INTRODUCTION

Over the past forty years, Western policy makers, commentators, and scholars have followed the development of
China’s intellectual property system with interest. Many Western countries have exported intellectual products to China, and the protection that China’s intellectual property system provides affects these countries’ gains. Some of them, particularly the United States, complain that China does not provide sufficient protection of intellectual property rights. When scholars study China’s intellectual property system, they tend to focus on whether the Chinese government has granted intellectual property rights to some particular kinds of intellectual products and whether it has effectively enforced these rights. Over the years, there have been studies claiming that the level of protection of intellectual property rights in

1 For the purpose of this article, “China” refers to Mainland China, excluding the Hong Kong Special Administrative Region, the Macau Special Administrative Region, and the Taiwan Region.


China is inadequate,\(^4\) but more recent research has suggested that the opposite might be the case.\(^5\)

However, few scholars have realized that the Chinese government has taken a holistic approach to developing its intellectual property system in recent years. This approach allows the system to develop in a way that goes beyond the provision of property rights protection. In particular, since the Chinese government’s promulgation of the *Outline of National Intellectual Property Strategy* in 2008 (the “2008 Outline”),\(^6\) there has been a significant shift in the way China manages intellectual property issues. Since 2008, the government has officially focused its legislation not only on improving the protection of intellectual property rights, but also on the creation of intellectual products, the implementation of intellectual property rights, and the management of these products and rights. This article refers to this legislative approach as *intellectual property legislation holism*. In 2021, the Chinese government promulgated the *Outline for the Construction of a Strong State of Intellectual Property (2021–2035)* (the “2021 Outline”),\(^7\) reinstating and strengthening this approach. In this outline, the

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\(^5\) See Bian, supra note 3 at 475 (noting that in patent infringement litigation, plaintiffs won 80.16% of cases, about 20% more than in the U.S.; the courts automatically granted permanent injunctions in 93.76% of these cases).


Chinese government expanded the focus of its legislation to include the development of services related to intellectual products and rights. Western scholars’ concentration on the provision of property rights protection of the Chinese intellectual property system has hindered their ability to understand the system comprehensively.

As current literature lacks studies on China’s holistic approach to intellectual property legislation, this Article aims to counter this deficiency. It reviews the history of China’s intellectual property legislation, then systematically surveys China’s intellectual property laws, including those promulgated at both the central and local government levels. By describing and analyzing intellectual property legislation holism in China, this article contributes to the literature both by providing scholars interested in the comparative study of intellectual property systems with a case study of the intellectual property system operating in a particular national context, and, more importantly, by showing how China, both as a developing country and as a recipient of legal transplants, has moved toward the development of a more multifaceted intellectual property system that reveals the various ways by which the law might handle issues that arise in the innovation process. The article’s description and analysis of the system should shed light on how policymakers in other jurisdictions, even those that generally export intellectual property institutions, can think about reforming their own intellectual property systems.

Following the Introduction, Section I of this Article provides an overview of the evolution of China’s intellectual property

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8 Irene Calboli, A Call for Strengthening the Role of Comparative Legal Analysis in the United States Symposium: Values, Questions, and Methods in Intellectual Property, 90 St. John’s L. Rev. 609, 611–12 (2016) (suggesting that comparative legal analysis could play a larger role for U.S. intellectual property academics and that more scholars could use it, in conjunction with other research methods, when studying intellectual property law because it allows them to use the experiences of other jurisdictions to develop their research questions and answers); Peter K. Yu, A Half-Century of Scholarship on the Chinese Intellectual Property System, 67 Am. U. L. Rev. 1045, 1121 (2018) (“[S]cholarship on the Chinese intellectual property system encourages researchers to think more deeply about the different justifications for and treatment of intellectual property rights in non-market economies.”).

9 See Peter K. Yu, Editorial, 8 Queen Mary J. Intell. Prop. 1, 2 (2018) (“Chinese intellectual property developments have also begun to influence the globe.”).

10 See Alan Watson, Legal Transplants: An Approach to Comparative Law 99 (1993) (noting that recipient societies often carefully examine the provisions of laws when they receive them and might be able to reform or improve them, so that the recipient society can, in turn, become a donor).
It points out that China began to form a modern intellectual property system in the 1980s.\textsuperscript{11} Initially, this legislation focused on establishing a system of rules that granted intellectual property rights to intellectual products and protected these rights.\textsuperscript{12} With the promulgation of the 2008 Outline, the Chinese government adopted a holistic legislative approach, expanding the focus of its legislation.\textsuperscript{13} In 2021, it expanded its legislative focus again.\textsuperscript{14} Section II describes and analyzes the Chinese government’s legislation in five areas: the creation of intellectual products, the implementation of intellectual products and intellectual property rights, the management of these products and rights, the services related to them, and the protection of intellectual property rights. Section III discusses two implications of China’s approach to intellectual property legislation. It points out that China’s intellectual property legislative holism is a manifestation of the government’s legalization of pluralistic innovation policies. The combination of multiple innovation policies can be an effective way to deal with the complexity of innovation, especially in emerging economies. It also points out that China’s intellectual property legislation reflects the paradigm of state-driven innovation, which might depend on a government’s ability to make sensible decisions regarding innovation and to deal with the rent-seeking behavior of government officials. The last section presents the article’s conclusions.

