.g., courts and markets), however, could be more sustainable sources for the development of a sound IPR regime in China. The articles in this issue of the *NBR Analysis* explore these underlying forces.

In the first essay, Professor Barry Naughton of the University of California, San Diego, illustrates how transnational production networks—in which mainland Chinese firms are important participants—both require and promote enhanced protection of patents, copyrights, and associated forms of intellectual property. Professor Naughton points out that the "critical technologies" model of technology absorption, in which a developing country identifies and transfers technologies pioneered in the developed world, and then attempts to emulate production processes, has not been successful in China. He argues that China would benefit by an approach based on its role in transnational production networks, in which firms can become domestically and internationally competitive by successfully developing skills at the most appropriate stages on the value chain.

The second essay, by Professor Donald Clarke of the University of Washington School of Law, addresses the need in China to strengthen private and decentralized IPR enforcement. Such measures provide companies and other nongovernmental parties with the incentive and the ability to protect intellectual property through courts and other private remedies. Professor Clarke recognizes that there will be significant challenges to private enforcement of IPR, including the weakness of the courts themselves. Nevertheless, in the long run private mechanisms would be far more effective because they would give courts power to resolve disputes directly, avoiding bureaucratic chan-

nels of policymaking and implementation. He urges international trade negotiators, as well as the Chinese, to focus more attention on courts and private enforcement mechanisms, instead of on political and administrative methods of IPR protection.

These essays were initially presented at a September 1998 conference in Chongqing, China that was part of NBR's program *Advancing Intellectual Property Rights In China: Information Technologies and the Course of Economic Development*. The conference, organized in cooperation with the Chongqing Foreign Affairs Office and the Chongqing Science and Technology Commission, was attended by over 130 officials, enterprise managers, scholars, and judges from Chongqing and the surrounding provinces of Sichuan, Yunnan, and Guizhou. Follow-on conferences are scheduled to take place in Shanghai in May 1999 and in Beijing in 2000. In addition to conferences, the program involves research, publications, and legal training, and recognizes inventors by awarding prizes for patents and copyrights.

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Private Enforcement of Intellectual Property Rights in China

Donald C. Clarke

The traditional modes of policy implementation in China focus heavily on coordinated government action. Often overlooked, however, is the role that decentralized enforcement mechanisms might play. Such mechanisms work by providing multiple nongovernmental parties with the incentive and the actual ability to vindicate certain rights, and then by granting those parties a set of rights that will, if enforced, result in the accomplishment of some policy goal. Intellectual property rights (IPR) are no exception to the general picture: the role of government in enforcing IPR is large; the role of IPR holders is relatively small. Although decentralized enforcement is subject to numerous problems, including the weakness of institutions such as courts, it offers the promise of overcoming certain other problems endemic in administrative enforcement, and thus should not be overlooked as a necessary part of a comprehensive enforcement scheme.

Introduction

It has become commonplace to note that although China over the last two decades has established a panoply of laws and institutions for the protection of intellectual property rights (IPR), these rights are not protected to the satisfaction of IPR holders,

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An earlier version of this paper was presented at the "Sino-U.S. Conference on Intellectual Property Rights and Economic Development: 1998 Chongqing," Chongqing, China, September 16-18, 1998, sponsored by The National Bureau of Asian Research.

either domestic or foreign. As a result, it is no longer possible, if it ever was, for the Chinese government merely to point to the existence of legislation and enforcement bodies as proof that China is meeting some particular international standard. Something more is required: a reason to believe that new legislation or institutions will actually work as promised.

At present, it appears that foreign IPR holders are pressing their case for protection to the Chinese government more forcefully than are domestic IPR holders. But the forum in which foreign IPR holders tend to press their claims—government-to-government negotiations in which, for example, the Minister of Foreign Trade and Economic Cooperation squares off with the United States Trade Representative—is structurally biased toward producing only one kind of response: unequivocal enforcement action by a government agency.

