

# **Report on the Latest Development in IPR Protection and Business Environment in China**

## **Preface**

The protection of intellectual property rights (IPR) is important for creating a sound business environment, and equals to the protection of the source of innovation. China has always attached great importance to IPR protection, and regards it as long-term interest. Around 2001 when China entered the WTO, China made comprehensive and systematic revision to IPR laws, and established a legal system for IPR that complies with international rules and reflects China's reality. In the practice of IPR protection, China has maintained its consistency with international practice, treated domestic and foreign IPR equally without discrimination, and fully implemented China's commitment and international obligations. In recent years, China has formulated and implemented its national IPRs strategy, accelerated the construction of an IP Powerhouse, and placed IPR protection in a more important position. The level of IPR creation, application, protection and management has been greatly improved. The IPR awareness of the whole society has

been generally enhanced. IPR work in all aspects has achieved new progress. The business environment has been further improved in terms of the degree of internationalization, facilitation and rule of law.

### **I. The legal system has been further improved**

Given the new characteristics of IPR infringement, China has formulated or amended in recent years over 10 laws and regulations, issued judicial interpretations, improved supporting measures, strengthened institutional construction, and improved the IPR legal system. As for the general trend, China has intensified the punishment of infringement, strengthened IPR protection, adopted detailed supporting measures for law enforcement, and created new methods for law enforcement supervision.

#### **i. The cost of IPR infringement has been raised**

In August 2013, the new amendment to the Trademark Law was examined and adopted by the Standing Committee of the 12<sup>th</sup> National People's Congress. It introduced the punitive compensation system into the field of IPR protection. According to this law, for bad faith infringement of exclusive rights of trademarks, the compensation amount in serious cases may be determined based on one to three times of the actual losses

suffered by the right holder incurred by the infringement, the gains derived by the infringer from the infringement or the licensing fee of the said trademark. Meanwhile, the ceiling of statutory compensation was raised from RMB 500,000 to RMB 3 million. The new amendment to the Trademark Law also prescribes the principles of honesty and trustworthiness, and contains explicit provisions on prohibiting bad faith trademark registration, reducing the rights holder's burden of proof when claiming infringement compensation and adding the infringer's obligations of proof. In January 2013, the State Council amended four administrative regulations, namely the Regulations on Computer Software Protection, the Regulations on the Implementation of the Copyright Law, the Regulations on the Protection of the Right to Communicate Works to the Public over Information Networks and the Regulations of the People's Republic of China on Protection of New Varieties of Plants. The fine in fixed amounts was changed into fine based on one to five times of the value of the infringing or fake products or services. The punishment on infringement has been intensified through larger amount of fines. Currently, China is amending the Patent Law, the Copyright Law, the Law against Unfair Competition and other laws. By doing so, China will effectively increase the

cost of infringement, compel infringers to pay high prices and protect the lawful rights and interests of rights holders in a more effective way.

**ii. The scope of IPR protection has been expanded**

The new amendment to the *Seed Law* was examined and adopted by the Standing Committee of the 12<sup>th</sup> National People's Congress in November 2015. A chapter on the protection of new varieties was incorporated, enhancing the legal liabilities for infringing the rights of new plant varieties. The amended *Trademark Law* removes the visuality requirement on trademark registration and incorporates sound trademark into the scope of registration application. State Intellectual Property Office amended the *Guidelines for Patent Examination* and incorporated graphical user interface into the scope of design patent protection. National Copyright Administration of China in conjunction with relevant departments formulated the *Measures for Paying Remunerations to Works Legally Permitted to Be Used in Textbooks* to standardize the behaviors of using published works when compiling and publishing textbooks and better protect the lawful rights and interests of right holders. China has also strengthened legislation in electronic commerce and other emerging sectors

and types of business. In December 2016, the draft of the *Electronic Commerce Law* was examined by the Standing Committee of the 12<sup>th</sup> National People's Congress. The draft explicitly requires electronic commerce operators to protect IPR in accordance with law, and specifies the responsibilities and obligations of third-party electronic commerce platforms in IPR protection. In August 2017, the draft of the Law against Unfair Competition was examined for the second time by the Standing Committee of the 12<sup>th</sup> National People's Congress. The draft strengthens the protection of trade secrets, further specifies the definition of trade secrets and increases the legal responsibility of trade secrets infringement.

### **iii. Judicial Interpretations on IPR have been further improved**

The Supreme People's Court and the Supreme People's Procuratorate have timely formulated judicial interpretations on the issues met during the implementation of IPR laws. In March 2014, the *Interpretation on Issues concerning the Jurisdiction over Trademark Cases and Application of Law after the Entry into Force of the Decision on Amending the Trademark Law* was issued to provide explicit provisions on the people's courts' jurisdiction over trademark cases, and the application of law in

cases, rulings, decisions and other circumstances taking place before and after the entry into force of the *Decision on Amending the Trademark Law*. In November 2014, the *Interpretation on Several Issues concerning the Application of Law during the Handling of Criminal Cases Endangering the Safety of Drugs* was issued to further specify the determination standards on the production and sale of fake or counterfeit drugs and other criminal acts endangering drug safety. In January 2015, the *Several Provisions on Issues Concerning Applicable Laws to the Trial of Patent Disputes* was amended for the second time to appropriately increase the number of grass-root courts with jurisdictions over general IPR cases and clarify such major issues as the selection of methods to calculate compensation for patent right infringement. In March 2016, the *Interpretation on Several Issues concerning the Application of Laws in the Trial of Patent Disputes (II)* was issued to actively solve the prominent issues such as long cycles, difficulty to prove and low compensation in patent lawsuits within the existing legal framework. In January 2017, the *Provisions on Several Issues Concerning Applicable Law in the Trial of Trademark Granting and Confirmation Administrative Cases* was issued to specify the difficulties in judicial practices such as

the scope of examination for trademark registration, the judgment of distinguishing features, the protection of well-known trademarks, and the protection of copyrights, right of name and other prior rights.