\section{I. EVOLUTION OF CHINA’S APPROACH TO INTELLECTUAL PROPERTY LEGISLATION}

\subsection{A. Establishment: 1982–2000}

After the founding of the People’s Republic of China, the Chinese government attempted to restore the legal system that had collapsed during the previous wars through legislation. In 1950, it enacted three laws regarding intellectual property: the \textit{Provisional
Regulations on Trademark Registration,\textsuperscript{15} the Provisional Measures on Remuneration for Book Manuscripts,\textsuperscript{16} and the Provisional Regulations on the Protection of Invention and Patent Rights.\textsuperscript{17} However, the effects of these laws were short-lived. The legal system suffered setbacks with the widespread purging of legal institutions.\textsuperscript{18} Coupled with this was a pervasive ideology that staunchly opposed the privatization of intellectual creations.\textsuperscript{19} Intellectual property was subsequently regarded as a communal asset, open to public access without any need for proprietary safeguards.\textsuperscript{20} Consequently, this era witnessed a conspicuous absence of intellectual property protection.\textsuperscript{21}

It was not until the 1980s that the Chinese government gradually restored the legal system through a series of legislative initiatives. During this period, the Chinese government had already set “reform and opening up” as the “basic policy of the state.”\textsuperscript{22} The various pieces of legislation it adopted were aimed at changing China from a...
planned economy to a market economy. As part of this transition, protection for private property was reestablished, reflecting a broader shift in the nation’s economic and legal paradigm.

During this period, the Chinese government realized that in order to develop its domestic economy, it would have to import intellectual products, especially technologies, from abroad. However, foreign owners were generally reluctant to transfer their intellectual products to China because they thought it likely that they would be unable to obtain intellectual property rights to those products or have access to mechanisms to enforce those rights. The need to import intellectual products and to establish trade relations with other countries, especially developed ones, drove the Chinese government to establish an intellectual property system. One example of the necessity of this system arose during the negotiation of the *U.S.–China High Energy Physics Agreement* and the *U.S.–China Trade Relations Agreement*, when the U.S. government made China’s establishment of an intellectual property system to provide protection for the property rights of intellectual products a condition for the development of bilateral trade between the U.S. and China.

In order to introduce foreign technology and participate in international trade, the Chinese government convened representatives from the industry to discuss the enactment of a patent law, a trademark law, and a copyright law. The strong foreign influence on the Chinese government’s efforts in this area appeared in the *Report on the Request for the Establishment of a Patent System in China*, which the Chinese National Science and Technology Commission...
submitted to the State Council on January 14, 1980. The report included the statement that “patent work is foreign-related work.”

In 1982, the Chinese government enacted the Trademark Law. Many scholars view this as the beginning of the formation of a modern intellectual property system in China. The law focuses mainly on the acquisition of trademark rights based on registration, and the protection of trademark rights. It also contains provisions on the management of trademarks and the quality of the supervision involved. The Chinese government adopted the Patent Law in 1984. Most of this law’s provisions relate to the acquisition and protection of patent rights. The Chinese government’s preparation for the copyright law legislation started in 1979. However, different opinions within the Chinese government regarding issues such as the balance between the government’s ability to shape public opinion and the protection of works of authorship led to a delay in its promulgation. In 1989, the United States Trade Representative (“USTR”) began implementing Special 301 Review, using its dominant position in trade and the sanctioning authority that Section

28 Id.
31 Trademark Law (1982), supra note 29, arts. 2–5, 11–22 (acquisition of trademark rights based on registration); 37–40 (protection of trademark rights).
32 Id. arts. 30–36 (Management of Trademarks); art. 6 (Product Quality Supervision).
34 See id. (stipulating in Article 16 that the employing party that obtains the patent right should give a prize to the inventors or designers of work-for-hire invention, and that a prize should be given to them after the implementation of the invention’s patent, the law’s primary focus is the acquisition and protection of the patent right. In fact, even these prizes are related to the employing party’s acquisition of patent rights.)
35 Cao & Wang, supra note 26, at 7.
36 Id. at 8.
301 of the Trade Act of 1974 granted it, to initiate bilateral negotiation procedures.\textsuperscript{37} On May 19, 1989, China and the United States signed a memorandum of understanding related to intellectual property rights.\textsuperscript{38} In 1990, the Chinese government enacted the Copyright Law.\textsuperscript{39}

The United States’ efforts to raise the level of protection of intellectual property rights in China did not end with the passage of the Copyright Law. On April 26, 1991, the USTR designated China as a priority foreign country for the first time under Section 301 of the Trade Act of 1974.\textsuperscript{40} This designation suggested that China “ha[d] the most onerous or egregious acts, policies, or practices that . . . deny adequate and effective intellectual property rights.”\textsuperscript{41} Against this backdrop, the governments of the two countries negotiated and signed another memorandum of understanding on protection of intellectual property in 1992.\textsuperscript{42} In order to fulfill its obligations under this memorandum, the Chinese government amended its Patent Law and Trademark Law in 1992 and 1993, respectively.\textsuperscript{43} It added national priority and a series of procedural rules to the patent law that made it easier for foreigners to obtain patent protection. In addition, the patent law added import protection for patented products and expanded the

\begin{footnotesize}
\begin{enumerate}
\item[38] For a discussion of the signature of this memorandum, see Peter K. Yu, The Long and Winding Road to Effective Copyright Protection in China Hindsight Is 2020: A Look at Unresolved Issues in Music Copyright, 49 PEP. L. REV. 681, 692–93 (2022) (“[T]he instrument ‘paved the way for the eventual adoption of the Copyright Law in [September] 1990 and a separate set of computer software regulations the year after.’”).
\item[40] Yu, supra note 3, at 141.
\end{enumerate}
\end{footnotesize}
scope of patent protection to cover chemical substances, pharmaceuticals, food, beverages, and condiments. It increased the duration of patent rights for invention from fifteen to twenty years. As for the Trademark Law, the Chinese government expanded trademark protection to cover service marks. It increased the penalties for the criminal offense of counterfeiting registered trademarks. It also simplified the trademark registration procedures, making it easier for both foreigners and Chinese nationals to obtain trademark rights. In the 1990s, the Chinese government established the intellectual property system, primarily to respond to foreign stakeholders’ demands for obtaining and enforcing intellectual property rights. In fact, in 1992, the Chinese State Council even promulgated the Regulations on the Implementation of International Copyright Treaties, which granted supranational treatment to foreign rights holders; that is, it gave them a higher level of protection for the copyright of their works than domestic rights holders had.