The period between early 1995 and mid-1996 is a particularly good example of this process. In February 1995, the United States and China signed the Action Plan for Effective Protection and Enforcement of Intellectual Property Rights (the "1995 Action Plan"),[1] beginning an extensive series of bilateral negotiations concerning the enforcement of IPR. China's failure to enforce the terms of the 1995 Action Plan led to the threat of sanctions by the United States in May 1996. China responded by making IPR enforcement part of a nationwide anti-crime campaign led by the Ministry of Public Security, thereby averting U.S. sanctions. Since 1996, largely satisfied with China's progress in this area, the United States has taken a more multilateral approach to IPR enforcement. Joining with the European Union and Japan, the United States has pressed IPR concerns in its negotiations with China over accession to the World Trade Organization (WTO).

Although bilateral negotiations may be effective in the short term, as demonstrated by the 1995 Action Plan and subsequent discussions, such negotiations are unlikely to produce another kind of enforcement structure that arguably has greater long-term prom-

[1] See "China-United States: Agreement Regarding Intellectual Property Rights," Feb. 26, 1995, *U.S.-PRC, International Legal Materials*, vol. 34 (1995), pp. 881 ff. (consisting of a letter from Wu Yi, China's Minister of Foreign Trade and Economic Relations, to Michael Kantor, the United States Trade Representative, and the Annex, "Action Plan for Effective Protection and Enforcement of Intellectual Property Rights").

ise: a decentralized structure driven by individual actors in the legal system. Because such a system would not rely greatly on government funding or on government policy priorities at any given moment, it would be more likely to produce consistent and reliable protection of IPR than enforcement systems relying solely on government initiative. This essay examines how such a system would differ from what currently exists in China, and addresses some of the issues involved in establishing such a system.

The list of complaints by IPR holders is long and well known. It includes inadequate IPR laws on the books, inadequate and expensive enforcement of existing laws, lack of Chinese government cooperation, and transparent administrative and judicial procedures, local protectionism, lack of IPR awareness and education among the general population, and lack of training and experience among judicial and administrative enforcement personnel.[2] There is no single solution, of course, to all these problems, and they are not unique to China or even to the developing world. There are, however, ways in which some of these problems can be ameliorated, provided that there is sufficient domestic pressure to generate the necessary political will.

Types of Enforcement Measures

In the IPR field, enforcement can be divided into political, administrative, and private measures. In practice, the lines between these conceptual categories are blurred and any particular enforcement measure may partake of the characteristics of more than one category. In particular, it is worth saying a few words about the relationship between law and policy in the People's Republic of China (PRC).

Law and Policy

A great deal has been written about the relative positions of law and policy in the PRC's political and legal system. The best way to understand the relationship might be to compare it with another ideal type of relationship (as opposed to a debatable account of what the relationship actually is in other societies) in order to show what it is not.

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[2] See Michel Oksenberg, Pitman B. Potter, and William B. Abnett, "Advancing Intellectual Property Rights: Information Technologies and the Course of Economic Development in China," *NBR Analysis*, The National Bureau of Asian Research, vol. 7, no. 4 (1996), p. 26. Of course, these problems are not equally shared among all IPR sectors. In general, copyright and software protection appear to present the most problems, with trademark and patents running well behind in the list of concerns.

One way for policy to relate to law can be stated straightforwardly. Imagine a government whose powers are limited by law. If the government wishes to achieve goal X, then we say it has a policy in favor of goal X. The government can pursue goal X in two ways. First, it can use whatever discretionary powers it has under existing law to advance the goal. For example, it could direct prosecutors to use more resources for the prosecution of crime A and fewer for the prosecution of crime B. Second, it can attempt to change existing laws to further the achievement of the goal. The laws it proposes will be dictated by the content of the policy, but it is only through the passage of the laws that the substance of the policy can be executed. In the example from criminal law, the government might propose legislation increasing the penalty for crime A, or creating a new crime.

The line between law and policy in China is often said to be blurred because the government is not effectively limited by law. To put it another way, the government has vast discretionary powers, so there is not a sharp distinction between the two types of measures described above. Thus, a policy of cracking down on crime A would take the form not only of increased resources for the investigation of such crimes, but also of instructions to courts to sentence more consistently in the higher range. It could even take the form of administrative directives that override the provisions of existing law, or of laws that override the provisions of the constitution.[3] Thus, whereas in one system an important part of policy implementation is the enactment and implementation of legislation embodying the policy, such a step, while useful, is not indispensable in the Chinese system.

