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THE JOURNAL OF INTERNATIONAL BUSINESS & LAW

TECHNOLOGY TRANSFERS FROM THE UNITED STATES TO THE PEOPLE’S REPUBLIC OF CHINA

By: David Williams Russell*

I. INTRODUCTION: BALL STATE’S 2003 “DOING BUSINESS IN CHINA”

On October 31, 2003, Ball State University in Muncie, Indiana, presented an all-day conference on “Doing Business in China” at which representatives of the People’s Republic of China and major international corporations, United States state and federal government representatives, and academics, including Ball State University professors and administrators, participated. The following paper has been developed from the text of my remarks as a speaker at that conference.

II. SCOPE OF REMARKS

My topic concerns the legal aspects of technology transfers from United States companies to entities within the People’s Republic of China. This is a topic of immense scope. It involves, among other things, the laws and regulations of the United States regarding the exports of American technology to foreign countries, including those promulgated under the Trading with the Enemy Act1 and under certain federal executive regulations promulgated thereunder relating to trade with potentially hostile countries, such as Cuba and Iran, which may also be applicable to trade with China. It involves the

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1 Trading with the Enemy Act, 50 App. U.S.C. §§ 1-6, 7-39, 41-44 (1917). First enacted in 1917, the Trading with the Enemy Act is the basis for certain asset control, trading and travel restrictions with respect to nations deemed by the executive branch of the federal government to be hostile to the United States. See also the United States Export Control regulations promulgated under the Export Administration Act of 1979, now expired, but maintained in effect by the President pursuant to the International Economic Emergency Powers Act, 50 U.S.C. § 1702 (2001).
applicability of Chinese laws relating to the transfers of technology into China and to the protection of the transferee’s rights to the technology once it has been transferred. It involves the commitments of the transferee to invest in China and to provide technical assistance and training to the Chinese. It involves arrangements with the Peoples Bank of China and its related entities for the transferee to be paid for the United States technology, including negotiating whether or not such payments may be made in foreign exchange, which may be repatriated by the transferee to the United States. It involves arrangements for the establishment, structure, and governance of any joint venture or company which may be formed to exploit such technology. It involves the transferee’s rights as regards future licensing or product royalties with respect to sales of products produced through the use of the technology transferred. In addition, technology transfers to China involve the availability of dispute resolution mechanisms and insurance against the risks of any such disputes.

Since I recognize that many of you are generally aware that the United States regulates and requires approved export licenses for the export of a wide scope of technologies, including technology exports to communist nations such as China, and that you may also be aware of some of the risks inherent in transferring technology to third world countries and of structuring investments abroad, the thrust of my article will be directed towards identifying those developing Chinese policies regarding foreign technology, which may differ from those of countries with which you may be more familiar, even after China’s 2001 entry into the World Trade Organization (WTO*).

III. GENERAL COMMENTS ON TECHNOLOGY

a. Transfers to Third World Countries

Here are some general thoughts on international technology transfers. Generally speaking, international technology transfers are ways of transferring intellectual capital overseas without necessarily incurring the obligation of making a substantial capital investment overseas. Third world countries, still including China, despite its almost unprecedented rate of growth and sophistication, are well aware of this, and tend to want to encourage technology transferees also to invest long term capital. To the extent that third world countries, such as China, are willing to allocate historically scarce foreign exchange to pay foreigners for their foreign technology, third world countries want the technology to be new, valuable, and usable to produce goods which can be sold abroad or which are unavailable locally. Third world countries want the transferee to make substantial commitments to assure that their citizens are trained to use the technology, and that the technology is implemented effectively. Third world countries want to own the technology at the end of a
ten-year, or (since China’s World Trade Organization entry) perhaps longer, period and to stop paying the foreigners for it at the end of the agreed period.2

This means, in countries such as Brazil or China, that technology transfer agreements have to be cleared both with a central industrial property bureau (in China, formerly the Ministry of Foreign Trade and Economic Cooperation or “MOFTEC”3) as well as with the proposed transferee. These technology transfer agreements must receive this authorization in order to ensure that the technology is of a type and quality which comports with the country’s current industrial policy and with central banking authorities (in China, generally a branch of the People’s Bank of China). Additionally, these agreements must receive this approval in order to guarantee that any proposed payments comport with both the foreign exchange policies and the industrial policies of the state.4 To bypass any of these required bureaucratic stages is to risk loss of the technology without being paid for it in usable foreign exchange.