**iv. Transparency in IPR enforcement has been improved**

In February 2014, the State Council printed and issued the *Opinions on Disclosing the Information on Administrative Punishment Cases Involving the Production and Sale of Counterfeit and Substandard Commodities and the Infringement on Intellectual Property Rights in Accordance with Law*, requiring that, for the administrative punishment cases involving counterfeit and substandard commodities and IPR infringement investigated and dealt with by administrative departments for law enforcement by adopting general procedures, the administrative punishment information shall be made known to the society within 20 working days from the dates on which the punishment decisions are made or changed. In August 2014, the State Council promulgated the *Interim Regulations on Publicity of Enterprise Information* which, in the form of administrative regulations, contain explicit provisions on the public notification of information about various types of administrative punishment

cases including IPR cases. In July 2013, the Supreme People's Court launched China Judgments Online, requiring that the effective judgment documents produced by the people's courts shall be made known to the public according to law and in light of the principles of timeliness, normalization and truth. China has constantly taken important steps to enhance the transparency of law enforcement which have ensured the operation of power under the sun, facilitated the right of businesses and the general public to be informed and supervise, and effectively held infringers and offenders in awe.

## **II. Administrative law enforcement has been effective and powerful**

Flexible and convenient administrative law enforcement, diversified means of punishment, and being able to quickly stop IPR infringement are the distinct features of IPR protection in China. Since 2013, more than 170 special operations have been carried out by various regions and relevant law enforcement departments to curb the spread of infringement and counterfeiting, and maintain a market characterized by fair competition.

### **i. Administration in key areas**

#### **Administration of Internet infringement and**

**counterfeiting** Internet infringement and counterfeiting is a common challenge faced by countries around the world. In June 2014, the National Leading Group on Fight against IPR Infringement and Counterfeiting organized 12 departments to carry out special campaigns on Internet infringement and counterfeiting. In November 2015, the General Office of the State Council issued the Opinions on Strengthening the Administration of Internet Infringement and Counterfeiting to continuously press ahead with the construction of a long-term mechanism on Internet infringement and counterfeiting management, which has achieved obvious results. In 2016 alone, industrial and commercial administrative departments carried out investigation on over 1.9 million websites and online stores, issued rectification orders to 1.9 million online stores, and solved 13,000 network violation cases through the Network Market Supervision Special Action; competent departments for communications dealt with over 3,300 illegal websites. The network transaction environment has been effectively purified.

### **Administration of infringement and counterfeiting in rural markets**

In December 2014, MPS, MOA, MOFCOM, SAIC, AQSIQ, CFDA and other departments jointly carried out a

special operation on infringements and counterfeiting in rural markets and rural-urban fringe zones. Focusing on agricultural production materials, daily consumer goods and the busy seasons for the purchase and sale of agricultural materials such as spring plowing and autumn and winter planting, these departments carried out joint law enforcement inspections, strengthened investigation at the sources, and enhanced circulation supervision.

<p style="text-align: center;"><b>Column 1: The cracking down of a case of counterfeit pesticide</b></p> <p>The public security organ of Ningbo Municipality joined hands with the agricultural law enforcement department to crack down the “2016.3.31” exceptionally serious case of cross-border production and sale of pesticides of counterfeit trademarks, destroyed 9 production lines, seized 25 tons of counterfeit pesticides disguised in such brands as the American DuPont and the Swiss Syngenta and more than 2 million counterfeit pesticide trademarks and signs. Through international policing cooperation, they also successfully captured the criminal suspects hiding abroad and destroyed the large counterfeit production and storage dens established abroad that radiated the entire ASEAN. DuPont Group especially expressed thanks to the Chinese Government</p>
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**Governance of infringement and counterfeiting in imports and exports**

Given the collusion between outlaws both at home and

abroad in cross-border production and sale of infringing and counterfeit products, the National Leading Group on Fight against IPR Infringement and Counterfeiting formulated in April 2015 the 3-year Fair Wind Action to maintain the overseas reputation of “Made in China” and conduct special governance on export commodities in an orderly fashion throughout different steps. In 2015-2016, the customs offices took IPR protective measures 45,000 times and detained more than 40,000 batches of infringing import and export goods. The quality inspection departments have strengthened port control and, since 2013, has investigated and dealt with over 500 cases of exporting counterfeit and substandard products and seized

nearly 2 million counterfeit and substandard products.

## **ii. Intensifying law enforcement and supervision**

### **Strengthening trademark rights protection**

Focusing on well-known trademarks, geographical identifications, foreign-related trademarks and time-honored trademarks, SAIC has cracked down free-riding, bad faith registration and other trademark infringement and unfair competition behaviors and carried out a series of actions to protect the exclusive rights of trademarks such as “Disney” and “Tongrentang”. 2013-2016, the industrial and commercial departments across the whole country investigated and dealt with nearly 150,000 cases of trademark infringement and

<b>Column 2: The cracking of cases of infringing export commodities</b>
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<p>In 2015, Shanghai Customs Office successively uncovered two cases of exporting breathing masks infringing the trademark of “3M” to Nigeria, and destroyed transnational gangs engaged in the production and sale of counterfeit products with a total price of RMB 10 million. Wenzhou Customs Office successively uncovered and seized 46,000 sports shoes infringing on trademark rights that were exported to Mozambique. In May 2017, upon receiving a report from the masses, Shanghai Inspection and Quarantine Bureau seized 95,000 counterfeit sports shoes and other products that were to be exported.</p>
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counterfeit trademarks and the total value of the cases amounted to nearly RMB 2 billion.

