

People's Republic Of China Intellectual Property Rights Memorandum Of Understanding--1995 Action Plan

PRIVATE Ministry of Foreign Trade and Economic Cooperation Minister Wu Yi

February 26, 1995

Dear Minister Wu Yi:

I have the honor to acknowledge receipt of your letter of this date, including its annex, which reads as follows:

Dear Ambassador Kantor:

I have the honor to refer to the consultations between representatives of the Government of the People's Republic of China (China) and the Government of the United States of America (United States) which were conducted in the spirit of the 1992 Memorandum of Understanding between our governments concerning the protection of intellectual property rights. Both of our governments are committed to providing adequate and effective protection and enforcement of intellectual property rights and have agreed to provide this to each other's nationals.

China's actions in this respect show considerable progress and determination to achieve effective enforcement of intellectual property rights through judicial and administrative procedures. China has created specialized intellectual property courts to hear these cases and I can confirm that the Civil and Criminal Procedure Laws of the People's Republic of China empower the courts to address infringement of intellectual property rights through measures to stop infringement, preserve property before and during litigation, and to order the infringer to provide compensation to right owners for infringement of their intellectual property rights. In addition, the courts also act to preserve evidence to permit effective litigation.

China's Supreme People's Court has issued a circular instructing courts at various levels to address intellectual property cases expeditiously, including cases involving foreign right holders. In respect of taking criminal action against infringers, our procuratorates are actively pursuing criminal infringement cases.

I have attached to this letter a State Council Intellectual Property Enforcement Action Plan (Annex I) that will be carried out immediately. This Action Plan strengthens the enforcement efforts that China has already taken and establishes a long term enforcement structure so that the peoples government in the provinces, directly administered municipalities, autonomous regions and cities meet the requirements of that Plan and China will actively implement it. Under Chinese law, each administrative authority mentioned in the Action Plan is fully empowered to take the specified steps to effectively enforce intellectual property rights.

Chinese authorities have recently taken effective actions to enforce intellectual property rights. Recently seven plants producing infringing products have been closed, business licenses revoked, and more than two million infringing CDs, LDs and copies of computer software have been seized and destroyed. Under the Chinese government's action plan, this effort will intensify and by July 1, 1995, investigation of all production lines suspected of producing infringing CDs, LDs and CD-ROMs will be completed. Factories that have engaged in infringing activities will be punished through seizure and forfeiture of infringing product and all infringing copies will be destroyed and the materials and implements directly and predominantly used to make the infringing product will be seized, forfeited and defrayed. Business licenses and permits will also continue to be revoked in appropriate cases.

Exports of infringing products have been banned. The establishment of a copyright verification system and the use of unique identifiers on CDs, CD-ROMS, and LDs will provide a vital tool to prevent the production of infringing goods and export of those goods. Permits to engage in activities related to audio-visual products will

not be issued without copyright verification and imprint of the unique identifier. More than one violation of this condition will result in revocation of the permit and repeat serious offenders will have their business licenses revoked.

Retail establishments will be inspected under the Action Plan and enterprises will keep records of inventories and other information to strengthen enforcement. Recent raids on computer software enterprises are an example of China's effective enforcement of intellectual property rights.

Another aspect of China's decision to develop its economy and open its markets further is increased cooperation and trade in products protected by intellectual property rights. China has recently approved the establishment of a representative office for the International Federation of Phonogram Industries (IFPI) and will examine and approve, when published requirements are met, the pending application of the relevant entity for the verification of motion picture copyright, as well as other entities involved in copyright verification. Obtaining this approval does not prejudice the ability of these offices to engage in other activities in accord with Chinese laws and regulations.

China confirms that it will not impose quotas, import license requirements, or other restrictions on the importation of audiovisual and published products, whether formal or informal. China will permit U.S. individuals and entities to establish joint ventures with Chinese entities in China in the audiovisual sector for production and reproduction. These joint ventures will be permitted to enter into contracts with Chinese publishing enterprises to, on a nationwide basis, distribute, sell, display and perform in China. China will immediately permit such joint ventures to be established in Shanghai, Guangzhou, and moreover, other major cities, and will then expand the number of these cities, in an orderly fashion, to thirteen (13) by the year 2000. U.S. individuals and entities will be permitted to enter into exclusive licensing arrangements with Chinese publishing houses to exploit the entire catalogue of the licensor and to decide what to release from that catalogue. China will also permit U.S. individuals and entities to establish joint ventures in the computer software sector and these joint ventures will be permitted to produce, and sell computer software and computer software products in China.

China will continue to permit U.S. individuals and entities to enter into revenue sharing arrangements with Chinese entities. Permissible arrangements will include, for example, licensing agreements under which the U.S. entity receives a negotiated percentage of revenues generated by film products.

China will adopt or enforce measures necessary to protect public morals or to maintain public order, as long as such measures are applied consistently and in a non-discriminatory, non-arbitrary manner and do not operate as a disguised restriction on trade. By October 1, 1995, China will publish all laws, rules, regulations, administrative guidance, or other official documents concerning any limitation on, regulation of or permission required to engage in all activities identified above. The audiovisual departments under the State Council will intensify their efforts to formulate the regulatory rules on audio-visual products which will clarify the specific censorship regulations for publication and importation of audio-visual products. For audio-visual products that meet the provisions of the censorship requirements, their publication and import will be approved without any restrictions in terms of quantity. The censorship regulations will be open, transparent and published. Determinations as to censorship requirements will normally be made within ten days, but in no event longer than sixty days from receipt of an application.

In light of China's policies of market opening, representatives of U.S. enterprises are invited to begin discussions on their establishment in China, including possible licensing arrangements, as soon as possible.

It is my understanding that the United States will provide assistance to China with respect to the protection and enforcement of intellectual property rights. This work will be implemented mainly through the U.S. Customs Service, U.S. Department of Justice and the United States Patent and Trademark Office.

