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Administrative Enforcement of Copyright in China

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Copyright enforcement in China

There are four main routes for enforcing copyright in China: administrative enforcement; civil litigation; criminal enforcement; and customs enforcement. Of these channels, civil litigation is the most commonly used. Copyright accounted for 69% of the 283,414 1st instance civil IP cases accepted by Chinese courts in 2018. In addition to these official channels, rights owners can issue warning letters to infringers and use online notice-and-takedown procedures as part of a copyright enforcement strategy in China. This factsheet focuses on administrative enforcement.

Administrative enforcement is conducted by an administrative government department as opposed to a law enforcement agency or court. It is available for many (but not all) types of copyright infringement and is best suited to cases of larger-scale piracy, i.e., the reproduction, distribution or making available on the Internet of multiple identical copies. Administrative enforcement is available for all types of copyright works including books, magazines, journals and other literary/printed materials; software and games; music and sound recordings; and film, TV programmes and other video. It is also available to protect TPM (technical protection measures) circumvention and RMI (rights management information) removal.

Administrative enforcement is currently only available where the infringement causes “damage to the public interest” and the authorities are generally only willing to take action where the issues are not complex. As such, administrative enforcement is generally not suitable for cases involving single or low-volume infringements; non-identical copying; indirect infringement (e.g. linking or P2P services); or technologically complex cases.

Making a complaint to the copyright administrative authorities

In general, rights owners can file a complaint with local government Cultural Enforcement Departments (CEDs) or Copyright Bureaux (CBs), with the enforcement itself generally being conducted by the CED. The CED is also responsible for cultural enforcement issues such as illegal publication and illegal broadcasting. It should be noted that the precise names of these authorities vary across the country. At central government level, the National Copyright Administration of China (NCAC) is responsible for the regulation and enforcement of copyright. The Ministry of Culture and Tourism (MCT) is one of several Ministries that provide guidance to CEDs. In some cities, such as

Shenzhen, the Market Supervision Bureau (MSB) has aggregated powers to enforce various IP rights including copyright and is therefore the authority with which to file a complaint. Because of the aggregation of powers, the MSB may also be more powerful than a CED enforcing copyright alone.

Check-List for Filing for Administrative Enforcement of Copyright in China

- Consider where to file your complaint. Are there strategic reasons to file with the local Copyright Bureau, or at provincial/national level? Do you have a choice of jurisdiction?
- Filing complaints in person (either directly or through an agent) is recommended over postal or electronic filing, as it creates an opportunity actively to engage the authorities.
- Prepare the four required pieces of evidence: a written description of the complaint; evidence of ownership of the infringed work; proof of identity of the complainant; and evidence of the infringement.
- Evidence should primarily be in Chinese, and all evidence from overseas should be legalised and notarised in accordance with Chinese procedures.
- Consider recordal of copyright in China with central or local authorities.

Choosing where to file a complaint involves a number of strategic considerations. Since reforms to the system initiated in 2003, CEDs are designated as the primary copyright enforcement agency in any given jurisdiction. However, if a case is technically complex – or if a rights holder or their representative has a prior relationship – filing with the local CB should be considered.

Complaints must be filed in writing at the CED or CB where the alleged infringer is located or where the infringement has occurred. There are no official filing fees. Complaints can be filed directly by the copyright owner or by an agent with a Power of Attorney. Agents do not need to be lawyers. It is advisable to file in person rather than by post. Serious cases may be filed centrally with the NCAC, who will typically delegate enforcement to a local department. The NCAC website (www.ncac.gov.cn – bilingual, but with limited content in English) contains contact details of provincial administrative authorities.

The complaint itself must introduce the copyright owner and the rights being infringed, along with a description of the infringement, its location and an indication of its scale. This must be accompanied by evidence of copyright ownership, evidence of the infringement itself and evidence to prove the copyright owner's identity. These core materials should be in Chinese and any documents produced overseas, in particular evidence of the owner's identity, must be notarised and legalised for use in China. Samples of genuine works may also be necessary to show ©/copyright notices demonstrating ownership and/or as reference for the authorities. Recordal of copyright is possible in China and may be useful to evidence ownership in administrative enforcement.

What can administrative enforcement achieve?

If the authorities accept a complaint, it is usual for them to conduct a raid during which they will inspect the infringer's premises, interrogate the infringer, collect evidence and seize infringing copies. The copyright owner or his agent may be invited to attend. If the authorities conclude that infringement at a sufficiently serious scale has occurred, then it may issue a Punishment Decision

including an order to cease the infringement and a fine. Administrative fines are limited to five times the infringer's illegal income. If income is difficult to prove, fines will be below RMB250,000 (approx. £29,000). If the scale of infringement is small, the authority may issue a Rectification Order to cease infringement but with no fine. No compensation for the rights owner is available through administrative enforcement.

Where the infringement meets the criminal threshold (for instance, a producer's illegal income exceeds RMB50,000 (approx. £5,800) or where more than 500 infringing copies are involved), the administrative authorities can transfer the case to the Public Security Bureau (PSB) for further investigation and, potentially, criminal prosecution.

Challenges with administrative enforcement

Businesses report that the copyright enforcement system is more difficult to navigate than the equivalent system for trade mark enforcement. The agencies empowered to enforce copyright are different in different municipalities and provinces, resulting in considerable variations in case filing requirements and procedures across the country. This ultimately leads to a national copyright enforcement system that can be inconsistent and unpredictable in its outcomes. Nevertheless, rights owners are advised to engage with the system, and consider it as a part of a wider copyright enforcement strategy in China.

For more information – or to arrange a discussion of a particular case based on our experience working with other companies in China – please contact commercialmail.beijing@fcdo.gov.uk.



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