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44 See 1992 Patent Amendment, supra note 43, § 2 (revising the 1984 Patent Law’s Article 25 which stipulates that the subject matters not eligible for patent protection include scientific discoveries; rules and methods for intellectual activities; diagnostic and treatment methods for diseases; food, beverages, and seasonings; drugs and substances obtained by chemical methods; animal and plant varieties; and substances obtained by nuclear transformation. After the revision, the non-patentable subject matters were narrowed down to scientific discoveries; rules and methods for intellectual activities; diagnostic and treatment methods for diseases; animal and plant varieties; and substances obtained by nuclear transformation).

45 Id. § 13.


47 Id. § 9.

48 Id. § 3 (After the amendment, if the same applicant uses the same trademark for products in different categories, there is no need to submit separate registration applications according to the product classification table; they can be combined into one application).


50 For more discussion of this aspect see Shen Renqian (沈仁千), Jianxin, Xiyue Yu Qipan—Gaige Kaifang Zhong De Zhuzuoquan Lifa (艰辛、喜悦与期盼—改革开放中的著作权立法) [Hardship, Joy, and Expectation—Copyright Legislation in the Reform and Opening-up], ZHONGGuo BANQUAN NIANJIAN [China Copyright Yearbook] 72, 80–81 (2009).

China joined the World Trade Organization (“WTO”) in 2001, becoming its 143rd member. Reform of its intellectual property system was an important aspect of China’s negotiations for joining the WTO. The Chinese government modified the Patent Law in 2000 and the Copyright Law and the Trademark Law in 2001. The modifications showed the influence of international trade rules, in particular the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”). In general, the modifications expanded the scope of intellectual property rights and enhanced the protection of those rights.

Specifically, by amending the Patent Law, the Chinese government expanded the patent right to the extent that right holders can exclude others from offering for sale the products that their patent covers. The amendment also enhanced the protection of patent rights, allowing a patentee to apply for preliminary injunction and, if its loss is difficult to prove, to request the court to determine damages by reference to a certain multiple of the patent license fee. In addition, the amendment simplified the procedures for patent examination and enforcement.

The Chinese government amended the Trademark Law in 2001 to extend the protection of property rights of famous trademarks.

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53 Yu, supra note 11, at 5; Li, supra note 52, at 83–89.


55 Id. § 28.

56 Id. § 27.

57 Id. §§ 9, 10, 24.
to trademarks used in different and dissimilar product categories;\(^{58}\) to expand the scope of subjects applying for trademarks;\(^{59}\) to expand the protection of geographical marks;\(^{60}\) to improve the registration of trademarks;\(^{61}\) to include the decision of the Trademark Review and Adjudication Board on the confirmation of trademark rights in the scope of judicial review;\(^{62}\) to add a provision related to innocent infringement;\(^{63}\) and, to increase the penalty for infringement.\(^{64}\)

The amended Copyright Law gave copyright owners additional property rights, including rental rights, projection rights, and network transmission rights;\(^{65}\) expanded the scope of copyright protection to cover acrobatic art works, architectural works, and databases;\(^{66}\) abolished the statutory licensing system under which radio and television stations could broadcast published sound recordings for free in some circumstances;\(^{67}\) and, added provisions on infringement remedies, such as statutory compensation.\(^{68}\)

The need to fulfill international trade treaty obligations was the primary motivation behind the Chinese government’s amendments to its intellectual property laws during this period, despite there being an endogenous demand for such changes to promote domestic innovative activities.\(^{69}\) In terms of legislation, by 2005, China’s protection of intellectual property had met the requirements of international trade treaties.\(^{70}\) Since then, while the United States has exerted pressure on China regarding intellectual


\(^{59}\) Id. § 7.

\(^{60}\) Id. § 15.

\(^{61}\) Id. §§ 3–7.

\(^{62}\) Id. § 34.

\(^{63}\) Id. § 40.

\(^{64}\) Id.


\(^{66}\) Id. §§ 2, 9.

\(^{67}\) Id. § 14.

\(^{68}\) Id. § 41.

\(^{69}\) Cao & Wang, supra note 26, at 10–11.

\(^{70}\) Id. at 11.
property rights protection, the pivotal catalyst for China’s substantive adjustments primarily has revolved around the enforcement of those rights. A major issue that has attracted considerable scholarly attention is the dispute between the United States and China at the WTO over China’s failure to meet the obligations under the TRIPS Agreement requiring it to enforce intellectual property rights at a relatively high level.