All of this is old hat to those who have been involved with overseas technology transfers. What then, is unique about China and what are the new rules in China since it joined the World Trade Organization in 2001?

b. Unique Aspects of Technology Transfers to China

At the outset, let me assure you that China desperately wants a great deal of U.S. technology and will allocate hard, internationally exchangeable “ren

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2 Typically, such goals are achieved by means of a cooperative interaction between the central authority which issues permits for the export of “hard” currency (in China, foreign enterprises need to register with the State Administration of Foreign Exchange Control (“SAFE”)3 in order to be certified to open a foreign exchange bank account. See Rules of the People’s Republic of China on Foreign Exchange Control (January 29, 1996) (amended January 14, 1997) (“FOREX Rules”)3 and with the state technology control bureau. Usually, one can import technology to third world countries pretty easily, so long as it is not defense related. The main protection against piracy, however, is the right to receive royalties, since the rights to enforce agreements and intellectual property rights may be limited or impractical. In order to lock in the rights to royalties, the central technology authority must approve the terms of the deal from a social policy standpoint. These approved terms will limit the ability of even a willing technology transferee to pay royalties beyond a designated time period, and often will stipulate that the transferee must own non-exclusive rights to the technology at the end of the approved term of the license, which rarely can be extended beyond ten years. With the technology approvals in hand, the technology transferor, or its domestic transferee, then must apply to the foreign exchange authority for permission to remit royalties and related “hard” currency payments overseas to the foreign technology transferor. Such permission will tend to be limited to the time period and other terms negotiated with the central technology authority.

3 On March 25, 2003, MOFTEC, was merged into a new Ministry of Commerce (“MOC”)3 with authority over both domestic and foreign trade in China.

4 For an example of a technology transfer regime similar to China’s, it is instructive to review that of Brazil, which requires technology transfer agreements to be reviewed by Brazil’s National Institute of Industrial Property (“INPI”), in order to make sure that the technology can be absorbed; is not licensable over a term longer than the life of the underlying intellectual property rights; is not subject to excessive royalties; and can be “absorbed” by the Brazilian transferee. In addition, remittance of royalties abroad must be approved by Brazil’s Central Bank. See generally LAWRENCE J. ECKSTROM, 3 LICENSING IN FOREIGN AND DOMESTIC OPERATIONS § 29 (Steven Z. Szczepanski ed., Clark Boardman Co., Ltd. 1988).
men bi” currency, also called the “yuan,” to buy it. I am aware of such technology transfers which have been negotiated and implemented by Indiana companies in the areas of food processing, metal cutting equipment, agricultural equipment (such as grain dryers) and automotive and transportation products. Additionally, there are several other transfers which are being explored in the areas of medical equipment, electronic and other industrial equipment, and pollution control equipment. The Chinese feel that the United States is a historical ally, and would frequently prefer, other things being equal, to deal with Americans, who are often viewed as more honorable and pleasant to deal with than are the Japanese and Germans, for example.

A major problem faced by Americans, however, is that the Japanese and Germans, for example, have dealt for years with the Chinese, have traditionally driven very hard bargains, and, in the process, have substantially educated the Chinese. The Chinese (A) are not unsophisticated, (B) bargain hard, (C) despite new transparency rules since the advent of the WTO, sometimes still refer to unwritten guidelines and rules they do not disclose, and (D) have been known to take advantage of relatively unsophisticated American companies by, for example, unfairly valuing the Chinese contributions to a joint endeavor or unrealistically limiting the rate of return to the American technology transferor.

5 Frequently, in the writer’s experience, the basic transaction involves the sale of a complex machine, such as one which can cut metal with a jet of high pressure water or a mechanized grain dryer. However, a concomitant of the sale is the undertaking by the seller to install the machine, and to train the Chinese to use and maintain the equipment. In addition, the seller sometimes will undertake to supply spare parts, to perform non-routine maintenance and to provide periodic upgrades to the underlying technology, such as software. In return, the Chinese may undertake not to disclose confidential information and trade secrets and to inform the seller of infringing or competing machines or technology.