A further element blurring the distinction between law and policy in China is the lack of a well understood and universally accepted hierarchy of legislation. Thus, for example, a ministry circular stating its views or intended practice on a particular issue

[3] An administrative directive that clearly overrides the provisions of existing law is the State Council's 1997 "Supplementary Notice on Issues Concerning the Trial Implementation in Several Cities of State-Owned Enterprise Bankruptcy and Merger and Re-Employment of Staff and Workers," discussed in Donald C. Clarke, "State Council Notice Nullifies Statutory Rights of Creditors," *East Asian Executive Reports*, vol. 19, no. 4 (April 15, 1997), pp. 9-15. Among other things, the notice purports to strip secured creditors in certain circumstances of their rights under the Security Law—a statute that does not provide for any leeway in administrative interpretation. An example of laws and regulations that override constitutional provisions can be found in the recent history of land leasing in China. Local experimentation in leasing was permitted and, when it proved successful, the constitution was ultimately revised to permit it formally.

can rarely be categorized as either a statement of policy or a binding regulation. More precisely, such a categorization will not assist in determining how, or with what vigor, the ministry plans to implement the policy embodied in the statement or the regulation.

Political Enforcement

The promulgation of laws and regulations relating to intellectual property protection is frequently accompanied by various initiatives at the political level to promote their implementation and the enforceability of the rights they grant. For example, initiatives can take the form of the State Council's 1994 White Paper on Intellectual Property Protection, which spells out the policy importance attached to protection of intellectual property and could be expected to have some influence on the way administrative agencies and courts interpret and enforce existing laws and regulations. They can also take the form of more specific concrete policy announcements, such as the 1994 Eleven Decisions on Further Reinforcing the Protection of Intellectual Property, also issued by the State Council, which called on administrative, legislative, judicial, and law enforcement bodies to cooperate in efforts to establish a unified and coordinated system for the protection of intellectual property rights.[4]

These efforts are more important than they might seem in other societies, since a sharp distinction between law and policy does not exist in China. Stated government policy can have exactly the same effect as formally enacted legislation.

Administrative Enforcement

A second mode of enforcement of IPR rights is administrative. This means the enforcement of the rights of IPR holders through some kind of proceeding against violators, whether labeled criminal, administrative, or civil, that is formally initiated by government officials and remains essentially in their control. The sanction in this type of proceeding could be punitive (imprisonment or fines) or essentially remedial (damages or disgorgement of illicit revenues or profits).

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[4] For further detail, see Shan Liu, "Enforcement of Computer Software Copyright Protection in China," LL.M. thesis, University of Washington School of Law (1996), p. 5.

In China, administrative enforcement has generally proven more effective than private enforcement. Most foreign complainants of IPR infringement use whatever administrative remedies are available instead of resorting to courts and private remedies, as the former are quicker, cheaper, and generally more effective.[5] The situation is undoubtedly similar for domestic complainants. Nevertheless, administrative enforcement is subject to several constraints that make it less than completely effective.

Administrative enforcement is subject to perverse incentives.

First, administrative enforcement is subject to perverse incentives: because the enforcing agencies rely heavily on fines for their operating expenses, they have a vested interest in seeing violations continue.[6] Second, administrative enforcement has the same limitations as any government action—limited resources and vulnerability to corruption and arbitrariness. This is not to say that administrative enforcement is never effective or desirable, only that it contrasts very distinctly with a system of private enforcement.

Private Enforcement

A third mode of enforcement, which can be called private enforcement, involves the government setting up, by legislation or otherwise, a mechanism whereby policy is implemented through the uncoordinated actions of nongovernmental parties responding to incentives. In the field of IPR, this could take the form of legislation establishing rights that could be effectively vindicated by IPR holders at their option. IPR holders could negotiate with violators if they chose, or they could force them to pay damages in some proceeding in which the costs did not exceed the expected benefits. The key difference between this type of proceeding and administrative enforcement is that it is the IPR holders, not government officials, who decide whether or not to bring the mechanism into play, and it is the parties to the proceedings, not the state, that bear most or all of the cost.

[5] See Stephen Hayward, "China: Practical Protection of IP Rights," *IP Asia*, June 30, 1994, p. 6.

[6] See Michel Oksenberg *et al.*, "Advancing Intellectual Property Rights: Information Technologies and the Course of Economic Development in China," p. 21.