The U.S. Customs Service is prepared to provide cooperative and reciprocal assistance to China on providing improved enforcement of intellectual property rights. This assistance and coordination effort could include: (1) providing training, in China, by U.S. Customs personnel, of Chinese customs officers with responsibility for enforcing intellectual property rights, and (2) providing mutually agreed relevant technical equipment to assist in the enforcement of intellectual property rights. Training will likely include: how to identify infringing merchandise

through physical examination, verification of documents, and laboratory testing, and assistance in building a centralized system of intellectual property rights recordations. The U.S. Patent and Trademark Office will also assist in training Chinese personnel, including through providing training and documents for the people who work on verification of well-known marks and mechanisms for establishing an administrative appeals process.

China and the United States will exchange information and statistics on a quarterly basis beginning on June 1, 1995, on intellectual property enforcement activities in their two countries. Beginning on January 1, 1996, this exchange will be carried out on a semi-annual basis for the next two years, and on a schedule to be agreed thereafter.

Under these exchanges, China will provide information and statistics concerning enforcement, throughout the country, of intellectual property rights of U.S. nationals and joint ventures with U.S. nationals, by type of intellectual property, establishments raided, and the value and disposition of infringing products and machinery and implements. Information and statistics on prosecutions and administrative and court decisions will also be provided.

Under these exchanges, the United States will provide to China, on the same schedule, information and statistics concerning the customs seizure value of infringing goods by commodity, the seizure value of infringing goods by type of intellectual property right, the seizure value of Chinese infringing goods by commodity, and the seizure quantities of infringing goods by commodity. The United States will also provide statistics on federal intellectual property enforcement activities, including information on prosecutions for copyright infringement and trademark counterfeiting and court decisions in intellectual property cases. The United States will also provide information and statistics on Chinese products that are infringed in the United States.

China and the United States will, upon request, consult and exchange information on the license verification system set out in the Action Plan and particular applications of that system. China and the United States require that public entities in both countries shall not use unauthorized copies of computer software in their computer systems and legitimate software will be used. They likewise require that adequate resources shall be provided to permit the acquisition only of authorized computer software.

In addition, China and the United States will consult promptly at the request of either government with respect to any matter affecting the operation or the implementation of the provisions of this letter, including its annex. In addition, both governments agree to consult, during the first year on a quarterly basis, semiannually for the following two years and then on a schedule to be agreed, on the implementation of the Action Plan and its effectiveness.

On the basis of the foregoing, the United States will immediately revoke China's designation as a "special 301" priority foreign country, and will terminate the section 301 investigation of China's enforcement of intellectual property rights and market access for persons who rely on intellectual property protection and rescind the order issued by the U.S. Trade Representative on February 4, 1995, imposing increased tariffs on Chinese exports.

Please confirm that this letter, including its annex, and your letter in reply constitute an Understanding between our two Governments.

With assurances of my highest consideration.

Wu Yi

Minister of Foreign Trade and Economic Cooperation

I have the honor to confirm that your letter, including this annex, and this letter constitute an Understanding between our two governments.

With my highest regard,

Michael Kantor

United States Trade Representative

ANNEX I

ACTION PLAN FOR EFFECTIVE PROTECTION AND ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Since infringement of intellectual property rights, including copyright piracy, patent infringement, trademark counterfeiting, and unfair competition, is prohibited in China, the State Council's Working Conference on Intellectual Property has developed this Action Plan to effectively crack down on infringement of intellectual property rights in China. The People's Governments of provinces, directly administered municipalities, autonomous regions and cities, as well as government ministries and departments are to participate in the substantial reduction of intellectual property rights infringement through effective implementation of this Action Plan.

This Action Plan sets forth both immediate and longer-term projects for the effective enforcement of intellectual property rights through the exercise of existing and expanded authority. The key short-term projects of this Action Plan include the institution of a special enforcement period. During this period, intensive action will be taken to investigate and punish infringement of intellectual property rights, targeting efforts on areas with a high level of infringement and actions against the manufacture, reproduction, and distribution of infringing products.

Long-term (3-5 years), sustained enforcement will be carried out by the State Council's Working Conference on Intellectual Property Rights, other working conferences on intellectual property, enforcement task forces and ad hoc groups, which will coordinate and work together to provide effective enforcement of intellectual property rights and punishment of infringement within each province, directly administered municipality, autonomous region and city, and among them. Administrations, including the Chinese Customs, State Council Departments, police and other relevant agencies will also participate in providing effective enforcement of intellectual property rights.

I . Intellectual Property Rights Enforcement Structure

A. State Council Working Conference on Intellectual Property Rights And Sub-Central Working Conference

1. The State Council has established a Working Conference on Intellectual Property Rights which through forceful measures centrally organizes and coordinates protection and enforcement of all intellectual property rights throughout the country, and will ensure that effective protection is provided and infringement of intellectual property rights is substantially reduced. For the purposes of this Plan, intellectual property rights include copyright and related rights, trademarks, patents, protection against unfair competition, including protection of undisclosed information, and other relevant subject matter.

2. The State Council's Working Conference on Intellectual Property Rights is comprised of the State Council's departments in charge of science, technology, foreign trade and economic cooperation, foreign affairs, press and publication, culture, broadcast, film, television, justice, public security, patent, copyright, industrial and commercial administration, and customs, as well as the departments in charge of the relevant industries.

3. The main duties that the State Council's Working Conference on Intellectual Property Rights will carry out are:

- To coordinate, study and decide on the major policies and measures for the effective protection and enforcement of intellectual property rights, and to coordinate and organize enforcement activities among provinces, directly administered municipalities, autonomous regions and cities, as well as government ministries and departments (hereinafter referred to as regions and departments) to achieve uniform and effective protection and enforcement of intellectual property rights;

- To monitor the implementation of the laws and regulations on intellectual property rights, to organize and instruct the relevant authorities within regions and departments to investigate and substantially reduce infringement of intellectual property rights;

- To instruct and organize the relevant authorities within regions and departments to provide education on and publicity for the laws regarding intellectual property rights, to foster the understanding of intellectual property rights protection among people throughout the country, and to improve intellectual property law enforcement skills of leading officials at various levels of government, as well as the skills of enforcement personnel.