C. Transformation: 2008–2020

The Chinese government passed the National Intellectual Property Strategy Outline in 2008 (the “2008 Outline”). The promulgation of this outline transformed China’s intellectual property legislation in two important ways. The first was a shift in the motivation for legislation. As Chinese intellectual property scholars Wenze Cao and Qian Wang suggest, since then, the Chinese government has started catering less to so-called Western or international standards and has developed a pragmatic approach to legislation based on domestic demand. The 2008 Outline stated that “intellectual property has increasingly become a strategic resource for national development and a core element of international competitiveness, and has become an important support for building an innovative country and a key to grasping the initiative of development”; as a developing country, China should “actively adopt intellectual property policies and measures adapted to its national conditions to promote its own development.”

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73 2008 Outline, supra note 6.
74 Cao & Wang, supra note 26, at 10–11.
75 2008 Outline, supra note 6.
Another transformation, more relevant to this article, has been the shift in the Chinese government’s approach to intellectual property legislation. Although the Chinese government had addressed aspects other than the establishment and protection of intellectual property rights in its intellectual property legislation before the passage of the 2008 Outline, the legislative efforts in that period mainly focused on the institutional set-up of intellectual property rights protection. The 2008 Outline elevates the creation of intellectual products, the implementation of intellectual products and intellectual property rights, and the management of those products and rights to the same level of importance as the protection of intellectual property rights. According to the document’s “strategic objectives,” the Chinese government is supposed to build China into a “country with a relatively high level of intellectual

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76 Before the promulgation of the 2008 Outline, China had enacted legislation pertaining to intellectual property that went beyond mere rights protection. However, these laws, once established, were seldom updated, and were not given significant emphasis in practice. Notable examples include the “Administrative Measures for Patents of Traditional Chinese Medicine (Trial)” and the “Measures for the Recordation of Trademark License Contracts.” As demonstrated in Sections I. A and B, the laws that underwent continuous evolution to stay abreast with the times were the trademark, patent, and copyright laws—the three core pillars of intellectual property legislation in China. The primary focus of these updates was to enhance the protection of intellectual property rights. Moreover, prior to 2008, the primary intellectual property-related directives issued by the central government concentrated on reinforcing intellectual property rights protection, as evidenced by directives like the “Action Outline for the Protection of Intellectual Property Rights (2006–2007).” See Zhongyiyaoye Zhuanli Guanli Banfa, (中医药专利管理办法 (试行)) [Administrative Measures for Patents of Traditional Chinese Medicine (Trial)] (promulgated by the National Administration of Traditional Chinese Medicine Sept. 5, 1995, effective Sept. 5, 1995) (China); Shangbiao Shiyong Xuke Hetong Beian Banfa (商标使用许可合同备案办法) [Measures for the Record-filing of Trademark License Contracts] (promulgated by the State Administration for Industry and Commerce Aug. 1, 1997, effective Aug. 1, 1997) (China); Baohu Zhishi Chanquan Xingdong Gangyao (2006–2007 Nian) (保护知识产权行动纲要 (2006–2007 年)) [Action Outline for the Protection of Intellectual Property Rights (2006–2007)] (promulgated by the General Office of the State Council, Mar. 27, 2006, effective Mar. 28, 2008) (China).

77 2008 Outline, supra note 6 (The opening sentence of the 2008 Outline explicitly states: “To enhance China’s capability in the creation, implementation, protection, and management of intellectual property, to build an innovative nation, and to achieve the objective of constructing a comprehensively well-off society, this outline is formulated.” This statement encapsulates the core purpose and objectives of the Outline. It underscores the notion that the facets of intellectual property, namely creation, implementation, protection, and management, are of equal significance in the context of the nation’s broader developmental goals. This simultaneous emphasis on various aspects of intellectual property reflects a holistic and balanced approach to the realm of intellectual property in China.)
property creation, implementation, protection, and management” by 2020.78

The legislative efforts of China’s central and local governments reflect the expansion of the focus of intellectual property legislation. The establishment of intellectual property rights and the enhancement of their protection have continued to be important aspects of legislation. The Chinese government amended its Patent Law, Copyright Law, and Trademark Law again in 2008, 2010, and 2013, respectively.79 The amendment to the Patent Law increased the level of protection of patent rights by enhancing the penalties for patent infringement.80 The revised Trademark Law includes “sound” as a protected object,81 clarifies the way to apply for “one mark in multiple categories,”82 strengthens the protection of well-known and unregistered trademarks,83 introduces punitive damages to remedies for trademark infringement,84 and increases the amount of statutory damages.85 The amended Copyright Law removes the provision that “works whose publication or dissemination is prohibited by law shall not be protected by the Copyright Law,” so that prohibited works can also enjoy copyright protection.86

78 Id. at 2.
80 2008 Patent Amendment, supra note 79, art. 32. Although this amendment introduces compulsory licensing rules into China’s patent law, they are rarely, if ever, used.
81 2013 Trademark Amendment, supra note 79, § 4.
82 Id. § 14.
83 Id. § 44.
84 Id. § 48.
85 Id.
While these revisions do not reflect the Chinese government’s emphasis on the creation, implementation, and management of intellectual property, local governments, both at the provincial and municipal levels, have undertaken legislative efforts in these areas. A typical example is the *Regulations on the Protection and Promotion of Intellectual Property in Shandong Province* adopted by the Standing Committee of the People’s Congress of Shandong Province on March 30, 2010, which came into effect on May 1 of the same year.\(^87\) Article 1 of the law sets its legislative purpose: “to promote the creation, implementation, protection, and management of intellectual property, enhance the capacity for independent innovation, and promote comprehensive and sustainable economic and social development.”\(^88\) The law has six chapters: Chapter I lists the general provisions;\(^89\) Chapter II presents the provisions related to incentives and support for the creation of intellectual products;\(^90\) Chapter III deals with the protection of intellectual property rights and the management of intellectual products and intellectual property rights;\(^91\) Chapter IV focuses on the provision of intellectual property-related education and the training of personnel in this field;\(^92\) Chapter V provides for legal liability;\(^93\) and Chapter VI enumerates the by-laws.\(^94\) Chapters III and V are most closely related to providing protection of intellectual property rights. However, Chapter III also contains a number of provisions that are managerial in nature and not directly related to this protection.\(^95\) Most of the provisions in Chapters II and IV are not related to the protection of intellectual property rights.\(^96\)


\(^88\) *Id.* art. 1.