### **Strengthening copyright protection**

Focusing on the standardizing the copyright orders in books, film and television, literature, music, software and games, NCAC has worked jointly with relevant departments to fight against various kinds of infringing and piracy. 2013-2016, copyright departments investigated and dealt with a total of 18,000 cases of infringement and piracy, transferred over 1,200 criminal cases to courts and captured over 58 million infringing and pirate publications of various kinds.

### **Column 3: The cracking of a case of Internet infringing and**

#### **piracy**

In 2016, the authorities in Jiangsu and Beijing joined hands in solving an exceptionally serious case of Internet-based sale of infringing and pirate books, destroyed two organized criminal gangs involved in the production and sale of pirated books and arrested 42 individuals involved. 1.2 million pirated books were captured and the total price of the books was over RMB 52 million. In 2017, the authorities in Beijing investigated and dealt with the case of infringement by the foreign language electronic book database of Beijing Youyueyingchuang Technology Co., Ltd. Association of American Publishers and the Publishers Association wrote to National Copyright Administration of China to express their thanks and indicated that international publishers are highly confident in China's copyright protection. China's solving of cases of Internet-based illegal reproduction of standard works containing copyrights has been spoken highly of by International Organization for Standardization.

While constantly cracking infringement and piracy, China has vigorously pressed ahead with the use of licensed software. 2011-2016, the governmental organs at various levels purchased a total of over 8.3 million sets of operating systems, office and antivirus software, and the use of licensed software has been

realized in governmental organs at central, provincial, municipal and county levels. The MIIT has vigorously facilitated the pre-installation of licensed operating systems in computers, and the proportion of computers with pre-installed licensed operating systems has been kept above 98%.

### **Strengthening IPR protection**

State Intellectual Property Office has organized and carried out special actions on IPR law enforcement and protection in the fields of electronic commerce, food and drugs, environmental protection, safety production and high and new technology, and constantly intensified efforts to combat IPR infringing and counterfeiting behaviors. 2013-2016, a total of over 125,000 IP-related administrative law enforcement cases were dealt with across the whole country, including over 47,000 cases of IPR infringement. Meanwhile, State Intellectual Property Office has also guided and supported local intellectual property offices and IPR protection assistance centers to enter influential large-scale exhibitions and conventions to establish assistance work stations for IPR-related reports and complaints and actively carry out IPR law enforcement and protection during these exhibitions and conventions.

**Column 4: Strengthening IPR protection during  
large-scale exhibitions**

During the China (Shanghai) International Technology Fair cohosted by the MOFCOM, the MST, SIPO and Shanghai Municipal People's Government, an intellectual property rights service center has been especially established to hold tour reviews of patent reexaminations and cases of invalid patents. State Intellectual Property Office has guided relevant intellectual property offices of Guangdong Province to engage in IPR protection during Canton Fair and other exhibitions. During the 119<sup>th</sup> and the 120<sup>th</sup> Canton Fair, more than 1,000 cases were handled which effectively protected the lawful rights and interests of the rights holders.

Strengthening the protection of other IPRs. The industrial and commercial departments of the whole country have investigated and dealt with a total of over 1,000 cases of trade secrets which have effectively combatted infringement violations. The protection of new plant varieties, geographical identifications, layout designs of integrated circuits and other new types of IPR has also been strengthened in an all-round way.

**iii. The prominent role of judicial protection**

The national public security organs have innovated case

detection methods, and courts and procuratorates have perfected the judicial protection system to punish the behavior of IPR infringement and counterfeiting in accordance with the law, and to safeguard the rights and interests of the holder of the intellectual property rights.

**(A) Strikes on criminal offences continuing to increase**

**The results of the battle of the public security organs are remarkable**

The public security organs have strengthened the combination of multiple police forces and cross-regional cooperation, and optimized the pattern of cluster campaigns with the mechanism of information investigation to concentrate on eradicating the industrial chain of IPR infringement. From 2013 to 2016, the public security organs of the country have cracked down on nearly 40,000 criminal cases of IPR infringement, arresting nearly 50,000 suspects with more than 67 billion yuan involved.

### **Column 5: Major criminal cases**

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In 2013, MPS launched operation “Cloud Cluster”, destroying 412 gangs who traded drugs illegally on the Internet, taking 1307 criminal suspects into custody and seizing 300 million fake drugs tablets or capsules with the total value of 2.2 billion yuan involved. In 2014, the public security organs cracked down on the sale of counterfeit shoes and clothes, seizing more than 56,000 pieces of counterfeit sports shoes and clothes involving brands such as "NIKE" and "ADIDAS", with the total value of 130 million yuan involved. In 2016, the joint action of the public security organs from 26 provinces (autonomous regions and municipalities) directly destroyed 339 gangs who manufactured and sold counterfeit cigarettes, seized more than 440 sets of equipment, and captured over 541 criminal suspects. The total value amounts to RMB 760 million yuan and it was the highest value on counterfeit cigarettes cases in recent years.

**Judicial organs strictly punish IPR infringement crimes according to the law.** The procuratorial organs have given full play to the functions of procuratorial supervision, arrested and prosecuted lawbreakers of IPR infringement in accordance with

the law, and supervised administrative departments for law enforcement and public security organs for case-filing, to prevent the non-transfer or non-filing of cases and substitution of criminal punishment for fines. The people's court has given full play to the criminal trial function and severely punished the criminals of IPR infringement according to law. From 2013 to 2016, the local people's courts at all levels concluded nearly 40,000 criminal cases involving IPR infringement, effectively convicting 50,000 people.

#### **Column 6: Cases prosecuted by procuratorial organs**

Procuratorial organs initiated public prosecution towards copyright infringement case of the thinking network, the case of pirated “LUOBO” version Windows operating system by Shanghai Ruichuang company, the case of Huashi wine producing fake “Château Lafite Rothschild” and other international well-known wine brands, and the case of Taobaocheng selling products using fake LOUIS VUITTON, GUCCI, CHANEL brands, etc. The copyright infringement case of the “silu.com” is called “the first case of Chinese copyright” by the media.