-- To instruct that administrative, civil and criminal processes and sanctions are applied consistently and uniformly to all Chinese and foreign persons and all public, private, and not for-profit entities, that engage in infringing conduct.

4. The State Council Working Conference will direct and coordinate the work of intellectual property working conferences which the People's Governments of at least 22 provinces, directly administered municipalities and autonomous regions, and major cities including Guangdong, Beijing, Shanghai, Tianjin, Wuhan, Nanjing, Shenzhen, Jiangsu, Zhejiang, and Fujian, will organize to carry out activities within their jurisdiction at the direction of the State Council Working Conference so that effective enforcement is achieved throughout the country.

5. The State Council Working Conference will issue directions to the provincial, directly administered municipalities, autonomous regions and city bodies coordinating and guiding intellectual property rights, to formulate action plans and work programs in their own localities for effective enforcement of the laws on intellectual property rights, as well as plans on providing information and education on intellectual property rights.

a. Each plan or work program shall provide for effective law enforcement, eliminate interference by local protectionism, and ensure complete and effective implementation and enforcement of the laws and regulations on intellectual property rights in the respective locality. The State Council Working Conference will receive these action plans and work programs and, within three months after issuance of this Action Plan, will inform the relevant Conference of any problems with that Conference's action plan or work program and issue directions to address the problems at that time.

b. In the immediate future the focus will be on selected key regions and problems where serious efforts shall be made to investigate and tackle major cases, and criminals shall be punished.

c. The provinces, regions and cities in which working conferences are established shall issue follow-up reports each quarter for the first year and semi-annually subsequently, beginning on June 1, 1995, on implementation of the action plans and work programs, which will be published as soon as they are issued.

d. Included within each report will be the name of a contact person in the working conference who will be responsible for coordination of all intellectual property protection for that conference and who will be a point of access for right holders.

6. The State Council's Working Conference on Intellectual Property Rights has established an Office within the State Science and Technology Commission to prepare for and handle the day-to-day functions of the State Council's Working Conference.

(a) The Office of the State Council's Working Conference on Intellectual Property Rights has established a system of liaison officers. The liaison officers of various regions and departments will report to the Office of the State Council's Working Conference on Intellectual Property Rights regularly regarding actions taken to provide effective protection and enforcement of intellectual property rights in their regions and departments, and will relay and implement the instructions, spirit, and work duties from the State Council's Working Conference on Intellectual Property Rights to the various regions and departments.

(b) Provincial, regional, municipal and city working conferences will establish local offices to carry out day-to-day functions and organize relevant local departments to implement China's intellectual property laws and provide effective enforcement of those laws.

B Enforcement Task Forces

1. Administrative and other authorities responsible for intellectual property protection and enforcement including the National Copyright Administration (NCA), State Administration for Industry and Commerce (AIC), the Patent Office, and police at the national, provincial, autonomous region, and directly administered municipality and cities (hereinafter "sub-central levels"), and customs officials will coordinate their activities under the working conference system and participate in enforcement task forces. Each participant in a task force shall give

assistance to ensure effective enforcement and is not allowed to refuse to provide such assistance. The People's Governments at each level shall give the necessary guarantees in terms of personnel, working expenses, and conditions to implement this Action Plan to ensure that:

a. Each enforcement task force has all necessary legal authority and will use its resources to initiate and carry out investigations of any suspected infringement of intellectual property rights. In the case of investigations involving more than one sub-central jurisdiction, where necessary, the relevant intellectual property rights working conference will organize and coordinate the enforcement task forces to carry out the investigation.

b. Each enforcement task force's authority includes the authority, in situations in which there is reason to believe or suspect that there has been an infringement of an intellectual property right, to:

--enter and search any premises;

-- review books and records for evidence of infringement and damages; and

--seal suspected goods and the materials and implements directly and predominantly used to make them.

c. When infringement is found, the enforcement task force has the authority to impose fines, order an end to the production, reproduction and sale of audio-visual products, revoke the permits for producing and reproducing audio-visual products, and cause the forfeiture and destruction of infringing goods and the materials and implements directly and predominantly used to make them, without compensation of any sort.

2. The enforcement task force has the authority to order infringement to stop while infringement cases are being processed. The party seeking such relief may be required to provide a security or equivalent assurance sufficient to protect the alleged infringer and the competent authorities and to prevent abuse. The amount of such security or equivalent assurance shall not deter recourse to these procedures.

3. Cases of infringements that are suspected to be of a (criminal nature shall be passed over to the prosecutor as well as being subject to administrative action- In each criminal case, the relevant authority will seek severe penalties commensurate with the level of infringement, and impose such penalties.

4. All sub-central level intellectual property protection and enforcement authorities participating in the enforcement task force will undertake aggressive ex officio actions (actions on their own authority without request from a right holder) against all types of infringement of intellectual property rights and investigate all complaints from right holders, their representatives or their exclusive licensees filed with the relevant administrative agency.

5. Upon its establishment, each enforcement task force shall specify a contact person and publish a phone number which right holders and other interested persons may use to exchange information with the Task force. Each enforcement task force shall, on request, keep right holders fully informed of the progress of the relevant investigations and, when offered, shall rely on right holders for information and expertise to assist the task forces enforcement efforts.