\(^89\) *Id.* Ch. I.

\(^90\) *Id.* Ch. II.

\(^91\) *Id.* Ch. III.

\(^92\) *Id.* Ch. IV.

\(^93\) *Id.* Ch. V.

\(^94\) *Id.* Ch. VI.

\(^95\) *Id.* arts. 25, 26, 27, 29, 30.

\(^96\) *See generally Shandong Province Intellectual Property Regulations, supra* note 87 (illustrating that the provisions in Chapters II and IV are mainly managerial).
Currently, the Tibet Autonomous Region is the only provincial-level administrative region in mainland China that does not have specific legislation related to intellectual property. The government of every other provincial-level administrative region has introduced innovation policies into their local intellectual property laws, making these laws address issues far beyond the scope of protecting intellectual property rights. Some municipal governments have also enacted local intellectual property laws applicable to their cities. These cities are usually the more economically developed cities in China. Typically, the Standing Committee of the Shenzhen Municipal People’s Congress enacted the Regulations on the Protection of Intellectual Property in the Shenzhen Special Economic Zone in 2018, and amended it in 2020. Of the law’s eight chapters, only two are devoted to the protection of intellectual property rights; most of the rest deal with issues exceeding this scope.

D. Optimization: Since 2021

On September 22, 2021, the Chinese government promulgated its Outline for the Construction of a Strong State of Intellectual Property (2021–2035) (the “2021 Outline”). This outline does not represent a shift in the Chinese government’s holistic approach to intellectual property legislation, but rather, an

97 The author confirmed this by searching the ChinaLawInfo Database and searching the bulletins of the People’s Congresses of the provinces, and found that only the Tibet Autonomous Region currently has no intellectual property legislation. ChinaLawInfo is a comprehensive online resource offering access to Chinese law (https://open.pkulaw.com/) [https://perma.cc/ARB9-47GS].

98 The author conducted a textual analysis of intellectual property laws from Chinese provinces with local intellectual property legislations. The findings reveal that, in addition to the protection of intellectual property rights, these legislations encompass other dimensions, including the creation of intellectual products, the management of both intellectual products and their intellectual property rights, the provision of intellectual property-related services, and the implementation of intellectual products—or at least one of these elements.


100 See generally Shenzhen City Intellectual Property Regulation, supra note 99 (illustrating that the provisions in the other chapters are mainly managerial or public service).

101 2021 Outline, supra note 7.
optimization of it. Compared to the 2008 Outline, the more recent legislation represents an expansion of the Chinese government’s focus on intellectual property legislation to cover the promotion of services related to intellectual products and intellectual property rights. In the “Guiding Ideas” section, the 2021 Outline emphasizes the importance of “developing the entire chain of intellectual property creation, implementation, protection, management, and services.”

This indicates that the Chinese government views these five aspects as integral parts of the intellectual property system. Although this outline was enacted recently, the legislative efforts of some local governments have already confirmed the value of this expansion of the legislative focus. For example, in 2022, the Standing Committee of the Shandong Province People’s Congress amended its previously enacted local intellectual property law to include provisions on the promotion of intellectual property-related services. The governments of the Hunan and Jiangsu Provinces both promulgated intellectual property protection and promotion regulations in 2022. These local intellectual property laws also incorporate provisions for the promotion of intellectual property-related services.

The Chinese government’s promulgation of the 2021 Outline is partly due to the increased external competitive pressures in technology. In recent years, both EU member states and the United States have steadfastly implemented enhanced restrictions on technology transfers from their respective entities to China, thereby

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102 Id.


In addition, the Chinese government has come to recognize the importance of optimizing the quality of the intellectual products it creates and of its ability to deploy them to develop its economy. As the State Council of China pointed out in the 2021 Notice on the National Plan for the Protection and Implementation of Intellectual Property that it issued to lower-level governments, the high-quality achievement of intellectual property development is to support the “innovation-driven development and the construction of a high-standard market system,” and to vigorously promote the “high-quality development of the economy and society.” In response to a combination of external pressure and endogenous demand, the Chinese government set a number of development goals in its 2021 Outline. If it achieves these goals, by 2035, China is supposed to be among the world’s leading countries in terms of its overall competitiveness in intellectual property.