**Column 7: The hearing of criminal cases on IPR  
infringement by the people's courts**

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In March 2013, the Guiyang Intermediate People's Court heard the case of stealing commercial secrets from "Guiyang time Wharton technology co., LTD.", which sentenced 3 criminals to three to four years in prison with the crime of violating commercial secrets. Since 2013, the people's courts across China have trialed more than 170 cases of violating commercial secrets and 280 people have been convicted.

**(B) Civil and administrative trials improved significantly**

The people's courts have worked hard to improve the professionalization of IPR cases trials, the leading role of judicial protection has been strengthened and the number of IPR cases has increased greatly. From 2013 to 2016, the people's courts concluded 440,000 civil and administrative litigation cases of IPR infringement, with an average annual growth of 15%. In 2016, the retrial rate of the second instance in local people's courts was only 5.9%, decreasing by 45%.

**Column 8: The supreme people' court hearing “Jordan”  
trademark case**

In December 2015, the supreme people's court made a public hearing of the administrative case on dispute over the "Jordan" trademark, and decided that the registration of the disputed trademark had harmed the prior name right of “Jordan” of the applicant. All-type media broadcasted the trial and sentencing of this case live, and diplomatic envoys from the United States, the European Union, Japan and other countries and representatives of the national chamber of commerce of US attended the hearing. More than 20 media including Xinhua News Agency, China Central Television (CCTV) made live coverage. “Today, China is not only a legal place for local intellectual property rights, but also is increasingly a place for international companies to assert their rights,” the Financial Times from the UK said.

**(C) The trial system reform of IPR continuing to  
develop**

**Setting up intellectual property right courts**

In August 2014, the standing committee of the 12<sup>th</sup> National People's Congress adopted “Decision on Establishing Intellectual Property Right Courts in Beijing, Shanghai and

Guangzhou”. From November to December, intellectual property right courts in Beijing, Guangzhou and Shanghai were set up successively. The Supreme People’s Court issued “Notice on Issues concerning the Jurisdiction of Intellectual Property Courts over Cases,” “Provisions on the Jurisdiction of the Intellectual Property Courts of Beijing, Shanghai and Guangzhou over Cases” and “Interim Provisions on Several Issues concerning the Participation of the Technical Investigators of Intellectual Property Right Courts in Legal Proceedings”, which provided a strong guarantee for the smooth operation of the intellectual property right courts. As of June 2017, three intellectual property right courts have received 46,000 IPR cases among which 33,000 cases were concluded.

**Column 9: The IPR court hearing the USB Key patent case**

In December 2016, the IPR court in Beijing tried "USB Key patent case" and the first instance identified that Hengbao Company Ltd. violated the patent for invention of the Watchdata System Company Ltd. The case sentenced the defendant to compensate the plaintiff for economic loss of 49 million yuan, and for attorney fees of 1 million yuan, having extensive social effects.

### **The “three in one” reform of IPR trial**

The “three in one” reform of intellectual property in the civil, administrative and criminal cases is an important measure of improving the judicial system of intellectual property rights. In July 2016, the Supreme People’s Court issued “Opinions on Promoting the “Three in One” Trial of Civil, Administrative and Criminal Cases Involving Intellectual Property Rights in Courts Nationwide”, hence the work had been implemented throughout all courts. The reform of “three in one” has played an important role in unifying the judicial standard, improving the quality of trial, optimizing the allocation of judicial resources, and improving the overall effectiveness of judicial protection.

### **Setting up a special tribunal of IPR**

In order to enhance the professional level of intellectual property rights trial, the Supreme People’s Court has actively promoted the establishment of special judicial institutions for intellectual property rights in some cities. At present, intellectual property right courts have been set up and accepting cases in Nanjing, Suzhou, Wuhan, Chengdu, Hefei, and Ningbo, and such courts are to be set up in Hangzhou, Jinan, Qingdao, and Fuzhou.

#### **IV. The enhancement of coordination**

While China continues to crack down on intellectual property rights violations, it also pays attention to strengthening the mechanism construction, forming the work pattern of IPR protection in a way of unified national leadership, coordination of different departments, local joint actions and multilateral participation. It greatly enhances the work against IPR infringement and counterfeiting together.

##### **(A) The strengthening of policy guidelines**

In recent years, China has issued a series of policy documents and plans to strengthen IPR protection, placing the protection of intangible assets such as intellectual property in the same important position as that of tangible property. In view of new trends and new features of IPR infringement and counterfeiting activities, we have strengthened the use of new technologies, and enhanced supervision in the course and afterwards so as to maintain a fair and competitive market order.

### **Column10: Important policy documents in recent years**

In December 2015, “Several Opinions of the State Council on Building a Powerful Intellectual Property Nation under New Conditions”.

In November 2016, “Opinions of the Central Committee of the CPC and State Council on Perfecting Property Protection System Regarding to Property Protection in Accordance with the Law”.

In November 2016, “Several Opinions of the Supreme People's Court on Giving Full Play to the Functions of Trials and Effective Judicial Protection of Property Right”.

In December 2016, “Opinions of the State Council on Issuing the 13<sup>th</sup> National Five-Year Plan on IPR Protection and Operation”.

In March 2017, “Opinions of the State Council on Major Tasks for the Nationwide Crackdown on IPR Infringements and the Production and Sale of Counterfeit and Shoddy Commodities under New Conditions”.

In April 2017, “Notice of the Supreme People’s Court on Issuing ‘Outline of China Intellectual Property Right Judicial Protection (2016-2020)’”.