6. Foreign and domestic right holders may submit petitions for investigations and enforcement actions to an enforcement task force by addressing them to the contact person at that task force. Once received, petitions shall be forwarded to the administrative authority within the task force in charge of the intellectual property at issue for management of the case. Petitions shall be accepted according to published, uniform criteria that are limited to determining whether there is reason to believe that the petitioner is the right holder and there is reason to believe or suspect that a right has been or may be infringed. Within fifteen days of the receipt of the petition, the petitioner must be notified that the petition has been accepted or, if it is not accepted, notified in writing of the specific reasons for its refusal. Requests for administrative enforcement actions and receipt of administrative remedies will not affect the right to seek relief in a judicial action.

7. Ad Hoc Groups --In areas in which the situation is particularly serious, enforcement task forces shall set up ad hoc groups to take immediate action against infringement in specific fields, such as audio-visual products (which includes CDs, LDs, audio cassette tapes, video tapes, sound recordings, and motion pictures) (hereinafter referred to as "audio-visual products"), computer software in any format or form, including video games,

diskette, network, hard drive, CD-ROM or other medium (hereinafter referred to as "computer software") , publications, and trademarks. Each ad hoc group will be headed by the departments in charge of their respective area of responsibility and shall act with the assistance of other departments concerned. The ad hoc groups shall have the same authorities as the enforcement task forces.

C. Special Enforcement Period

1. The working conferences and enforcement task forces will operate over the long-term. In addition, beginning on March 1, 1995, the Special Enforcement Period will be intensified for the next six months. During this period, the number of investigations will be increased and other actions taken to ensure the elimination of piracy, counterfeiting and other infringements of intellectual property rights.

2. During the Special Enforcement Period, the State Council's Working Conference on Intellectual Property will direct and coordinate enforcement efforts which all working conferences and enforcement task forces established under this Action Plan will undertake. The State Council's Working Conference on Intellectual Property will also coordinate with the relevant departments in launching a nation-wide information and education campaign on intellectual property rights.

3 . Particular campaign will be placed on achieving effective enforcement in key regions, cities and entities with a high level of infringing activity with a focus on pursuing significant cases so as to eliminate piracy and counterfeiting, deter future infringement, and require use of legitimate products.

4 . During the Special Enforcement Period:

--The work of investigation and punishment of infringers, will focus on regions and entities where infringing products are produced, the places of distribution, and the points of sale.

--Efforts will be primarily directed against piracy activities involving audio-visual products, computer software, books and other publications, sound recordings, counterfeiting and infringement of trademarks, especially well-known trademark, patent infringement and unfair competition.

--Each of the CD, LD and CD-ROM factories now operating in China shall be investigated during the Special Enforcement Period to determine whether they have produced or are producing unauthorized CDs, LDs or computer software in CD-ROM format. Factories subject to investigation will not be provided prior notice of visits and inspections. Those factories found not to have engaged in infringing conduct shall be re-registered and monitored on a regular basis thereafter. Those that are found to be engaging in infringing conduct shall be subject to administrative and/or judicial penalties, commensurate with the level of infringement.

--In respect of trademark infringement, the focus will be on prosecuting some significant cases, imposing severe penalties and widely publicizing them to demonstrate the dignity of the legal system and to deter further infringements.

5. While carrying out special raids, each enforcement task force is also to intensify and conscientiously carry out regular, routine inspections, and to make unremitting efforts to confirm that its operations are effective, and that infringements of intellectual property rights in its own area are substantially reduced and do not reoccur.

6. If infringements of intellectual property rights in a specific area are not substantially reduced by 31 August 1995, or if significant increases occur at any time in the future, then the Special Enforcement Period in that area will be extended or reinstated accordingly. If piracy is substantially reduced in a particular area, then that area can terminate the special enforcement effort before August 31, 1995.

D. Enforcement Efforts In Specific Fields

1. Audio-Visual Products and Computer Software

a. Enforcement task forces will complete the investigation of production lines suspected of producing infringing CDs, LDs, and CD-ROMs including computer software by July 1, 1995. In addition, relevant units engaged in

reproduction, publication, import, export, wholesale, leasing, operation, or public performance of these products will be investigated.

b. Factories determined to have been engaged in infringing activities will be punished through seizure and forfeiture of infringing product and required to pay compensation adequate to compensate the loss which the infringed party suffered as stipulated in Article 53 of the Copyright Regulations, and will pay serious fines commensurate with the level of infringement. In addition, those factories found to be engaging in serious infringing production shall have their business licenses revoked. All infringing copies and the materials and implements directly and predominantly used to make them shall be seized, forfeited and destroyed.

2. Other Enforcement Efforts In Respect of Audio-Visual Products and Computer Software

All audio-visual administration departments and copyright administration departments at the sub-central level will join with relevant departments in charge of industry and commerce administration, and enforcement task forces (where they exist) to complete a comprehensive investigation of all CD, LD, CD-ROM production lines.

a. Audio-Visual Products

Infringement of copyright for audio-visual products is strictly banned. To that end, the following actions shall be taken:

i. The operation of audio-visual product businesses without obtaining the relevant permits and a business license will be prohibited.

ii. Audio-visual administration and copyright administration departments will begin comprehensive inspections and investigations of establishments that publish, reproduce, wholesale, retail, rent out, or perform audiovisual products within their respective jurisdictions. They will examine and verify the types, quantities, product whereabouts and matters relating to copyright for all-such products reproduced, sold, rented, performed and/or otherwise dealt with by these establishments. This work will be pursued on a continuous basis.

-- Repeat offenders (those who have been found to infringe on more than one occasion) will have their relevant audio-visual product permits revoked. For serious repeat offenders, the AIC office will revoke that infringers business licenses and will not grant another to such offender in the same field of activity within three years. The full range of administrative and judicial penalties will also apply, as appropriate.

iii. All sub-central departments in charge of audiovisual product control, together with enforcement task forces (where they exist) , will ensure that each retailer maintains an accurate inventory of his or her audio-visual products and updates it regularly. Departments are to improve routine inspection of these establishments. They are to examine carefully the origin of audio-visual products supplied to enterprises and keep well-informed of the category, quantity, and outlet of reproduced products.

