

# China Law Update

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## **New Intellectual Property Legislation and Regulations 2010 (1)**

### China's National People's Congress Amends the Copyright Law

On February 26, 2010, the National People's Congress passed the second amendment to the Copyright Law. Only two articles of the Copyright Law have been amended, and the changes will take effect on April 1, 2010.

#### *Article 4*

Former Article 4 stated: "Works for which publication or distribution is prohibited by law shall not be protected by this law. Copyright owners, in exercising their copyright, shall not violate the Constitution or laws or prejudice public interests." In China, works such as foreign movies need to obtain approval before they are publicized and distributed. However, works for which publication or distribution is prohibited do not always violate the Constitution or laws, or prejudice public interest. Former Article 4 indicated that Copyright Law did not protect such works even where their content is not against the law. This was challenged by the United States in the WTO in 2009.

Thus, Article 4 has now been amended to state, "Copyright owners must not act in breach of the Constitutional Law and other laws or in conflict with the public interests in exercising their copyrights. This Country shall lawfully supervise publications and circulations of works."

#### *New Article 26*

The new Article 26 states, "To pledge a copyright, the pledgor and pledgee concerned shall complete the pledge registration with the copyright authority under the State Council." It responds to 1996 measures by the National Copyright Administration which allowed copyrights to be pledged and pledge contract to be registered. Amending the measures' provisions and including them into Copyright Law eliminates the conflict between the law and relevant administrative measures.

### China's Supreme Court Expands Jurisdictions of Lower Courts Over Intellectual Property Rights (IPR) Cases

On January 18, the Supreme Court issued the *Notice of the Supreme People's Court on Adjusting the Standards for Jurisdiction of Local People's Courts at ALL Levels over IPR Civil Cases of First Instance* (the "Notice"), which went into effect February 1, 2010.

There are four levels in the Chinese court system: the Basic People's Courts, the Intermediate People's Courts, the Higher Courts and the Supreme Court. The Basic People's Courts have jurisdiction over general IPR Civil Cases.

The Notice clarifies that a Higher People's Court shall have jurisdiction over: (1) IPR civil cases of first instance in which the amount in controversy is over 200 million Yuan; and (2) IPR civil cases of first instance in which the amount in controversy is over 100 million Yuan, and where a party is not domiciled in such court's jurisdiction, or the case is foreign-related or Hong Kong, Macau or Taiwan-related.

An Intermediate People's Court shall have jurisdiction over IPR civil cases in which the amount in controversy is below the abovementioned amounts, other than those that shall be designated by the Supreme People's Court to Basic People's Courts.

The Notice also stipulates that the Basic People's Courts shall have jurisdiction over: (1) general IPR civil cases in which the amount in controversy is no more than 5 million Yuan; and (2) general IPR cases in which the amount in controversy is between 5 million and 10 million, and where a party is domiciled within the jurisdiction of the related Intermediate People's Court or that of the related Higher People's Court.

Relevant Supreme Court decisions shall be complied with when deciding the jurisdiction of IPR civil cases involving patents, new plant varieties, layout-designs of integrated circuits, recognition of well-known trademarks, and antitrust issues.

It is reported that the Supreme People's Court has designated 92 Basic People's Courts with jurisdiction over general IPR civil cases.

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