### **(B) The strengthening of unified leadership**

China’s protection of intellectual property rights involves a number of departments. In order to strengthen the unified leadership on the combat against IPR infringement and

counterfeiting, China set up the National Leading Group on the Fight against IPR Infringement and Counterfeiting in 2011 with the State Council Vice Premier as the head of the Group, leading unified national campaign on combatting IPR infringement and counterfeiting. There are 29 members agencies in this group now. Provincial (Autonomous Regional, Municipal) leading groups were also set up accordingly in succession, forming a complete national system on IPR.

**(C) Promoting the convergence of administrative law enforcement and criminal justice**

In recent years, China has strengthened the convergence of administrative law enforcement and criminal justice, deepening the reform of law enforcement system. In March 2012, the 11th National People's Congress (NPC) examined and approved the newly revised Criminal Procedure Law, which specifically added the provision that "physical evidence, documentary evidence, audio-visual recordings, electronic data, and other evidence gathered by an administrative authority in the process of law enforcement and case investigation may be used as evidence in criminal procedures". It provides important legal safeguard for evidence transfer between administrative law enforcement and criminal justice. The members of the National

Leading Group on the Fight against IPR Infringement and Counterfeiting established the working mechanism of clue notification, case transfer, joint law enforcement, assistance in handling a case and so on, promoting the information sharing in cross-sectoral, cross-regional, cross-level combat against IPR infringement and counterfeiting and improving work efficiency.

#### **(D) Regional cooperation**

With the rapid development of the Internet economy, global IPR infringement and counterfeiting shows the trend of integrated online and offline operation. In this connection, China vigorously promotes cross-regional law enforcement cooperation and all-chain strike on the crime.

#### **Regional cooperation between Yangtze River Delta and Pan - Pearl River Delta**

In August 2016, the combat against network counterfeiting of Yangtze River Delta regional cooperation, namely, “Operation Cloud Sword” was jointly launched in five provinces and municipalities including Zhejiang, Shanghai, Jiangsu, Anhui and Jiangxi. In May 2017, the Yangtze River Delta regional cooperation extended to the Pan-Pearl River Delta region, including Fujian, Hunan, Guangdong, Guangxi, Hainan, Sichuan, Guizhou, Yunnan and other provinces (autonomous

regions), and regional linkage mechanism of crackdown on IPR infringement and counterfeiting were established in 13 provinces (municipalities).

### **Beijing -Tianjin - Hebei regional cooperation in North China**

In July 2016, a collaborative mechanism was established in five provinces (autonomous regions, municipalities), namely, Beijing, Tianjin, Hebei, Shanxi and Inner Mongolia to promote law enforcement in collaboration with departments and branches at ground levels, and to focus on eliminating the regulatory blank zone of administrative junction area. Six cross-regional law enforcement cooperation actions were carried out in the area of seeds and edible agricultural products. In August 2017, we jointly carried out special operation cracking down on counterfeit vehicle fuel, and on criminal acts in counterfeit vehicle fuel and lubricants of well-known brands.

**The regional cooperation of “Silk Road Economic Belt”.** In August 2017, we jointly carried out improvement of import and export along the Silk Road Economic Belt, including 10 provinces (autonomous regions, municipalities), namely, Henan, Shandong, Hubei, Chongqing, Tibet, Shanxi, Gansu, Qinghai, Ningxia and Xinjiang. We focused on strengthening supervision

on import and export commodities of the land transit of China and Europe, export materials of infrastructure projects and machinery and equipment in countries in the Belt and Road Initiative, and cross-border e-commerce goods and so on.

**Column11: Operation Cloud Sword**

Thirteen provinces (autonomous regions, municipalities) in the Yangtze River Delta and the Pan-Pearl River Delta has established several regulations and systems such as clues notification, evidence transfer, case investigation, joint case handling and mutual recognition of inspection and identification results. Relying on Alibaba Group's big data of network transactions, they jointly combatted illegal behavior of IPR infringement and counterfeiting. On the basis of clues from Alibaba Group, law enforcement agencies implemented cross-provincial (autonomous regions, municipalities) action to protect the legitimate rights and interests of a group of brands holders of China and foreign countries such as Apple, Chanel, Johnson & Johnson, Sony, Bayer and Nanfu, Yang River and so on.

**(E) Strengthening social co-governance**

Intellectual property rights protection is systematic. In recent years, China has motivated its enterprises, industry organizations and the public to actively participate in IPR protection in order to accelerate setting up social governance pattern.

## **Expanding the scope of cooperation between government and enterprise.**

General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) set up the National E-commerce Product Anti-counterfeiting Rights Cooperation Network in Hangzhou, motivated production enterprises, e-commerce enterprises, industry associations and others to involve in anti-counterfeiting, and the number of the first batch of production enterprises and e-commerce enterprises reached 200. China's large-scale e-commerce platform, based on big data analysis of online transactions, actively participated in cooperation with the administrative law enforcement departments and public security organs and in transferring case clues, effectively improving the accuracy of law enforcement.

### **The function of industry organizations**

Since 2014, the State Intellectual Property Office (SIPO) has exerted the professional advantages of associations, chambers of commerce and other industry organizations, and has organized mediation pilot project over IPR disputes to expand diversified solutions. At the beginning of 2015, the China Anti-Infringement and Anti-Counterfeit Innovation Strategic Alliance (CAASA) under the China

Industry-University-Research Institute Collaboration Association (CIUR) was set up, which assembled more than 500 industry organizations and enterprises such as China Trademark Association, Copyright Society of China and China Written Works Copyright Society to assist law enforcement departments in investigating and penalizing a number of infringement cases. Alibaba banded with well-known brands and enterprises of China and foreign countries to set up Alibaba Anti-counterfeiting Alliance (AACAA), and JD Group banded with Baidu, Lenovo and other enterprises to set up Strategic Alliance of Protection on IPR of the Internet Enterprises to strengthen self-discipline.