-- Except for those products published and distributed by regular audio-visual units approved by the State and reproduced, produced or imported after approval, all audio-visual products will be treated as illegal publications and turned over and destroyed. In addition, other remedies in the law shall apply as appropriate.

-- Retail units dealing with audiovisual product must possess licenses to operate, and unlicensed retail peddlers of these products will be strictly banned. Operators shall receive their goods from distribution units approved by publications administration departments, and must register goods they receive. In cases in which the source of infringing products is unclear, an investigation will be made, responsibility will be determined, and those responsible will be strictly punished through administrative and judicial means, commensurate with the level of infringement.

iv. Prior to July 1, 1995, a report on the investigation and punishments imposed will be sent to the responsible departments, with a copy to the State Council Intellectual Property Working Conference Office.

b. Computer software

Infringement of copyrighted computer software is strictly banned under the law and each individual and entity, including all public, private, and not-for-profit entities, shall be treated equally under the law. To ensure effective enforcement against piracy and infringement of copyright in computer software, the following actions shall be taken:

i. The State Council Intellectual Property Working Conference will organize and coordinate the AIC, police, copyright administration, electronics industry, other relevant departments and the enforcement task forces (where they exist) to conduct comprehensive inspections of establishments that commercially reproduce, wholesale, retail, or rent out computer software within their respective jurisdictions. This work will be pursued on a continuous basis.

ii. All sub-central departments in charge of computer software product control, together with enforcement task forces (where they exist), will require each retailer to maintain an accurate inventory of his or her computer software, including information on the type, origin, quantity, and product location of any software that it commercially reproduces, distributes or rents, and update it regularly. Departments are to improve routine inspection of these establishments and verify the accuracy of the inventory. They are to verify the accuracy of the information in the inventory.

-- Except for those products distributed by entities with appropriate business licenses and reproduced, produced or imported after approval, all computer software will be treated as illegal publications and turned over and destroyed. Retail units dealing with computer software must possess licenses to operate, and unlicensed retail peddlers of these products will be strictly banned. If a retail unit cannot establish that it purchased computer software from an individual or entity with an appropriate business license, the source of the product will be investigated. Any individual or entity that reproduces or sells the software of right holders from whom they have not been licensed, will be punished through administrative and judicial means, commensurate with the violation. Cases in which serious infringement has been punished will be broadly publicized.

--For serious repeat offenders, the AIC office will revoke the infringers' business licenses and will not grant another to such offender in the same field of activity within three years. The full range of administrative and judicial penalties will also apply, commensurate with the violation

iii. All public, private, and not-for-profit entities using computer software, shall provide resources sufficient to purchase legitimate software.

iv. Prior to October 1, 1995, a report on the investigation and punishments imposed will be sent to the responsible departments, with a copy to the state Council Intellectual Property Working Conference Office.

3. Books, Periodicals and Other Printed Works

a. With respect to books and periodicals, supervision and monitoring of the distribution of publications will be improved since piracy of publications is absolutely banned. All localities are to carry out an operation to consolidate all printing firms within their areas of jurisdiction, take severe action against those enterprises that illegally take orders to print pirated publications, and the business licenses of those engaged in the printing of pirated printed matter are to be revoked without mercy.

b. Publishers and printing enterprises must check with the license issuing agency to verify the printing license prior to undertaking the printing of books or periodicals. Those who do not strictly complete the formalities and print pirated books or periodicals will be punished through administrative and judicial means. Grant of a publishing license will be based on whether the applicant has obtained authorization or permission from the right holder or that person's representative to publish the relevant material. Printing houses that operate without licenses will be shut down.

4. Trademarks

a. Since trademark counterfeiting and infringement is illegal, the working conferences and enforcement task forces will investigate and punish trademark infringement promptly and strictly. Cases involving suspected

criminal trademark infringement must be handed over to the prosecutors. The relevant authorities will seek severe penalties, commensurate with the level of infringement.

b. Any trademark agent permitted to act on behalf of Chinese individuals and entities will now also be permitted to act on behalf of foreign individuals and entities. For the purposes of obtaining enforcement actions by the AIC and Customs, wholly-owned subsidiaries of foreign companies, joint ventures involving foreigners in China, and any licensee in China will be permitted to act on behalf of the foreign owner of the mark.

E. Enforcement Directly Through Administrative Agencies and Departments

1. The Administrations and Departments listed below shall have the respective authorities as specified and will exercise those authorities to eliminate infringement of intellectual property rights:

a. The National Copyright Administration (NCA) and local copyright administrative agencies are in charge of and responsible for administration and maintenance of all copyright protection for computer software, audio-visual products, books and other publications, and all other works. NCA and local copyright administrative agencies shall direct and be in charge of enforcement efforts as part of enforcement task forces and each task force will investigate and punish copyright infringement.

b. The Trademark Office of the SAIC is in charge of trademark registration and trademark administration throughout the country. If there is reason to believe that a trademark contract is inconsistent with the law, the Trademark Office will review the contract to determine if it is valid. The AIC Trademark Office also punishes trademark infringement and trademark counterfeiting and handles the appeal of trademark infringement cases and identifying and determining whether trademarks are well-known.

AIC is the primary administrative law enforcement department responsible for investigating and punishing unfair competition. It is responsible for supervising and examining transactions of operators in the market, preventing unfair competition, and investigating and punishing illegal activities that infringe on trade secrets.

c. The Chinese Patent Office is an administrative authority for the enforcement of patent law and is the functional authority in charge of patent work under the State Council. The administrative authorities for patent affairs established by relevant departments under the State Council or the local People's Governments are responsible for directing and coordinating patent work in localities and departments, for mediating and handling patent disputes, as well as investigating and punishing passing-off of patents within its jurisdiction.

2. All copyright, patent and trademark authorities at the provincial, regional and local levels will report directly to, and follow the guidelines of, the NCA, AIC and the Patent Office at the central level. All such authorities shall devote time and resources to secure effective communication between themselves at the inter-regional level and with the central level and to ensure the effectiveness and coordination of their operations.