II. HOLISTIC LEGISLATION ON INTELLECTUAL PROPERTY

This section describes and analyzes five aspects of China’s intellectual property legislation: the creation of intellectual products, the implementation of intellectual products and intellectual property rights, the management of these products and rights, the services relating to them, and the protection of intellectual property rights. The legislation that this section surveys includes legislation at both


107 See 2021 Outline, supra note 7.
the central and the local government levels. Laws that the central government makes apply to the entire territory of China, while laws of local governments cover their particular administrative region.108

A. Creation

Scholars understand the most basic function of intellectual property law as incentivizing innovation by providing the creators of intellectual products with property rights that can benefit them by excluding others from exploiting their intellectual products without permission.109 The Chinese government has also adopted this approach to create incentives for innovation. The Copyright Law and the Patent Law grant authors copyright and give inventors patent rights respectively. However, the incentive measures in Chinese intellectual property legislation are not limited to granting property rights. The laws also adopt other measures, including giving prizes, grants, tax credits, government procurement, and privileges. Governments in other jurisdictions have adopted similar incentive measures, although they don’t always include them in their intellectual property laws.110

Scholars often view the giving of prizes as an alternative incentive to the granting of intellectual property rights.111 Similar to

108 According to China’s Legislative Law, organs with the ability to enact national laws are the National People’s Congress and its Standing Committee, the State Council, and the State Council’s departments and commissions. Provincial and municipal governments have the power to legislate locally. Provincial and municipal people’s congresses can make local regulations. The provincial and municipal administrations can make local government rules. The legal effect of local regulations and local government rules covers the administrative region of local governments.

109 See William Fisher, Theories of Intellectual Property, in NEW ESSAYS IN THE LEGAL AND POLITICAL THEORY OF PROPERTY 168, 169 (Stephen R. Munzer ed., 2001) (noting that the economic inefficiency for innovation can be reduced by “allocating to the creators (for limited times) the exclusive right to make copies of their creations”); William M. Landes & Richard A. Posner, An Economic Analysis of Copyright Law, 18 J. LEGAL STUD. 325, 326 (1989) (articulating through the lens of copyright that intellectual property, as a “public good,” necessitates a delicate balance between incentivizing creators by granting exclusive rights and ensuring public access, given the disparities between high creation costs and low reproduction costs).


intellectual property rights, creators generally receive prizes after having innovated.\textsuperscript{112} Incentives of this sort can be effective for creators who are not constrained by capital and do not tend to be risk averse.\textsuperscript{113} To receive a prize under China’s intellectual property laws, the creator must meet certain conditions, so not all innovations are eligible.

Both the Patent Law and the Copyright Law include provisions for awarding these prizes. Under both laws, it is the entity who employs the creator that grants the prize, not the government. Article 18 of the Copyright Law provides that a work created by an author to accomplish a task set by the employing entity is a work for hire.\textsuperscript{114} Where the employing entity enjoys copyright rights other than the right of attribution, it may grant the author a prize. The Patent Law is more detailed than the Copyright Law regarding its provisions in this area. Article 15 of the Patent Law stipulates that the employing entity to which the patent right is granted should give a prize to the inventor or designer of a work-for-hire invention; after the patent for the invention is implemented, the employing entity must give the inventor or designer compensation commensurate with the extent of the application and the economic benefits that the patent creates.\textsuperscript{115} The provision also suggests that such compensation does not necessarily have to be in the form of money, but can be equity, options, dividends, or other possibilities.\textsuperscript{116}

Some local governments have introduced more detailed provisions into local intellectual property laws about giving prizes.\textsuperscript{117}

\textsuperscript{112} Hemel & Ouellette, Beyond the Patents-Prizes Debate, supra note 110, at 308.
\textsuperscript{113} Id.
\textsuperscript{114} Zhonghua Renmin Gongheguo Zhuzuoquan Fa (中华人民共和国著作权法) [Copyright Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Nov.11, 2020, effective June 1, 2021 (China) [hereinafter Copyright Law 2020], art. 18.
\textsuperscript{116} Id.
\textsuperscript{117} See e.g., Baotoushi Zhuanli Cujin Yu Baohu Tiaoli (包头市专利促进与保护条例) [Regulations on the Promotion and Protection of Patents in Baotou City] (promulgated by the Standing Comm. Baotou City People’s Cong., May 22, 2009, effective Aug. 1, 2009) [hereinafter Baotou City Patent Regulations], art. 18 (China); Shenyangshi Zhuanli Cujin Tiaoli (沈阳市专利促进条例) [Regulations on the Promotion of Patents in Shenyang City]
For example, Article 18 of the *Regulations on the Promotion and Protection of Patents in Baotou City* stipulates that the prize awarded to the inventor or designer shall be given “within three months from the date of the announcement of the grant of the patent right.”118 The prize for an invention patent must not be less than 3000 RMB; for a utility model patent, not less than 1000 RMB; and for design patents, not be less than 500 RMB.119 When the employing entity applies the patented technology and obtains economic benefits, it should give the creator of the invention or of the utility model patent not less than 5% of the profit after tax, or not less than 0.5% from design patents.120 In addition, if the employing entity acquires shares in other companies by transferring the patented rights of the work-for-hire invention, the employing entity must give at least 20% of these shares, or their monetary value, to the inventor or designer.121 The law provides for the possibility of agreements between the employing entity and the creator to override this arrangement.122

Some local governments have used their local intellectual property laws to expand the circumstances for granting prizes, rather than adding more detailed provisions to the central government’s intellectual property laws. When prizes take the form of money, they are generally supported by government funds, which in turn are derived from taxes. For example, Article 9 of the *Regulations on the Promotion and Protection of Patents in Fujian Province* provides that the provincial government should establish patent prizes to honor the patentee, inventor, or designer of a patent-related project who produces “significant economic and social benefits” within the

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118 *Baotou City Patent Regulations*, supra note 117, art. 18.
119 *Id.*
120 *Id.*
121 *Id.*
122 *Id.*
administrative region of the province. In 2021, the size of the award reached 1,000,000 RMB, 300,000 RMB, 200,000 RMB, and 100,000 RMB, corresponding to the grand prize and the first, second, and third prizes, respectively.

