



MMLC Group 

北京铭辉达知识产权代理有限公司

## *China Update*

*Lawyers and Consultants*

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### *Legal News*

#### Intellectual Property

##### **Paramount Ordered to Compensate Chinese Tourist Board 2 Million Yuan for Breach**

On October 27, 2016, the Third Intermediate People's Court of Chongqing issued its first instance judgment, and decided that the defendants, Paramount and its Chinese partner, should compensate the plaintiff (Wulong Kast Tourism) in the amount of RMB 2 million Yuan for economical loss, due to the defendants' failure to carry out product placement in the latest Transformers film. According to the plaintiff, the producer of Transformers 4, Paramount, failed to present the characters of "China Wulong" in an obvious way in the film in accordance with their agreement, and this constituted a fundamental breach of contract that it had in place with the plaintiff. Thus, it requested termination of the agreement and compensation for losses resulting from the shooting of the film, in the amount of RMB 20 million Yuan. The defendants argued that the film had fully shown the beauty and natural views of the scenic spot and set the most important storyline in the scenic spot, which had a positive effect on promoting the scenic spot and reached the goal set in their contract. In addition, although the theater version did not contain the characters of the scenic name, the defendant had remedied this in the DVD version and those played on TV and digital media platforms. It is not known whether Paramount has appealed or not.

##### **Electronic Data Now Admissible in Criminal Trials**

On October 1, 2016, a new regulation, the Provisions on Several Issues Concerning Collection, Extraction and Review of Electronic Data in Criminal Investigations, co-issued by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Safety, became effective. In accordance with the Provisions, electronic data may be adopted as evidence in criminal cases. The electronic data, includes but not limited to messages issued through online platforms, such as web pages, blogs, micro blogs, Wechat Moments, bulletin boards, skydrives; telecommunication messages through Internet application services, such as cell phone messages, emails, instant messages; information such as user registration information, ID verification

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information, electronic trade record; and electronic files such as files, images, music and videos, digital certificates, computer programs. In the past, there has been an inconsistent approach to admitting such evidence in trials in China and it is hoped that this new regulation will get rid of these inconsistencies.

### **Draft of the Cybersecurity Law Amended**

According to the latest news, the third draft of the Cybersecurity Law was submitted to the Standing Committee of the National People’s Congress for reviewing. It is reported that, some amendments have been made on the basis of its second version. For instance, it proposes to further define the scope of key information infrastructure, which may include but not limited to industries and fields of public telecommunication and information services, energy, transportation, water conservancy, finance, public service, e-government and so on. It also proposes to add provisions relating to punishment of foreign organizations and individuals that attack and damages key information infrastructures in China, punishment on new types of online illegal and criminal activities, such as online fraud.

### **Copyright Protection for Literary Works to be Strengthened**

Recently, the National Copyright Administration issued “Notice on Strengthening Copyright Management of Online Literature” in draft form for public opinion solicitation. Among the drafted provisions, Article 10 thereof proposes to establish a “black/white name list” for online literature by the Administration, which will publish the “black name list” of network service providers that infringe copyright in literature, as well as a “white name list”. It is reported that online literature piracy costs authors and publishers RMB10m annually.

### **Beijing IP Court in favor of Microsoft’s New Windows Mark**

In a recent judgment, the Beijing IP Court overturned the TRAB’s decision to reject Microsoft’s new Windows logo, due to a prior similar registration:

The Disputed Mark	The Cited Mark
	

The Beijing IP Court held that, since Microsoft’s trademark appears as an inverted trapezoid and is divided into four parts by a cross, having a 3D feel, whereas the prior registration involves a square design with four rounded corners, there are differences in terms of composing elements, design style and overall visual effect between the two marks, which can be distinguished by consumers with normal attention and will not cause confusion and misidentification. Based on the above, the Beijing IP Court decided that the two marks do not constitute similar trademarks, and therefore, ordered the CTO to accept the trademark application for registration.