### **Strengthening the social supervision mechanism**

In recent years, we strengthened publicity and education, popularized intellectual property knowledge, enhanced public awareness, and encouraged the public to file complaints of IPR infringement and counterfeiting. Over the years, an IPR Protection Week has been staged around the World Intellectual Property Day throughout the country, and counterfeit goods have been destroyed publicly. State organs such as the Supreme People's Court, the Supreme People's Procuratorate, the General Administration of Customs, the State Administration

for Industry and Commerce, the State Administration of Press, Publication, Radio, Film and Television and the State Intellectual Property Office announced typical cases of protection of intellectual property respectively in law enforcement and judiciary, creating a good social atmosphere. China's website for the campaign against IPR infringements and counterfeits ([www.ipraction.gov.cn](http://www.ipraction.gov.cn)) has opened English version and opened 37 local stations with the average daily more than 100,000 visits per day. Since 2016, State Intellectual Property Office (SIPO) has organized the pilot project of social supervisors on protection of intellectual property rights.

#### **V. Deepening international cooperation**

Intellectual property is a cultural treasure that people around the world cherish. China is always open and ready to strengthen IPR cooperation with other countries. Currently, China's laws, regulations and practices in IPR protection are in line with international rules. China has signed nearly 20 IPR international conventions or treaties including the Paris Convention for the Protection of Industrial Property, Washington Treaty on Intellectual Property in Respect of Integrated Circuits, Berne Convention for the Protection of Literary and Artistic Works, International Convention for the

Protection of New Varieties of Plants and Beijing Treaty on Audiovisual Performances. China actively fulfills its international obligations and extensively participates bilateral and multilateral IPR exchanges and negotiations. We contribute to the cracking down on IPR crimes and IPR protection with our own wisdom and resources.

#### **i. Pushing Ahead with Bilateral Cooperation**

China-US cooperation: In 2004, China and the U.S. set up an IPR working group under the U.S.-China Joint Commission on Commerce and Trade (JCCT). The working group holds deputy-ministerial and department level meetings to address shared concerns. In 2011, China and the U.S. signed the The United States-China Intellectual Property Rights (IPR) Cooperation Framework Agreement and the two sides have conducted a series of exchanges since then. In recent years, China and the U.S. have had in-depth and fruitful discussions under the framework of the Strategic Economic Dialogue and Joint Commission on Commerce and Trade (JCCT).

China-EU cooperation: Since 2004, China and the EU have established the IPR working group and dialogue mechanism to facilitate communication on IPR issues that concern the two parties. Since 1996, China and the EU have carried out three

IPR joint programs with varied activities. These programs participated by many agencies set examples for bilateral IPR cooperation. In September 2017, China and the EU initiated the fourth IPR cooperation program. Besides, the negotiation on China-EU Agreement on Cooperation and Protection of Geographical Indications has gained major progress. The two sides have published the list of the first batch of geographical indications and completed the exchange of oppositions.

Other bilateral cooperation: MOFCOM held regular working group meetings with Russia, Japan, Switzerland and Brazil under bilateral commerce and trade frameworks and organized the negotiation of IPR chapters in a number of free trade agreements such as the China, Japan and Korea FTA and the Regional Comprehensive Economic Partnership. We have also strengthened IPR communication with emerging countries. GAC worked with the customs of over 130 countries and regions, and signed over 190 documents including MOUs on IPR law enforcement with the U.S., the EU, Russia, Japan and Korea. SAIC held in-depth communication with the United States Patent and Trademark Office in terms of geographical indications, trademark squatting and trademark/brand innovation. NCAC signed MOUs of strategic cooperation with their

counterparts of the U.S., Britain, Japan, Korea and Thailand. AQSIQ has established overseas anti-counterfeiting and rights protection mechanisms with 15 countries and trained more than 1,000 officers of product quality inspection for African countries.

## **ii. Extensive multilateral IPR cooperation**

In 2017, the Ministry of Commerce held the first meeting of the BRICS IPR Cooperation Mechanism. The meeting passed the BRICS IPR Cooperation Guidelines. The Ministry of Commerce also actively participated in the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) and the APEC Intellectual Property Rights Experts Group (APEC-IPEG). SIPO set up the BRICS Heads of Intellectual Property Office (BRICS HIPO) and worked with the World Intellectual Property Organization to jointly hold the high-level conference for countries along the “Belt and Road” to strengthen cooperation. SAIC established the trademark dialogue among China, Europe, the U.S., Japan and Korea (TM5) and worked with WIPO to host the 2017 Worldwide Symposium on Geographical Indications. NCAC cooperated with WIPO to hold the International Forum on Copyright, Protecting the Rights of Creators and Promoting the

Development of Culture and Film Industry. China Council for the Promotion of International Trade held the International Business Summit of Intellectual Property.

### **3. Joint Law Enforcement Actions**

MPS worked with the INTERPOL and other 35 international, national and regional organizations in the U.S., the EU, etc., to build channels for IPR criminal law enforcement cooperation. The cooperation focuses on the intelligence exchange, investigation and evidence collection, joint action and judicial assistance in cross-border cases. MPS has led Operation REAL of the INTERPOL for years and cracked down hundreds of cases.

#### **Column 12: China-US Joint Law Enforcement on Trans-border Crimes**

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In September 2015, MPS and the US Department of Homeland Security worked closely to crack down a case involving counterfeit automobile airbags of 11 brands such as Ford, Benz, Audi and Toyota, with the value exceeding seven million yuan. China arrested three suspects and the U.S. launched criminal investigations against two suspects. In March 2016, during the joint action of China-US Customs, the US Customs received information from the Chinese Customs and took criminal compulsory measures on suspects infringing the NBA logo on caps sold in the US illegally.

