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Copyright Protection in China

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Copyright Law

- Copyright Law of the People's Republic of China (as amended up to the Decision of February 26, 2010, by the Standing Committee of the National People's Congress on Amending the Copyright Law of the People's Republic of China)
- Date of entry into force: June 1, 1991
- Signatory to the Berne Convention

Copyright Law

- In China, a copyright arises when the original work is created “in a fixed medium,”
- Regardless of the location of creation
- Registration is optional but recommended
 - Best way to secure a quick takedown of infringing material
 - Best way to engage the Customs Office to seize goods at the frontier before leaving China
- While a copyright registration is presumptive evidence of ownership, the key issue of enforcement is proof

Copyright Practice

- Still the only avenue for protecting software
 - Draft Patent Law amendments do not cover
- Design patents can overlap with copyright protection in China
 - But does not *replace* design patent protection
 - Design patent protection is stronger – but is limited as to time much more narrowly than copyright
 - Best option: obtain both

Copyright Practice

- Currently, works of “applied art” (defined as “artistic works with utilitarian functions”) are eligible for copyright protection in China
- Products such as sneakers, tire treads, and even Lego bricks may be eligible for copyright protection in China as “works of applied art”
 - The Michelin case
 - The Lego case
- Limited enforcement
 - One court may say “yes,” another court “no”



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Thank you.

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