### **SIPO Issues Revisions to Patent Examination Guidelines for Opinions**

On October 28, 2016, SIPO issued a drafted revision to the Patent Examination Guidelines for public opinion. The drafted Revision involves six major amendments as follows:

- With respect to claims involving business models, it proposes that in case it includes contents of business rules and method as well as technical characteristics, then it shall not

exclude the possibility of granting patent rights in accordance with Article 25 of the Patent Law (Section 2, Chapter 1).

- With respect to amendments relating to examination of inventions in the field of computer programs, it proposes to further clarify that “computer programs themselves” are not “inventions that involve computer programs” and it allows adoption of the method of “medium plus computer program process” for claim drafting. It also suggests that equipment claimant may include program, and amend “functional module” as “program module” (Section 2, Chapter 9).
- With respect to amendments relating to examination of inventions in the field of chemistry, it proposes that for lab data submitted after the application date, examiners are required to examine such data. The technical effect proved by the lab data submitted after the application date shall be able to be obtained from the content published by the patent application by the technicians in their field (Section 2, Chapter 10).
- With respect to amendments relating to the examination to invalidation applications, it proposes to allow the supplement of one or more technical characteristics written in other claims in order to reduce the scope of protection, and allow amendments to obvious mistakes in the claims. It also proposes to adjust provisions on adding invalidation reasons by an applicant, as well as supplementary evidence (Section 4, Chapter 3).

Comments are invited by SIPO, through to November 27, 2016.

## **Taxation**

### **SAT Issues Draft Administrative Measures For Non-Resident Accounts**

On October 14, 2016, the State Administration of Taxation (SAT) issued a draft of the Administrative Measures for Due Diligence of Tax Related Information in respect of Non-Resident Financial Account for public opinion. China committed to implement the Standard for Automatic Exchange of Financial Information in Tax Matters in September, 2014. According to the Standard, financial institutions within China shall start to perform due diligence as required, from January 1, 2017. Pursuant to this, SAT drafted the Administrative Measures to regulate the principles and procedures of identifying non-resident accounts and collecting relevant information by the Chinese domestic financial institutions, including but not limited to interpretation of basic definition, due diligence procedures for newly opened account and existing accounts, scope of financial institutions and financial accounts that do not require due diligence, scope of information collected and reported by financial institutions, as well as punishment for financial institutions and clients that are in violation of relevant regulations and so on.

## **Environment**

### **Firms Face Harsh Punishment for Polluting**

According to statistics from the Ministry of Environment Protection, in the first eight months of this year, over nine thousand cases have received enforcement measures. These included daily fines, seizure and destructions, stop orders and criminal detention. Among them, over four hundred cases involved fines totaling over RMB 480 million Yuan. Liaoning Province and Inner Mongolia took the gong for imposing the greatest amount of fines.

## **Business News**

### **Cross-border E-commerce Quality Monitoring Center Launched in China**

On October 26, 2016, the first national monitoring center for cross-border e-commerce quality safety was launched online in Hangzhou, Zhejiang Province. This online system will conduct monitoring, collecting, analyzing, evaluating, warning and issuing relevant data and risk information that involve biological safety, quality safety, fake products, industry development and so on, in order to create a better cross-border e-commerce environment for consumers. In recent years, cross-border e-commerce trade in China has continued to grow by 30% every 12 months and it is estimated that the trade volume of the cross-border e-commerce in 2016 may reach RMB 6.5 trillion Yuan.

### **ZTO Express Lists in NYSE**

On October 27, 2016, ZTO Express, a Chinese express company, debuted on the New York Stock Exchange. ZTO Express issued 72.1 million American depository shares, raising around USD 1.4 billion, making it the largest IPO in 2016 in the USA so far.

### **China Establishes Inter-ministerial Joint Meeting to Lower Corporate Leverage**

On October 26, 2016, the General Office of the State Council issued a letter on approval of establishment of an inter-ministerial joint meeting system to lower corporate leverage. The inter-ministerial joint meeting will be joined by 17 departments and work units, including but not limited to, National Development and Reform Commission, People's Bank of China, Ministry of Finance, Banking Regulatory Commission, Ministry of Commerce, State Administration of Taxation, State Administration of Industry and Commerce and Supreme People's Court and so on. Among them, the National Development and Reform Commission will be the leading department. The joint meeting will responsible for researching, drafting, coordinating the relevant policies to leverage lowering as well as other tasks designated by the State Council.