GAC endorsed the Registration for Customs enforcement of intellectual property rights and implemented EU-China Action Plan (2014-2017) on IPR Customs Enforcement. In 2016, Chinese Customs carried out 7 joint law enforcement actions with the Customs of the U.S., European countries, Russia, Japan and Korea, seizing more than 100,000 infringing products. In 2017, GAC and the US Customs launched a one-month joint action. The two sides chose their key ports of entry and focused on express, maritime transportation and mail delivery as well as consumer electronic products, automobile parts, food and drug and sportswear. This joint action represented a new way of law enforcement cooperation.

### **Column 13: Awards Presented by International Organizations**

In recent years, INTERPOL presented a number of awards to Chinese public security authorities, including Outstanding Contribution Award for Fighting Infringing and Counterfeiting Products and Best Regional Case Award and to Chinese Customs such as International IPR Crimes Investigation Cooperation Award. Global Anti-Counterfeiting Group granted Chinese public security authorities the Highest Contribution Award for Global Anti-Counterfeiting Law Enforcement Agency and Chinese Customs the “GAC Award for National Public Body”. Global Intellectual Property Center of US Chamber of Commerce presented Chinese public security authorities the 2014 IPR Defenders Award.

China has enhanced the level of IPR protection. Chinese enterprises and the general public have raised their IPR awareness. China experienced robust innovation and the number of IPR application and registration in China has increased by a large margin. In 2016, the Chinese government received 1.339 million patent applications, which increased by 21.5% compared to the previous year, making China the first in the world for the sixth consecutive year. The Chinese government received 3.691 million trademark applications, grown by 28.4% compared to the last year and received 2.008 million registration applications of copyrights, with an increase of 22.3% compared to 2015. Among the above numbers, according to Patent Cooperation Treaty (PCT), China received 45,000 international patent applications, up by 47.3%. 21,000 international trademark applications were filed in China, making China No.1 in terms of filing amount in the Madrid Union for the 12<sup>th</sup> consecutive year. According to the survey by the Patent Protection Association of China, China Trademark Association and Copyright Society of China, the public shows growing satisfaction for IPR protection. The score in 2016 was 14 percentage points higher than that of 2012. WIPO said that China had made great progress in IPR protection and the transition from “Made in China” to “Created

in China”.

## **VI. The business environment has been constantly optimized**

Strengthening IPR protection is an important aspect of China's business environment construction. In recent years, China has been committed to optimizing the business environment in all respects. Focusing on giving better play to the decisive role of the market resource allocation, China has sped up the transformation of government functions and vigorously promoted the reform characterized by “streamlining administration, delegating more powers to lower-level governments and society, improving regulation and optimizing services”. The convenience and openness of the market has been further improved. In June 2017, the total number of market subjects of the whole country rose by over 60% compared with the end of 2012, and the number of newly-established enterprises each day rose to 16,000 from 6,900 in 2013. New industries, new business types and new modes have enjoyed prosperous development. According to the Doing Business 2017 report released by the World Bank, the global ranking of China's ease of doing business rose by 18 rankings in the past three years, and the ease of starting a business rose by 31

rankings.

**i. Production and operating activities have become more convenient**

The Chinese Government has comprehensively promoted streamlining administration and delegating powers, thus the market convenience has been greatly improved.

**Improving investment facilitation**

In September 2013, a pilot on the pre-establishment national treatment and negative list management mode for foreign investments was conducted in Shanghai Pilot Free Trade Zone to experiment with record-filing administration of the establishment and alteration of foreign investment projects and enterprises outside of the negative list. After that, the *Law on Wholly Foreign-Owned Enterprises* and three other laws were amended. Negative list management was implemented across the whole country from October 2016, and 96% of the wholly foreign-owned enterprises were brought under record-filing administration. Currently, the processing time of foreign investments that are not involved in the nationally prescribed special entry management measures have been reduced to three working days from the original 20 working days on average. China has actively participated in the process of global trade and

investment liberalization, advanced agreement on the *Trade Facilitation Agreement Facility* among multiple parties and taken the lead in completing domestic examination and approval. Meanwhile, China has also facilitated the *G20 Guiding Principles for Global Investment Policymaking* and the *Outlines for BRICS Investment Facilitation*, and put forward China's plan for investment facilitation at the WTO.

### **Reducing examination and approval items**

As of June 2017, the departments under the State Council has removed and delegated to local authorities over 40% of administrative examination and approval items, and non-administrative licensing examination and approval has been completely removed. The number of professional qualifications established by departments under the State Council has been reduced by over 70%. The number of investment projects examined and approved at the central government level has been accumulatively reduced by 90%, and 87% of the 226 items of prior examination and approval in industrial and commercial registration have been either altered to post-examination and approval or removed. The examination and approval of foreign investment projects that are encouraged or permitted have been changed into record filing. And the approval authority of local

governments over foreign investment projects that are restricted has been increased from USD 50 million to USD 300 million.

### **Optimizing business procedures**

The industry and commerce departments have constantly pressed ahead with business system reform, strictly implemented the commitment-to-pay registered capital system, pressed ahead with reforms in the registration system integrating multiple certifications and licenses into one consolidated business license in which every unified business license is accompanied by a unified social credit code and the system of “approval certificate after business license”, simplified the registration procedures of the residences (sites of business operation) of market subjects, carried out reforms of company name registration management and the simplified enterprise deregistration procedures, and implemented electronic licenses and whole-process electronic business registration. The time required for an enterprise to get registered has been greatly shortened.

### **ii. Further opening to the outside world**

In recent years, China has continuously improved its foreign investment policy, and made great efforts to build a new system of open economy. There has been an obvious

improvement in the opening up of the market. Foreign-funded enterprises have not only shared the fruits of China's economic development, but also made positive contributions to China's economic development.