Some local intellectual property laws describe the prize as a privilege or a qualification for obtaining privileges. For example, Article 10 of the Regulations on the Protection and Promotion of Patents in Fuzhou City stipulates that the inventor or designer of a patent that has won a national, provincial, or municipal patent prize may be eligible for a relevant professional or technical position, even if he or she has not otherwise met the qualifications for the position. Under some local intellectual property laws, companies that own intellectual properties are more likely to get government privileges. For example, Article 24 of the Regulations on the Protection and Promotion of Patents in Shantou City sets the fact of owning self-developed patented technologies as an important condition for companies that want the government to recognize them as a “leading industrial enterprise.”

Leading industrial enterprises can obtain from the government a series of privileges, including priority arrangement of

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123 Fujiansheng Zhuanli Cujin Yu Baohu Tiaoli ([Regulations on the Promotion and Protection of Patents in Fujian Province]) (promulgated by the Standing Comm. Fujian Province People’s Cong., Nov. 29, 2013, effective Jan. 1, 2014) [hereinafter Fujian Province Patent Regulations], art. 9 (China).


exhibition booths, priority use of convenient export customs clearance, priority approval of company personnel’s applications to go abroad, priority participation in government projects, as well as financial subsidies, tax preferences, and favorable financing terms. These privileges constitute incentives for companies to create intellectual products.

Likewise, Article 23 of the Regulations on the Promotion and Protection of Intellectual Property in Nanjing City stipulates that the government “encourages and supports” the listing of enterprises with “intellectual property rights in self-developed core technologies.” Financing is very important for innovative enterprises, especially small and medium ones. Becoming a publicly listed company gives an enterprise convenient access to capital from the capital market and allows it to use that capital to commercialize its intellectual products and achieve growth. Getting government support in the process of going public thus becomes an incentive for companies to create. This is partly because government support can increase the success rate of a company going public. For example, the Nanjing City government gives these enterprises not only guidance but also financial subsidies. The government also gets involved in addressing the difficulties that arise in the process of the company’s going public. Another reason why companies are

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129 See Thorsten Beck & Asli Demirguc-Kunt, Small and Medium-size Enterprises: Access to Finance As A Growth Constraint, 30 J. BANKING & FIN. 2931, 2941 (2006) (noting that “access to finance is a significant growth constraint for SMEs,” and that financial and legal institutions can help to alleviate this constraint); Masato Abe, Michael Troilo & Orgil Batsaikhan, Financing Small and Medium Enterprises in Asia and the Pacific, 4 J. ENTREPRENEURSHIP & PUB. POL’Y 2, 2 (2015) (noting that “lack of capital is the most serious constraint limiting the survival and growth of SMEs”).


131 Id.
motivated to get government support is that investors tend to see it as a positive sign that the company’s development model has won the approval and support of the local government. They are more likely to believe that the company has good prospects and will therefore be inclined to invest more money in it. In other words, the government’s support is a positive signal to the secondary market that the company has a good future. This imprimatur serves as an incentive for the company to innovate.

Chinese government grants also give creators the incentive to produce intellectual products. In their intellectual property laws, some local governments have made patents a consideration for the provision of government funding. For example, Article 9 of the Regulations on the Promotion of Patents in Shenyang City makes “the quality and quantity of patents obtained” an “important factor” in the initiation, approval, and verification of government-funded research and development projects and technological reform projects. The financial benefits that this provision provides offer an incentive for a creator to invent and encourage that creator to apply for a patent. Furthermore, since the Chinese government takes into account both the quantity and the quality of the patents, creators will focus not only on the number of the inventions they produce but also on their value. As the quantity and quality of patents matters at the time of initiation, approval, and verification, creators have the incentive not only before they receive government grants, but also afterwards.

Incentives for creators to innovate may also come from access to government procurement opportunities. Some local governments prioritize patented products for government procurement. For example, Article 12 of the Regulations on the Promotion and Protection of Patents in Fujian Province provides that “government procurement and other purchases using fiscal funds shall give priority to the purchase of patented products under equal conditions.” The Luoyang City government adopted a similar provision. Article 14 of the Regulations on the Promotion and Protection of Patents in Luoyang City stipulates that “government procurement shall give priority to the inclusion of products with patent rights in the procurement catalogue and shall give priority to procurement under the same conditions.” These provisions give creators an incentive

132 Shenyang City Patent Regulations, supra note 117, art. 9.
133 Fujian Province Patent Regulations, supra note 123, art. 12.
134 Luoyang City Patent Regulations, supra note 125, art. 14.
to engage in invention, as well as to apply for patents. Here, the purpose of seeking a patent might be to secure government procurement, rather than to exclude competitors from the market.