One advantage of private enforcement is that it reduces the dilution of norms that can occur in a system of administrative enforcement. A pervasive problem in any authority system is that of ensuring that commands from the top are carried out at the lower levels of the system in such a way as to interact directly with the object of regulation. There is a progressive loss of control as the organization becomes larger and the distance increases between policymakers at the top and policy implementers and enforcers at the bottom. The difficulties encountered by Chinese policymakers at the center in seeing their directives implemented are well known. In general, the more layers there are between policymaking and policy implementation, the more "noise" will interfere with implementation.

The key advantage of private, decentralized enforcement over administrative enforcement is that if the system works properly it reduces to a minimum the number of layers between policymaking and implementation. Parties come before the court with a specific dispute that the court has the authority and power to resolve. The court resolves this dispute by direct reference to the original text of policy issued by the relevant policymaker—the winner in the bureaucratic struggle that preceded formulation of the policy. When a court resolves a dispute, therefore, there is only one intermediate layer between the formulators of policy and the regulated parties.

If decentralized enforcement works properly, it reduces to a minimum the number of layers between policymaking and implementation.

Administrative Enforcement versus Private Enforcement

Despite the problems of administrative enforcement, it remains the preferred method in China for dealing with IPR protection, and it is important to understand why. Administrative enforcement, as opposed to enforcement through the actions of independent parties, has traditionally been the Chinese state's preferred mode of policy implementation in all fields, not just IPR protection. This is because the state has traditionally viewed the legal system as essentially one of many tools of government. It is not something that stands superior to government. Just like monetary policy, for example, the legal system is something to be directed centrally and administered by experts, not by ordinary citizens.

This preference for government-directed solutions may be exacerbated in the modern Chinese state by the relative difficulty the government faces in reaching final decisions on matters of policy and making them stick. Losers in policy struggles within the bureaucracy often have the ability to sabotage the implementation of the winners' policies.[7] Obviously the notion of disgruntled bureaucrats is not unique to China, but because of the relative weakness of the legal system in governing or constraining the actions of government agencies, bureaucratic losers have a greater ability in China than in many other countries to ignore the winners' rules. Thus, it is even more essential that everyone be brought on board and satisfied in some way when a policy decision of importance is taken.

The relevance of this phenomenon to a discussion of private enforcement is that the process of bringing everyone on board involves striking deals and making promises about how a given policy will be implemented. To keep those promises means that implementation cannot be put in the hands of those who were not a party to the deal and whose actions cannot be controlled. Thus, losers may be willing to go along with a particular policy decision because they believe that they can continue to exercise influence over the implementation of the policy (which can in the right circumstances be just as good as exercising influence over its substance). This belief will be justified only so long as implementation can be controlled by other bureaucratic actors who, while winners today, may need something from the losers tomorrow.

A good example of the above process at work can be seen in the Enterprise Bankruptcy Law (the "Bankruptcy Law"), which went into effect in November 1988. The Bankruptcy Law was, in a sense, ahead of its time: it represented a policy of closing down money-losing, state-owned enterprises and leaving their workers to fend for themselves at a time when China had very little in the way of a labor market or a social safety net for urban residents that was not tied to a person's place of employment. For this and other reasons, its passage was controversial.

One key feature of the Bankruptcy Law was that it appeared to recognize the difficulty of forcing government bodies to close down the enterprises under their jurisdiction. It provided for decentralized implementation of its policy objectives by taking

[7] See Michel Oksenberg *et al*., "Advancing Intellectual Property Rights: Information Technologies and the Course of Economic Development in China," p. 16.

decision-making power out of the hands of the government department in charge of the enterprise (which always had the power to close it down under the old system) and putting it in the hands of creditors (who can initiate the process) and courts (who make the final decision).

However, very few state-owned enterprises have actually been declared bankrupt under the Bankruptcy Law. The reasons for this are many: among other things, banks, who are the biggest creditors, may be reluctant to put debtor enterprises into bankruptcy because it would force the banks to recognize the loss on their loans instead of continuing to roll them over. Another important reason has been that the decentralized implementation feature of the Bankruptcy Law has never really been allowed to play its full role. The Bankruptcy Law is specifically labeled "For Trial Implementation," and it is clear that the choice of test cases remains in the hands of government. In other words, the Bankruptcy Law tells you what procedure to follow when a decision has been made to put an enterprise into bankruptcy, but that decision remains in the hands of the government.