### **Relaxing access limits for foreign investment**

In the past three years, the Catalogue of Industries for the Guidance of Foreign Investment has been amended twice. 2015 version of the Catalogue reduced the number of restricted measures from 180 to 93, and 2017 version of the Catalogue further reduced the number to 63. The comprehensive pilot on opening up Beijing's service sector wider to the outside world has been carried out, and measures have been taken in the fields of science and technology, cultural and education, finance, business and tourism, health and medicine, air transportation, culture and arts and legal services. In June 2017, the foreign investment negative list of the Pilot Free Trade Zone was amended for the third time, and the number of restricted measures was significantly reduced from the original 190 to 95. ~~There were not any laws in China which force foreign investors to transfer their technologies.~~

### **Expanding areas of opening up**

In January 2017, the State Council printed and issued the

*Circular on Several Measures concerning Opening Wider to the Outside World and Making Active Use of Foreign Investment.*

The Circular put forward 20 measures including significantly relaxing access fields or canceling access restrictions for foreign investments, specifying that both foreign-funded enterprises and domestic enterprises are equally suitable for the policy measures of the “Made in China 2025” strategy, further creating fair competition environment for domestic and foreign-funded enterprises through qualification permission, government procurement, standard establishment, scientific and technological policies and registration, encouraging foreign investments in high-end manufacturing, intelligent manufacturing and green manufacturing, and production-related service sectors such as industrial design and creativity, engineering consultation, modern logistics, inspection, testing and authentication. In August 2017, the State Council printed and issued the *Circular on Several Measures Promoting the Growth of Foreign Investment* which put forward 22 measures including further expanding the scope of opening up in market access and improving the IPR protection of foreign-invested enterprises. The measures involve facilitating the opening up of the manufacturing of special vehicles and new energy vehicles,

ship designing, maintenance of regional and general-purpose planes, international maritime transportation, railway passenger transportation, gas stations, business sites of Internet access services, call centers, performance brokerage, banking, securities and insurance, and the timetables and routes have been specified.

**Column 14: The launch of the IPR Protection Action among Foreign-invested Enterprises**

With a view to implement the *Circular on Several Measures Promoting the Growth of Foreign Investment*, 12 departments worked together to carry out the IPR Protection Action among Foreign-invested Enterprises in September 2017. Aiming at the sectors with relatively intensive complaints from foreign-invested enterprises such as trade secret infringement, free-riding and other violations of trademark right, patent infringements and Internet-based infringements and piracy, these departments have taken centralized actions to strengthen regulation over import, export and mailing, and have intensified criminal punishments and judicial judgments.

According to World Investment Report 2016 published by United Nations Conference on Trade and Development in 2016, China is still one of the most appealing hosts for investment in the world; a survey conducted by AmCham China shows that

over 60% of its member enterprises regard China as one of the three major investment destinations in the world, and 68% of its member enterprises have plans to expand investment in China; a survey conducted by the European Union Chamber of Commerce in China finds that over 2/3 of enterprises invested in China by the EU are profitable, and over 1/2 of its member enterprises are planning to expand operation scales in China; the results of a questionnaire conducted by Japan External Trade Organization among Japanese enterprises in 20 Asia-Pacific countries and regions indicate that the proportion of Japanese enterprises with the intention to expand businesses in China has risen by 2% compared to 2015.

### **iii. Constant improvement in the mechanism guaranteeing fair competition**

China has strengthened the construction of the business environment under the rule of law. When formulating policy measures, China has implemented comprehensive reviews on legitimacy, compliance and fair competition.

Since 2013, the 12 departments under the State Council have established a working mechanism which eliminates regional blockades and breaks industrial monopolies, and focused on cleaning up and abolishing the provisions and

practices obstructing the construction of a unified national market and fair competition. A total of 236,000 local governmental regulations and normative documents were reviewed, and 476 of these documents were amended, abolished or declared ineffective. This has promoted the construction of a unified national market, and guaranteed the free flow of various production factors among the regions.

In June 2014, the General Office of the State Council printed and issued the *Circular on Further Strengthening the Compliance of Trade Policies*, requiring that the trade policies formulated by various departments under the State Council and local people's governments at various levels and their departments shall comply with WTO rules. MOFCOM has conducted compliance evaluation on over 1,000 policy documents so as to ensure that the policy documents adopted are consistent with the commitments made by China when entering the WTO.

In June 2016, the State Council printed and issued the *Opinions on Establishing a Fair Competition Review System in the Development of the Market System*, requiring various departments and regions to, while formulating policy measures, conduct reviews on fair competition so as to prevent policy

measures that eliminate or restrict competition and maintain a unified national market and fair competition.

## **Conclusion**

The IPR system, since its creation, has effectively protected the fruits of labor for innovators, inspired the creativity of human beings, and promoted the rapid economic, social and cultural development. China started late in IPR protection, but has made remarkable achievements over just thirty years. IPR protection is a global issue and an eternal theme in the process of innovation and development of all countries. China is soberly aware that, as the largest developing country, it cannot establish the IPR system and enhance the IPR awareness of the whole society overnight. China will make overall plans and take all factors into consideration, implement strict IPR protection, strengthen international exchanges and cooperation with a positive and open mind, and prevent and stop IPR abuse according to common international rules, not only to protect the interests of IPR owners, but also to allow innovations to better enhance the wellbeing of all mankind. At the heart of today's world trade system is the rule-based multilateral trading system,

represented by the WTO. We strongly oppose the unilateralism and protectionism adopted by some countries. China will continue to strengthen the business environment construction in an all-round way, build an open, transparent and non-discriminatory market environment, effectively safeguard the multilateral trading system, strictly abide by multilateral rules and promote the prosperity and development of the global economy.