### **Beijing Zhongguancun Sees Revenue Growth**

It is reported that Zhongguancun, the high-tech zone in Beijing, has had the fastest revenue growth in the first eight months this year, despite a slowing national economy. According the Beijing Statistics Bureau, Zhongguancun has seen growth of 16.4% for the last 12 months. In the first eight months this year, the total R&D personnel in the Zhongguancun reached 544,000, which is an increase of 5.8% compared to that of last year.

### **Chinese and American Enterprises Sign Agriculture Trade Agreement**

On October 14, 2016, multiple Chinese and US enterprises signed agricultural transaction agreements in the capital city of Iowa. The total value of the agreements is reportedly in the amount to USD 2.1 billion. It is said that China will import 5.1 million tons of agricultural products from US companies under the agreement, assuming the upcoming US elections do not lead to a change of rules for trade involving the US.

### **Tax Revenue Increases 5.9% year on year in the first Nine Months**

According to statistics issued by the Ministry of Finance on October 19, 2016, tax revenues appear to be for this year. In the first nine month period of this year, the total tax revenues reached RMB

12.14 trillion Yuan, which is a 5.9% increase year on year. It is worth of noting that property transfer taxes have increased 27.2%.

### **China Becomes the Biggest iOS APP Market**

China has surpassed the US and become the largest iOS App Store market. It is reported that in the past quarter, Chinese consumers spent USD 1.7 billion in the iOS App Store, which is twice as much as that of two years ago. Apps in the following categories, received the most growth over the last 12 months - entertainment, social media, books, photos and video media.

### **China to Acquire Foreign Power Generator**

It is reported that China Three Gorges Corporation has reached an agreement to acquire Duke Energy's asset, 2,090-megawatt business in Brazil, for USD 1.2 billion. It is estimated that this deal will be finished within 2 – 4 months, after it obtains relevant government approvals in both Brazil and China. It is reported that China Three Gorges Corporation entered the Brazilian market by establishing a subsidiary in 2013. By the end of January of 2016, it had invested 7 hydroelectric projects and 11 wind power projects in Brazil.

### **Alibaba Cooperates with HP and Intel to Launch New Laptop**

At the "Computing Conference 2016" recently held in Hangzhou, Zhejiang Province, Alibaba, HP and Intel co-launched a new laptop called the HP YunOS Book. The new laptop will have its own intelligent operation system, known as they YunOS of Alibaba. Several government contracts have already been executed regarding bulk supply of these laptops to government agencies in Zhejiang Province, Chongqing and Wuhan.

### **Xinhua.net Lists IPO in Shanghai**

On October 28, 2016, Xinhua.net launched its IPO on the Shanghai Stock Exchange. Xinhua.net was established in 1997 and is a comprehensive news service website operated by the Chinese government agency, Xinhua News Agency.

### **Alibaba Invests \$100 Million to Bring Rugby into China**

Recently, Alibaba Group announced that it signed a cooperation agreement with the International Rugby Board, pursuant to which, Alibaba will invest USD 100 million to make rugby become a mass sport in China within 10 years. According to Mr. Bernard Lapasset, the World Rugby chief, the agreement will establish a rugby platform to allow new comers from all over China to participate this sport. Currently, around eighty thousand Chinese citizens play rugby in China – this is obviously a small percentage of the total population.

### **Taiwan may Become Offshore RMB Settlement Center**

At a cross-strait financial cooperation meeting co-held by the Remin University of China's International Monetary Institute and Taiwan SinoPac Bank, a research report was released and suggested that it could establish an offshore RMB settlement center in Taiwan. It is said that the cross strait economic cooperation shall deepen their financial cooperation.

*This update is aimed at keeping our clients and partners informed as to the latest legal and business developments in the Greater China region. Whilst every care has been taken to ensure the accuracy of the information contained in this update, it should not be relied upon for any purpose prior to formal legal advice being obtained.*