6 In connection with one transaction, a Chinese engineer commented to me that, in fact, comparable German-made machine tools were technologically far superior to the American tools being purchased. “Why buy the American tools?” I asked. “Because the Americans will patiently show us how to use the tools and will stand behind them. The Germans will just sell us the tools and walk away. We very much prefer working with the Americans even though their tools are not as good.”
Let us now focus on some of the uniquely Chinese aspects of their current technology transfer policies. Post WTO, China has considerably liberalized and somewhat simplified its rules on technology transfers. The following types of technology transfers may be among those which might be subject to the MOC approval process:

- Patent assignments
- Assignments of patent application rights
- Patent licensing
- Assignments of know-how or trade secrets
- Technical service and other unspecified forms of technology transfer
- Technology consultancy contracts
- Technical training contracts
- Cooperative research and development contracts
- Technology brokerage contracts
- Software importation contracts
- Trademark licenses or assignments combined with patented or non-patented technology

Technologies are now classified into one of three categories: “prohibited” or “restricted” or “permitted.” If technology is not listed in the applicable catalogue of “prohibited” or “restricted” technology, it is deemed by

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7 To accomplish this, all of China’s basic intellectual property laws were modified, and numerous new and revised laws and regulations governing technology transfers to China, their administration and dispute resolution were issued.

8 Patent rights, or the rights to exclude others from using useful technology disclosed to Chinese patent authorities in patent applications, can be assigned (i.e., sold), or licensed (i.e., there may be some reversionary rights in the licensor to license others during and/or after the term of the license).

9 Trade secret or know-how rights are protected by contractual covenants of confidentiality and non-disclosure and can be assigned or licensed like other intellectual property rights.

10 As indicated above, sales or licenses of equipment frequently are accompanied by technical assistance contracts calling upon the transferor to service, upgrade, and maintain the equipment, as well as to train the operators thereof. Such contracts may implicitly or explicitly require the transferor to disclose proprietary information.

11 Jointly owned and developed technology agreements, with implicit and explicit grants of rights to each party, may be subjected to particular scrutiny.

12 Because of its complex, bureaucratic technology system, China has numerous “middlemen” who broker and barter services ranging from location of manufacturers, jobbers, dealers, bill collectors, shippers and foreign exchange handlers, to brokering and bartering technology.

13 Software protections are more limited in China than in the United States. In particular, software source code cannot be separately protected. See China Computer Software Protection Rules, Art. 3(1) (Jan. 1, 2002). “The source program and object program of the same computer program are of one work.”

14 A typical license or sublicense, franchise or value-added reseller agreement may contain a license of trademark rights.
the Chinese to be "permitted" and you can enter into an agreement to import it to or export it from China without formal approval from MOC. One must remember that you may need to make sure your licensee is authorized to export hard currency to pay your royalties, even though only MOC registration, and not MOC approval, is a prerequisite for this. You will need to register even "permitted" technology export and import agreements with MOC and, possibly, with Chinese banking, tax and customs authorities, prior to being entitled to be paid in exportable currency for your technology.

Import "prohibited" or "restricted" technologies tend to be those in areas involving China's most basic or labor-intensive industries, including industries from which the Chinese desire, for reasons of national security and/or of controlling the exploitation of their most precious resources, wholly or mostly to exclude foreigners from involvement. Many of these industries have been and remain subject to state or provincial monopolies and traditionally have been and remain subject to substantial Chinese governmental controls and political and military power over vast amounts of labor and resources.

On the export side, the "prohibited" exports tend to be in areas deemed historically or traditionally "Chinese" such as Chinese herbal medicines, tea production, or silk production and seem designed to protect foreign usurpation of these technologies. The same sorts of thinking seems to be at work as regards "restricted" exports, since many of these "restricted" categories seem to be those in which the Chinese may believe they have an international competitive advantage, as with the restrictions on computerized technology for recognizing or processing Chinese characters, or as to which the Chinese have material security concerns, as with the restrictions on export of certain computer networking technologies.

If technology is "prohibited" from import to China (25 categories of technology), MOC will not approve agreements for its import or export.

This leaves the technology "restricted" from import (16 categories) or export (170 categories). Agreements for technology transfer including technology in any of those "restricted" categories must go through the MOC approval process. On the import side, this begins with the filing of an

15 These include certain types of iron and mineral mining technology, chemical, petro-chemical and petroleum refining technology, electronic, medical, printing, construction materials, production, firefighting and certain light industry technologies. See Catalogue of Technology of Which China Prohibits or Restricts the Import (First Batch), (MOFTEC, Dec. 30, 2001.) [Categories numbered 010101 to 011102] [hereinafter Import Catalogue].

16 These include textile, tea and Chinese medicine technologies and are described in categories numbers 980201J to 984405J. See Catalogue of Technology of Which China Prohibits or Restricts the Export. (MOFTEC, Dec. 12, 2001) [hereinafter Export Catalogue].