3. Administrative authorities, including NCA, AIC and the administrative authorities for patent affairs, responsible for determining and punishing infringement shall:

--wherever there is reason to believe or suspect an infringement of an intellectual property right, order the infringement to stop immediately, and where infringement is found, upon the request of the right holder, require the infringer to compensate for the loss which the infringed party suffered (as stipulated in Article 53 of the Copyright Regulations, and Article 39 of the Trademark Law and Rule 43 of the Trademark Regulations and Article 60 of the Patent Law), and impose serious fines on the infringer commensurate with the level of infringement;

-- in any case that involves suspected criminal conduct refer the case to the prosecutors; and

-- with respect to repeat offenders, i.e., those who have been found to infringe intellectual property rights in a serious manner on more than one occasion, the relevant AIC office will revoke their business licenses and will not grant another to such offender in the same field of activity within three years.

4. In the process of enforcing the intellectual property laws, all administrative and judicial bodies with responsibility in this area are to accept information about infringements given by the holders of intellectual

property rights (including foreign owners of intellectual property rights), or by other interested persons, and are to conduct investigations into the reported cases promptly.

5. Foreign and domestic right holders will be permitted to submit petitions to initiate investigations and enforcement action to the national or local administrative agency in charge of the intellectual property right at issue. Petitions shall be accepted according to published, uniform criteria that are limited to determining whether there is a reason to believe that the petitioner is the right holder or that person's authorized representative and there is a reason to believe or suspect that a right has been or may be infringed. Information on procedures for filing such petitions shall also be published and made available to right holders. Within fifteen days of the receipt of the petition, the petitioner must be notified that complaint has been accepted or, if it is not accepted, notified in writing of the specific reasons for its refusal. Requests for administrative enforcement actions and receipt of administrative remedies does not affect the right to seek relief in a judicial action.

6. Foreign right holders or their representatives will be permitted to collect information by legal means concerning infringement of their rights. Foreign entities will be permitted to collect by legal means any information relevant to the issue of infringement. Such information will be admissible as evidence when administrative agencies initiate investigations and handle cases and this evidence will be treated as equal to evidence collected and provided by Chinese nationals.

F. Additional Administrative Actions

1. All sub-central level administrative departments in China must institute an Intellectual Property Rights protection and enforcement system with individuals and enterprises that manufacture or sell books, computer software, except for CD-ROMS, or are engaged in trademark printing or publishing to determine if violations have occurred.

-- Since individuals and enterprises that manufacture, sell or print or publish these products are subject to special permits and annual business operating license checks, administrative departments shall register only those entities that have observed the law. Repeat offenders (those who have been found to infringe on more than one occasion) will have their relevant audio-visual product permits revoked. For serious repeat offenders, the AIC office will revoke the infringers, business licenses and will not grant another to such offender in the same field of activity within three years. The full range of administrative and judicial penalties will also apply, commensurate with the violation.

2. All sub-central level administrative departments must combine stringent enforcement with information and education; run training classes; and require the manufacturers and sellers of audio-visual products, computer software products, books, and engage in trademark printing or publishing to study, in-depth, intellectual property laws, regulations, and relevant documents. Examinations shall be held to check their study. Those who pass will be issued an intellectual property rights training certificate and will operate on the strength of the certificate.

Those who fail to obtain an intellectual property rights training certificate will be refused the registration of their special permits and annual business operating licenses when the annual inspection is due until such time as they obtain a training certificate.

3. In intellectual property right infringement investigations, all sub-central level administrative departments will institute a system for persons to provide information and assistance in intellectual property right infringement cases.

4. All sub-central level administrative departments shall institute a monitoring system for serious and significant intellectual property infringement cases, and in cooperation with the intellectual property working conferences coordinate cross-region and cross-province investigations and enforcement efforts. They shall crack down promptly and effectively on copyright pirating, trademark counterfeiting, and other intellectual property rights infringements so as to eliminate infringement.

5. While properly carrying out special law enforcement inspection operations, all sub-central administrations and all departments are to further improve and perfect all routine supervisory and administrative systems, develop

standardized administrative procedures, improve administrative quality, perform their duties and conscientiously protect the legitimate rights and interests of intellectual property rights owners.

G. Customs Enforcement

1. All customs offices will further intensify the protection of intellectual property rights of all imports and exports and they will be subject to customs enforcement.

Beginning on March 1, 1995, and lasting until October 1, 1995, Customs will intensify the protection at the border for imports and exports of CDs, LDs, CD-ROMs and trademarked goods. Customs will, therefore, detain suspected infringing products. Once the goods are determined to be infringing, they will be seized, forfeited and destroyed or excluded from the stream of commerce according to the principles set forth below. Those, responsible for the infringement will be strictly punished through administrative and/or judicial means.

2. New customs regulations will be published by July 1, 1995 and enter into force by October 1, 1995. These new regulations will clarify that infringing goods that are imported or exported are illegal. In order to protect intellectual property rights, customs will exercise all of the authorities stipulated by China's Customs Law. In particular:

- Goods that infringe intellectual property rights under Chinese laws and regulations are prohibited from being imported into or exported from China.

- The copyright or trademark owner or his authorized representative may apply to customs for the enforcement of his intellectual property right with respect to imports and exports.

- In the area of copyrights, Customs will enforce copyrights against infringing imports and exports in all cases in which the applicant for enforcement presents legal proof of copyright, which in the case of a national of a member of the Berne Convention for the Protection of Literary and Artistic Works, would be satisfied by a copyright registration certificate of that member country.

- In the area of trademarks, Customs enforces trademarks against infringing imports and exports in all cases in which the applicant for enforcement presents a "Trademark Registration Certificate" issued by the AIC or, in the case of unregistered marks, a claim of well-known status confirmed by the AIC.