Further Steps in Private Enforcement

Private enforcement carries the promise of more consistent, system-wide enforcement of IPR, but it has some problems that need to be addressed.

First, parties to litigation are still very limited in their ability to collect evidence on their own, even though it is increasingly their responsibility. This can present particular difficulties for foreign parties, given the vast areas of official and unofficial information that are considered off-limits to foreigners.

Second, private enforcement through courts is still subject to the problems of local protectionism that beset administrative enforcement. The principal cause of local judicial protectionism appears to be the combination of the local government's direct interest in the financial well-being of enterprises and its power over court personnel and finances. Consequently, local protectionism could be expected to be less pronounced where either of these factors is weakened or absent. Indeed, lawyers and court officials have suggested that local protectionism is much less of a problem in Intermediate Level

and Higher Level (provincial level) courts, where the corresponding level of government has a much more tenuous connection with local finances. Consequently, the higher up in the court hierarchy a plaintiff with a meritorious case can start, the better his chances.[8]

Additionally, local judicial protectionism would decline if the dependence of courts on local government were reduced. On the financial side, this could be done by funding courts from the central government budget instead of from various levels of local government.[9] At present, with the central government short of funds, there is no indication that such a reform is in the works. On the personnel side, superior courts, not local government, should have more say in the appointment of court officials. Some local experiments in this area have been carried out, but these have been limited so far.

Because the problem of local protectionism will not be resolved quickly, however, it is important that plaintiffs be able to bring suit not only in the defendant's home jurisdiction, but also in other jurisdictions, such as the place of sale of the allegedly infringing product. Article 29 of the Civil Procedure Law provides for jurisdiction by the court in the place of the defendant's domicile or in the place of the alleged infringement. This practice was confirmed by the Beijing Higher Level People's Court in a suit brought by the publisher of Chinese Star software against an infringer based in the city of Taiyuan.[10] This decision is important because Article 29 could have been read differently. For example, the court could have held that the infringement occurred when the copy was made, not when it was sold. It would also have been possible for the court to exclude from the complaint allegations of infringement outside of its territory, and to have provided relief to the complainant only for sales in Beijing.

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[8] Having higher courts on your side does not necessarily solve all problems, however. One lawyer interviewed by the author was involved in a case against a Hangzhou defendant for 200,000 yuan. The Hangzhou court with jurisdiction, a Basic Level People's Court, refused to accept the case for hearing. The lawyer went to the Intermediate Level People's Court (directly above the first court) and obtained an order to the lower court to hear the case, but to no avail. Even after the lawyer procured a direct order from the Higher Level People's Court, at the provincial level, the Hangzhou court still refused to hear the case.

[9] Chinese commentators have been making proposals to this effect for years. See, Zhang Yiping, "Jingji shenpan zhong difang baohu zhuyi wenti de sikao (Thoughts about the problem of local protectionism in economic adjudication)," *Shenzhen Fazhi Bao* (Shenzhen Legal System News), November 14, 1990, p. 3.

[10] Mary L. Riley and Liu Shan, "Selected Cases on Software Infringement," in Mary L. Riley, ed., *Protecting Intellectual Property Rights in China,* Hong Kong and Singapore: Sweat and Maxwell Asia, 1997, p. 83.

The third problem related to private enforcement is that courts and administrative agencies have little "weaponry" to back up their commands. Article 313 of the 1997 Criminal Law provides: "Whoever refuses to carry out a decision or order made by a people's court while he is able to carry it out is to be sentenced to not more than three years of fixed-term imprisonment, criminal detention, or be fined if the circumstances are severe." This is stricter than the corresponding provision of the 1979 Criminal Law, which provided in Article 157 that refusal to carry out legally effective court judgments was punishable only if accomplished by threats or violence. Nevertheless, it falls far short of the general contempt power available to courts in some other systems, under which courts can directly impose punishment on those who violate their orders without the necessity of a full-blown criminal trial.