17 These include certain types of currency production, biotechnology, chemical, biochemical and petro-chemical and petroleum refining technology described in categories numbered from 010101X to 010601X. See Import Catalogue.

18 These include certain computer and software technology, as well as a wide variety of other export restricted items, described in categories numbered from 980101X to 984804X. See Export Catalogue.
"Application for Importing PRC Restricted Technology" for approval by MOC and the appropriate provincial Commission for Foreign and Economic Trade ("COFTEC"), a process which is supposed to take 30 days. The four general approval criteria (public interest and national security; health, environment, national industrial and technology policy) are broad and vague.

Upon approval, the Chinese importer gets a Technology Import License Proposal from MOC, and can sign the technology license, assemble the required documents, and submit them to MOC for issuance (or denial) of a Technology Import License by MOC within 30 days. This license then must be submitted various places for foreign exchange, banking, tax and customs clearances. (Note: A similar process applies when “restricted” technology is to be exported from China.)

As with “permitted” technology, imports or exports of “restricted” technologies must be registered with MOC. When completed, the MOC registration system is designed to be used on-line with registration to be completed in 3 days.

But watch out. If your technology transfer agreement contains the following types of clauses, it will not be able to be registered:

- Clauses that (A) tie or condition the transfer of your technology to the transferee’s purchases of (i) unnecessary licensed technology, (ii) technology services, or (iii) materials or supplies; or (B) which would unduly restrict licensee access to such adjuncts from others
- Clauses that require payments for expired or invalidated patents or copyrights
- Clauses that would prevent licensees from improving or owning or using technology improvements
- Clauses preventing licensees from acquiring competitive technologies from others
- Clauses which unduly restrict the pricing, quality or variety of products of the technology

19 COFTEC is a registered Chinese authority under MOFTEC (now MOC). Import of restricted technology must therefore have both national MOC approval and the approval of the regional COFTEC, now also under MOC.
20 MOC will examine broadly whether the technology import will conform to China’s foreign trade policy and foreign trade commitments. MOC then will examine whether the import will damage national security or the public interest; whether import will hurt the environment; and whether import will promote China’s technological progress consistent with China’s industrial and social policies.
21 At this stage, approval is in concept only, the actual license between the foreign technology transferor and the Chinese transferee has yet to be signed.
22 See supra note 2, for a general description of the Chinese SAFEC ministry and the FOREX Rules on foreign exchange.
23 Regulations on Technology Import and Export Administration of the People’s Republic of China, Art. 29(1-7) (Jan. 1, 2002) [hereinafter China Technology Import/Export Regulations].
Clauses unduly restricting re-export of the technology from China.

As indicated above, the maximum term for technology transfers once was ten years. Now the parties can choose a longer (or shorter) term not to exceed the life of the underlying patent or copyright, as the case may be.\(^2\)

Trademark licenses should not exceed the term of the current Chinese trademark registration, but, since they must be registered (or re-registered) within six months of the license (or license renewal) date, they may be renewable in perpetuity provided the registration is renewed.\(^2\) Trade secret license agreements may be perpetual, but should be worded to provide for perpetually renewable terms.\(^2\) Since WTO the terms of confidentiality agreements, which once were limited in duration to the length of the underlying technology license, can extend beyond the end of the license term.\(^2\) Royalties for technology transfer licenses are negotiable, but should not extend beyond the life of licensed patents or trademarks.\(^2\) But be careful and reasonable. You may not be able to get foreign exchange approvals when you register your technology license with banking authorities if your agreed royalties are deemed too high.

**IV. PROTECTION OF INDUSTRIAL PROPERTY RIGHTS IN CHINA**

**a. Dispute Resolution**

China now has laws relating to the protection and utilization of foreign industrial property rights which are the subject matter of technology transfers by foreigners to the Chinese. Within this section, I will outline the available protections which are applicable to industrial property rights in China. First, however, let me briefly discuss dispute resolution in China, since this topic is perhaps more germane to industrial property protection than are the industrial property laws themselves- which are extremely sketchy by western standards.