- Customs will, on an ex officio basis (without a request from the right holder), based on suspicion of infringement, on the petition of the right holder or his representative, or on a random basis, examine all types of imports and exports protected by copyright and trademarks and determine whether they are infringing.

- The Customs Office shall detain goods if they are suspected of constituting an infringement or in accordance with a ruling of the Peoples Courts. On detention of suspected infringing goods, the right holder or his representative will be notified and can request that the customs office continue to detain the goods. When the customs office detains goods suspected to constitute an infringement, the right holder or his representative will post a bond in an amount equal to the value of the bonded goods, to be determined based on the invoice value of the goods. If a final determination as to infringement is negative, the importer or exporter can request relief for losses incurred in a civil court action against the right holder. If the right holder pays any award granted by the court, the bond will be returned to the right holder; if the right holder does not pay such award in a timely manner, customs will forward the bond to the court for satisfaction of the judgement.

- Customs can release the suspected infringing goods after the courts, Customs, or the relevant administrative authorities make a final determination clearing the goods of suspicion of infringement. However, if within a period not exceeding 10 working days after the right holder has been served notice of the detention, Customs has not been informed that proceedings leading to a decision on infringement have been initiated by a party other than the alleged infringer, or that the duly empowered authority has taken provisional measures prolonging the detention of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days.

-- Within ten working days of the goods being detained, the customs office will begin an investigation as to the legitimacy of the detained goods that are suspected of infringement. In particular, the customs office will in every possible instance make a comparison between such suspected goods and legal goods, carry out an inspection of the suspected goods and the vessel of transportation concerned, inspect the factories and warehouses that are under the customs office's supervision and are suspected of being involved in the case of infringement, and re-examine the documents and materials related to the case of infringement. In doing so, Customs will search for evidence of or infringement, other infringing goods, and the materials and implements used to make infringing goods.

-- For cases involving suspected criminal activity and cases exceeding Customs authority to address, Customs will, within 20 working days of the goods being detained, notify prosecutors, the police and other relevant administrative enforcement authorities, who will cooperate with Customs in the investigation and punishment of these cases.

-- Imports and exports that are determined to be infringing will be seized by customs officials. Infringing articles seized and forfeited for violation of China's copyright law shall be destroyed.

--All goods violating China's trademark law will be destroyed, unless the trademark is removed or obliterated. In that case, such goods will be kept out of the stream of commerce and can be used only for charity, use by the government agencies who demonstrate a need for the product, or auctioned so long as it is not auctioned to the infringer.

-- Customs will also impose severe administrative penalties on the infringer.

-- By December 31, 1995, Customs will establish a central recordation system for the protection of copyright and trademark rights. Recordation will be valid for no less than seven (7) years or until the expiration of the copyright or trademark right, whichever is sooner, but recordation can be extended after its expiration.

-- The recordation system will include information on suspected or known infringers, including those persons and entities found by an administrative body, judicial authorities to have dealt in infringing imports or exports. Customs will include in this system identifying information provided by owners of intellectual property rights or other reliable sources on known or suspected importers or exporters of infringing goods; means for identifying the specific merchandise that is believed to be infringing; location and time, if available, of the anticipated importation or exportation; and suspected destination of exported goods. Customs will disseminate the continuously updated information to all customs offices.

-- If the parties concerned are dissatisfied with the customs office's decision, they can ask for administrative reconsideration or judicial proceedings, in accordance with the provisions of Article 53 of the Customs Law.

H. Establishment of Copyright Verification Systems

1. Unique Identifier

a. Beginning on March 1, 1995, CDs and all CD-ROMS will be protected through a unique identification verification system. By July 31, 1995, LDs will also be protected through such a system and technical assistance will be provided to assure that the means to implement this system are made available by that date. To implement this system: manufacturers of copies of CDs, LDs, and all CD-ROMs will be issued a unique identifier that must be imprinted on the manufactured copies in an obvious place.

b. Any manufacturer of copies of CDs, LDs and CD-ROMs that fails to comply with the unique identifier requirement will be punished by administrative and judicial means commensurate with the violation.

2. Title Verification

a. All individuals or entities engaged in reproduction, production, or publishing of foreign audiovisual products or computer software in CD-ROM format must register their contracts with the NCA or local copyright authorities.

b. Any individual or entity that reproduces or publishes, including for export, in foreign audio-visual products or computer software in CD-ROM format must receive title registration from MCA and a permit authorizing the specific act from the relevant authority. Any individual or entity that fails to receive title registration or a permit or exceeds the scope of the permit will be punished by administrative and judicial means commensurate with the violation.

--NCA shall refer documents purporting to authorize any such act to relevant associations of right owners and shall not issue a certificate of title registration except upon receipt of verification from such association.

-- The relevant authority (Press and Publications, Ministry of Culture, Ministry of Radio, Television and Film, and the local audio-visual departments) charged with granting permits shall not issue a permit except upon prior receipt of NCA's certificate of title registration. Permits will be specifically limited to the acts actually authorized by the right holder.

--The issuance of a registration certificate with respect to a particular work will in no way preclude a later action for infringement against any party with respect to the work.

3. Beginning on March 1, 1995, any entity that reproduces CDs, LD's, or CD-ROMs shall maintain, during the period of production or reproduction and for three years thereafter, a copy of the license contract and certificate of registration, together with an example of the copies produced.