One major problem faced by courts and administrative bodies attempting to enforce their orders—the virtual immunity of military-run enterprises—may be relieved by the central government's recent policy, announced in July 1998, of requiring military units and units within the political-legal system to divest themselves of business operations. If carried out, this policy could go a long way toward reducing IPR violations. Companies owned by the military and public security bodies in particular have been able to operate with impunity because of their connections. Given the economic importance to the military of its business operations, however, it remains to be seen if the new policy can actually be implemented or will be watered down with so many exceptions as to become nearly meaningless.

There is also no general right to preliminary injunctive relief in intellectual property litigation. Such relief would require the alleged infringer to cease all the alleged infringing activities during the course of proceedings. The availability of such a measure would strengthen the hand of plaintiffs against defendants, who would suddenly be changed from winners to losers from delays in litigation. To alleviate concerns of abuse, plaintiffs could be required to post a bond covering the defendant's losses in the event that the defendant prevails. Under Article 44 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), members of the World Trade Organization are required to make such preliminary relief available, so this problem would have to be solved prior to China's entry into the WTO. Article 97 of China's Civil Procedure Law might possibly be read to allow for such measures: it provides for the enforcement prior to judgment of whatever the judgment might eventually be—provid-

ing certain conditions are met. The only possibly applicable condition consists of "other urgent circumstances that require prior execution." A more directly worded authorizing statute would be far preferable.

A fourth problem with private enforcement is that damage awards—both in private and administrative enforcement proceedings—tend to be small in China. As a result, administrative enforcement proceedings do not provide sufficient deterrence, and many private enforcement proceedings are discouraged because they simply will not pay off economically. In response to international criticisms that its damage awards were too low to provide deterrence, in 1993 China revised Article 40 of the Trademark Law to make more cases subject to criminal prosecution. Originally, Article 40 allowed criminal prosecution only when a person other than the trademark holder passed the trademark off as his own. It was revised to allow for criminal prosecution for forging a trademark or knowingly selling counterfeit goods.[11]

Criminal sanctions keep control in the hands of government instead of in the hands of those who have the strongest monetary incentive to use them.

The problem with criminal sanctions is that they keep control in the hands of government instead of in the hands of those who have the strongest monetary incentive to use them. Moreover, criminal prosecution is a very heavy weapon to bring to bear in many cases; police and prosecutors have their own priorities for the use of limited resources. Thus, criminal sanctions can never really replace civil liability as a means of curbing IPR violations.

In some cases (e.g., copyright infringement), individuals are allowed to institute criminal proceedings. It is hard to imagine, however, that this will become a major avenue for the vindication of intellectual property rights. What the victim of the infringement wants is damages and the assurance that its rights will not be infringed upon again.

[11] See Michael N. Schlesinger, "Intellectual Property Law in China: Part II—Evolving Judicial Role in Enforcement," *East Asian Executive Reports*, vol. 19, no. 3 (March 15, 1997).

Conclusion

To date there are no indications that the Chinese government is willing to consider private enforcement, as opposed to political and administrative enforcement, as a major mode of IPR policy implementation. Nor are China's negotiating partners pressing for private enforcement. The 1995 Action Plan, for example, essentially calls for the strengthening of only two legs of the enforcement tripod: the political and the administrative.

The political aspect of the Action Plan recognizes that merely passing laws is not enough. It provides for the sustained enforcement of intellectual property rights through the State Council Working Conference on Intellectual Property Rights, a body consisting of delegates from several departments and agencies under the State Council, including the National Copyright Administration, the Ministry of Public Security, the Ministry of Foreign Affairs, and the Patent Office. One important function served by the Working Conference is purely symbolic: its very existence shows that the Chinese government attaches at least some degree of importance to the problem of enforcement of intellectual property rights. More concretely, the Working Conference is to take the lead in coordinating the actions of other bodies involved in intellectual property protection.

Perhaps the best hope for enhanced IPR protection through courts and private enforcement mechanisms lies in China's accession to the WTO and the associated TRIPS agreement. The WTO's dispute settlement mechanism would act as an additional spur to the efforts of those within the country anxious to strengthen IPR protection, and its multilateral character would serve as a shield against accusations from domestic opponents that China was surrendering to U.S. pressure.

It is clear, however, that owners of IPR must do their part by using the court system, either alone or in tandem with administrative remedies. The formal legal infrastructure is there, but it must have life breathed into it by frequent use.