First, it is very difficult to enforce industrial property rights under the Chinese legal system, and resorting to the Chinese courts is very likely to be frustrating at best.\(^2\) Second, the Chinese do recognize arbitration, and

\(^2\) See id. at Art. 28.
\(^2\) See id.
\(^2\) See China Technology Import/Export Regulations, supra note 23, at Art. 29(2).
\(^2\) China’s legal system has been designed and implemented in toto since the 1970’s. It is administered by a bureaucratic and corrupt legal system which tends to elevate political concerns above ethical concerns. The Chinese do not follow the principle of *stare decisis*, so there is no requirement that any two courts or even the same court must rule comparably on identical facts. The Chinese legal system is often called a “rule by law” system rather than a “rule of law” system and
Arbitration in China is relatively easy to negotiate. Third, arbitration outside China is possible, but may be difficult to negotiate. The Chinese will currently recognize foreign arbitral awards, provided they agreed to the foreign arbitration in the first place. Fourth, effective United State Overseas Private Investment Corporation (“OPIC”) insurance is not currently available with respect to technology transfers to the Chinese, since OPIC will not insure against political risk in China. Since a U.S. technology transferor invariably will be dealing with an agency of the Chinese government, which can simply refuse to perform, and since OPIC considers this an uninsurable political risk in China, no effective OPIC insurance is available to ensure that the U.S. technology transferor will be paid. OPIC will insure, however, against the risk that the Chinese will not honor an agreed method of contract dispute resolution - such as an arbitration outside China. OPIC insurance may be better than nothing. (Note: A number of other insurers do insure Chinese projects, so do not end your project finance research with OPIC.)

b. Industrial Property Rights in China

i. Know-How

As indicated above, MOC has the authority to approve contracts which require the Chinese to keep confidential the technical secrets contained in the technology provided by the supplier according to the scope and terms agreed upon by the parties concerned. Effective injunctive relief is difficult to get and doubtful of enforcement, but it is possible to negotiate for liquidated (i.e., pre-negotiated) damages for breach. Another approach would be to take advantage of China’s 1993 Anti-Unfair Competition Law to protect your trade secrets.

ii. Patents

China’s current patent law dates from 1984 and was amended in 1992 and again in 2000 to bring it closer to the WTO requirements. Types of patents are:

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Chinese lawyers themselves go to considerable lengths not to resort to the Chinese courts on behalf of their clients.

30 Chinese authorities strongly favor arbitration in China under Chinese law in Chinese via the Chinese arbitral system. Chinese suggested form contracts contain language to such effect. Technology transfer agreements must be registered and approved by MOC and SAFEC which strongly favor approving contracts stipulating that disputes should be resolved by Chinese arbitration.

31 The Overseas Private Investment Corporation - or “OPIC” was established as a development agency of the United States government in 1971. OPIC provides political risk insurance to help United States companies manage risk, provides capital through direct loans and loan guarantees and helps leverage private capital through OPIC-supported equity funds.

32 Law of the People’s Republic of China Against Unfair Competition (Dec. 1, 1993). This law provides damages in the event of breaches of contracts designed to preserve commercial secrets.

• **Inventions**, defined as "any new technical solution relating to a product or procedure, or relating to an improvement in a product or procedure;"^35

• **Utility Models**, defined as "any new technical solution fit for practical use relating to the shape of a product, its structure or combinations of the shape or structure of a product;"^36 and

• **Designs**, defined as "any new design of the shape, color, pattern or a combination, creating an aesthetic feeling and suitable for industrial application."^37

The duration of patent rights is twenty years for inventions and ten years for utility model and design patents, "counted from the date of filing."^38 Patents are granted on a first-to-apply basis, which differs from many other countries. Applicants may claim "prior right" under the International Patent Cooperation Treaty, which allows them to claim the date of filing in another signatory country as the date of filing in China, so long that the claim is made within one year.^39 Patent protection is limited for many pharmaceutical products, which did not formerly qualify for patent protection, and is non-existent for software products (some estimates are that 92% of software products in use in China in 2003 were pirated). Most of the post-WTO amendments deal with procedural and enforcement matters; not with basic patentability issues.^40

iii. **Trademarks**

Trademarks are registered by the Trademark Office, which is an agency under the Chinese State Administration of Industry and Commerce.^41

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36 See id.

37 See id.

38 See China Patent Law, supra note 34, at Art. 42.

39 The International Patent Cooperation Treaty (1978), available at http://www.int/pct/en/index.html (last visited Apr. 6, 2004), enables an inventor to file a single international application in addition to the main application filed in a treaty-member country, which simplifies the process of an applicant’s seeking a patent on the same invention in more than one country. The United States became a party to this treaty on January 24, 1978, and China became a party on January 1, 1994.