I. Administrative and Regulatory Matters

1. Trademarks

a. The Trademark Office of the AIC, when verifying whether a mark is well-known, will make its examination on a case-by-case basis. Well-known marks are those known in the relevant sector of the public, including knowledge in China resulting from the international renown of the trademark.

b. If a owner of the trademark requests a determination concerning whether a mark is well-known, either directly or through the Customs Office, for the purpose of preventing the import or export of goods or in connection with an administrative or judicial proceeding to determine infringement, the Trademark Office will issue a determination concerning whether the trademark is well-known within 30 days after receipt of the request.

c. Protection of a well-known mark will extend to products or services other than those on which the mark is registered or used, to the extent such use would indicate a connection between those goods and services and the owner of the mark or adversely affect the commercial reputation of the trademark owner.

d. Trademarks that the Trademark Office of AIC determines are well-known, but are not registered in China, will be protected against infringement, including providing the right to oppose or cancel the registration of a duplicate or confusingly similar mark. The owner of an unregistered well-known mark will be able to enforce his rights against infringement and counterfeiting to the same extent a registered trademark owner can enforce rights.

e. The Trademark Office of the AIC will not register a mark it has determined to be well known to a person other than the internationally recognized owner of the well-known mark. Registration of well-known marks to persons other than the internationally recognized owner of such marks will be canceled upon petition of the internationally recognized owner of the well-known mark within five years of the date of registration. No time limit shall apply for requesting the cancellation of well-known marks registered in bad faith. If the registered mark is identical to or substantially indistinguishable from the well-known mark, the requirement of Rule 25(2) of the Implementing Regulations of the Trademark Law has been met.

f. AIC will establish and publish standards to govern the registration process, for example, standards relating to determining likelihood of confusion, descriptiveness, and criteria for determining if a mark is well-known, and procedures for filing and examining a trademark application, and renewal of registration, and standards and procedures for opposition and cancellation of marks.

2. Unfair Competition

Any person or entity that engages in any act of unfair competition, such as the adoption of the trade dress, trade name, commercial indication or trade mark or service mark of a competitor, false allegations in the course of trade of such a nature as to discredit the establishment, the goods or services, or the industrial or commercial activities, of a competitor; indications or allegations the use of which in the course of trade are liable to mislead the public as to the nature, the manufacturing process, characteristics, suitability for their purpose, or the quality of the goods or services will be considered to be engaged in unfair competition. AIC and other responsible departments will intensify efforts to address unfair competition and to strictly punish violations commensurate with their seriousness.

II. Pursuit of Information Dissemination and Training, and Improving the Environment for Intellectual Property Laws

A. Relevant authorities will conduct training and education on intellectual property protection across the country and take the following steps:

1. Incorporate intellectual property laws into the state's knowledge-of-law popularization scheme, with the aim of providing training on intellectual property rights for over 50 percent of officials at or above the county and departmental ranks in all departments within one to two years. Over 80 percent of persons in charge of research institutes, large and medium-sized enterprises, and institutions of higher learning, as well as officials in economics, science and technology, and culture management, shall also undergo such training.

2. Make special efforts to improve and expand the training of officials responsible for administering and enforcing intellectual property rights. These officials include personnel in departments of industry and commerce, press and publication, culture, customs, and police who are charged with enforcing patents, trademarks rights, and copyrights, including copyright in computer software. The government will cooperate with local judicial bodies, actions to improve the professional quality of judicial and prosecutorial personnel, and provide Customs officers with training courses in identifying products that infringe copyrights, including methods of inspecting computer software, products that infringe trademarks and other intellectual property rights.

3. Provide national training and education about intellectual property rights protection. These efforts will include: publicity campaigns through the news media on intellectual property rights and the importance of protecting them; opening or expanding special studies of intellectual property at institutes of higher learning, and providing basic education for undergraduates; and providing training courses for the management staff of enterprises and non-profit-making institutions that make or sell products protected by intellectual property rights.

B. The Press and Publication Organizations shall:

1. Organize manpower systematically to heighten the awareness of protecting intellectual property rights and of intellectual property laws in society as a whole. While giving publicity to the positive results and experiences of enterprises and non-profit-making institutions in protecting intellectual property rights, the media must also expose serious infringements of intellectual property rights and local protectionism.

2. Mount nation-wide information and education efforts through broadcasting, television, newspapers, periodicals, and other mass media to boost publicity on intellectual property rights, and to publicize the consequences of infringements of intellectual property rights. Wide coverage shall be given to serious right infringements--including investigations into foreign-involved cases--through television and newspapers. This will serve as information and education for the general public.

C. Prior to June 1, 1995, the State Council's Office for the Working Conference on Intellectual Property Rights will have compiled and published a body of laws and provisions on intellectual property rights to make publicly available the laws, provisions, regulations, standards, edicts, decrees, and interpretations regarding the authorization, management, and implementation of intellectual property rights. All intellectual property laws, regulations, provisions, standards, edicts, decrees, and interpretations will be published, and those that are not published and made readily available will not be enforced.

D. The State Council's Office for the Working Conference on Intellectual Property Rights is charged -- together with the Chinese Patent Office, the Trademark Office of the PRC State Administration for Industry and Commerce,

the State Copyright Administration, and other concerned departments -- with compiling and publishing the "Guidelines for Patent Application and Protection in China," the "Guidelines for Trademark Application and Protection in China," and the "Guidelines for Copyright Protection," in which they are to clarify standards and procedures for intellectual property rights protection, so that Chinese and foreign holders of intellectual property rights can have a better understanding of the legal provisions and methods for protecting intellectual property rights in our country. Each set of guidelines shall clearly explain all procedures and standards related to the application for, maintenance of, and enforcement of intellectual property rights. The Chinese language version of these guidelines shall be made widely available to the public by September 1, 1995.

NOTE: People's Republic Of China Implementation Of The 1995 Intellectual Property Rights Agreement (June 17, 1996) provided an update on China's efforts to implement the February 26, 1995 Agreement on Providing Intellectual Property Rights Protection. It took stock of the steps China took in several areas, which included opening market access opportunities for legitimate U.S. audiovisual and computer software products and companies.

[View People's Republic Of China Implementation Of The 1995 Intellectual Property Rights Agreement--1996](#)

TANC offers these agreements electronically as a public service for general reference. Every effort has been made to ensure that the text presented is complete and accurate. However, copies needed for legal purposes should be obtained from official archives maintained by the appropriate agency.