40 See China Patent Law, supra note 34. Some of the added post-WTO protections include, among others, the ability of patent owners to prohibit unauthorized “offering for sale” (Article 11); the availability of statutory damages (Article 60); the ability to prosecute (but not collect damages from) infringers who are unaware that they are infringing (Article 63); the ability to get preliminary injunctions against infringement (Article 61); and simplified enforcement procedures (Articles 45 and 46).

41 See China Trademark Law, supra note 25, at Art. 2.
Trademark rights are on a first-to-file, not first-to-use, basis, and should therefore be filed as early as possible. Trademarks are valid for ten years "from the date of approval of the registration," not the date of application, and can be renewed for periods of ten years at a time.

There was a major amendment to Chinese trademark law in 2001 which liberalized the trademark law in several respects including:

- Individuals now can own trademarks
- Three dimensional signs and multiple color combinations can be protected with trademarks
- Protections for well-known marks, previously unavailable to U.S. owners, are enhanced
- Preliminary injunctions are now available to stop infringements.

iv. Copyrights

Most copyrights are awarded for the life of the author, plus fifty years. Software can be copyrighted, (but not patented) to some extent, in China, but software source code cannot be copyrighted separate from the entire program. Copyrights are handled by the Copyright Agency of China and enforceable by the People's Court of China.

There was a substantial amendment to the Chinese Copyright Law in 2001 to bring Chinese practices closer to those of the Berne Copyright Convention and the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"). Some of the changes include:

See id. at Art. 29.
See id. at Arts. 37-38.
See id. at Art. 4.
See id. at Art. 8.
See id. at Arts. 14, 17, 18, 24.
See id. at Art. 58.
See id. at Arts. 3 (8) and 53; see China Regulation for Computer Software Protection, Art. 3 (1) (Jan. 1, 2002).
See China Copyright Law, supra note 48, at Arts. 7, 50-55.
TRIPS cover five subject areas:
1) Application of World Trade Organization ("WTO") basic principles to intellectual property rights;
2) Protection of intellectual property rights;
3) Enforcement of protection of intellectual property rights;
4) Settlement of intellectual property rights disputes;
5) Transactional arrangements as TRIPS is instituted;
Copyrights are now available for acrobatics, masks and models.\(^{53}\)

Ten year copyrights are now available for original designs of published books or magazines.\(^{54}\)

Internet publications are now copyrightable.\(^{55}\)

Foreign works protected under agreements between the country which the author belongs or in which the author permanently resides and China, and under international treaties, such as the Berne Convention, are now protected in China.\(^{56}\)

Tighter regulation on the “fair use” of copyright protected works for the benefit of copyright owners.\(^{57}\)

Preliminary injunctions to prevent copyright infringement now are available.\(^{58}\)

V. CONCLUSION

There is great opportunity and great risk inherent in effecting technology transfers to the People’s Republic of China. The key, I believe, is to identify technology the Chinese need and will pay for in foreign exchange and which is technology of a type which the United States will grant you an export license permitting you to export it to China. Federal and state departments of commerce are good places to begin to explore whether your technology is profitably exportable to China and to begin to identify trade leads. Then it is appropriate to begin to identify persons who are experienced in China trade who will introduce you to the appropriate potential Chinese transferees for your technology. Again, the government’s commerce officials may be helpful to you. It also may make sense to try to identify persons in Hong Kong, for

\(^{53}\) See China Copyright Law, supra note 48, at Art. 3 (1-9). See also Copyright Law Implementing Regulations of the Copyright Law of the People’s Republic of China, Art. 4 (1-13) (Sept. 15, 2002) [hereinafter Copyright Regulations].

\(^{54}\) See China Copyright Law, supra note 48, at Art. 35.

\(^{55}\) See id. at Arts 3 (1) and (7).

\(^{56}\) Id. at Art. 2.

\(^{57}\) Id. at Art 22. (A work may be exploited without the permission from, and without payment of remuneration to, the copyright owner, provided that the use is for the purposes of a user’s own private study, reporting current events by newspapers, periodicals, radio stations, an television stations, translation or reproduction for use by teachers or scientific researchers in classroom teaching provided the name of the author and the title of the work are mentioned and or appropriate quotation from a published work in one’s own is clearly displayed).

\(^{58}\) Id. at Art. 49. (Issuance of preliminary injunctions are based on the same criteria as a United States Court requires; a showing that his lawful rights and interest will suffer damage which will be difficult to be remedied if he does not stop the action in time).
example, who have regular dealings in the Chinese markets and who can help you to identify potential transferees and can help guide you as you deal with the labyrinth of Chinese bureaucracy.