Tax credits counteract the negative incentives that the high risk of innovation imposes on creators. In this sense, they also have the function of encouraging creators to innovate.\(^\text{135}\) Tax credits provide an ex-ante incentive. Creators know the magnitude of the incentive before the results of their R&D are available, although the Chinese government grants the monetary benefit only after creators have engaged in the innovation.\(^\text{136}\) The tax credits that intellectual property laws provide generally take the form of additional deductions or additional amortization of costs in calculating taxes. For example, Article 16 of the Regulations on the Promotion of Patents in Jiangsu Province stipulates that in calculating taxable income, if “research and development expenses incurred for the development of new technologies, new products or processes” do not form intangible assets and are included in the current profit and loss, “on top of the actual deduction in accordance with the regulations, 50% of the research and development expenses shall be deducted”; if the developments create intangible assets, “they are amortized at 150% of the cost of the intangible assets when calculating the taxable income.”\(^\text{137}\) In addition, in their intellectual property laws, some local governments provide preferential tax policies for entities that develop certain types of intellectual products. For example, Article 20 of the Regulations on the Promotion and Protection of Intellectual

\(^\text{135}\) See Hemel & Ouellette, Beyond the Patents-Prizes Debate, supra note 110, at 306 (noting that “[t]hese tax credits are designed (albeit perhaps poorly) to achieve the same objective as patents, prizes, and grants: to encourage the production of new knowledge”); Dominique Guellec & Bruno Van Pottelsberghe De La Potterie, The Impact of Public R&D Expenditure on Business R&D Expenditure, 12 Econ. Innovation New Tech, 225, 225 (2003) (noting that there is a positive effect of tax incentives on business-funded R&D).

\(^\text{136}\) See Hemel & Ouellette, Beyond the Patents-Prizes Debate, supra note 110, at 308 (noting that “[g]rants and tax credits provide rewards ex ante, before the results of R&D are known”).

Property in Nanjing City provides that value-added taxpayers selling products employing their self-developed computer software or integrated circuits are eligible for preferential tax policies.138

B. Implementation

It is no less important to apply intellectual products than to create them, but implementing intellectual products is not always easy. Particularly in the patent field, technology users often have to spend a lot of money on research and development and bear the high risk of failure to transform the technology into a marketable product or service.139 But as Chinese President Xi Jinping points out, “[China’s] ability to convert scientific and technological achievements is not strong.”140 The problem of weak conversion is particularly evident in universities. As Yang Zhou and Jin Chen’s empirical study shows, the conversion rate of patents from Chinese universities is close to zero.141 A low conversion rate implies that a lot of resources invested in R&D are being wasted.142 In order to enhance the implementation of intellectual products and the property rights associated with them, the Chinese government has introduced a number of measures in intellectual property laws. These measures fall into three groups: measures to provide incentives, measures to provide resources, and measures to facilitate transfer.

The incentives that the Chinese government included in its intellectual property laws to encourage the implementation of intellectual products to some extent overlap with those that it introduced as incentives for the creation of these products. Prizes are one example of this. Thus, according to Article 30 of the Regulations on Promotion of Patents in Shenyang City, the government will give a certain prize to the entity or individual with a patent project that it implements in the city and that achieves significant economic or

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138 Nanjing City Intellectual Property Regulations, supra note 128, art. 20.
140 Xi Jinping (习近平), Nuli Chengwei Shijie Zhuyao Kexue Zhongxin He Chuangxin Gaodi (努力成为世界主要科学中心和创新高地) [Strive to Become the World’s Leading Scientific Center and Innovation Highland], 6 QIUSHI (求是) [SEEKING THE TRUTH] 4, 4 (2021).
142 Id.
social benefits. Regarding government grants, Article 14 of Regulations on Promotion of Patents in Shenyang City stipulates that the government will promote the “implementation and industrialization” of patented technologies in the local market, “prioritizing projects with self-developed patented technology in the science and technology [funding] plan.” Setting local application of intellectual property as a factor for giving government grants is common in local intellectual property laws. Article 8 of the Regulations on Protection and Promotion of Patents in Fuzhou City stipulates that government financial resources should give priority to support patents and core patented technologies “implemented and industrialized in Fuzhou City.” Local governments also encourage the deployment of intellectual products by granting tax benefits. According to Article 14 of the Regulations on the Promotion and Protection of Patents in Chongqing City, if an enterprise develops a new product in the process of implementing and industrializing patented technologies, it can “enjoy preferential tax policies related to supporting new product development.”

Some creators cannot employ intellectual products effectively because they lack financial resources. This is especially the case for small and medium-sized enterprises. These enterprises on the one hand have limited internal capital, and on the other, have difficulty borrowing from financial institutions due to the lack of physical asset collateral. Enhancing the financing function of intellectual property rights helps to alleviate the financial difficulties that innovative enterprises face when deploying intellectual products. In recent years, the world’s major innovative economies have become aware of the importance of enhancing the financing function of intellectual

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143 Shenyang City Patent Regulations, supra note 117, art. 30.
144 Id. art. 14.
145 Fuzhou City Patent Regulations, supra note 125, art. 8.
property rights. Against this backdrop, some local governments in China added measures to their intellectual property laws to augment the financing function of intellectual property rights. For example, Article 16 of the *Regulations on the Protection and Promotion of Intellectual Property in Shandong Province* stipulates that “financial institutions shall develop innovative financial service models and financial products, providing intellectual property pledge financing, intellectual property securitization, and other credit and guarantee services; expanding the scale of intellectual property credit and guarantee; and increasing credit for intellectual property rights of small and medium-sized enterprises and start-ups.” In 2021, the amount of patent and trademark pledge financing in China reached 309.8 billion RMB, with about 17,000 financing projects, benefiting around 15,000 enterprises. Research has found that China’s patent pledge financing has had a notable positive net effect on the performance of enterprises.

In addition to measures to increase the supply of financial resources, local governments have used their intellectual property laws to provide other kinds of resources. To support creators in exploiting intellectual products, some governments have established incubators that provide resident companies with connections to government agencies, venture capital, companies with

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148 Org. for Econ. Coop. & Dev. [OECD], *Enquiries into Intellectual Property’s Economic Impact* 458 (2015), https://ec.europa.eu/growth/industry/strategy/intellectual-property/ip-and-smes_en [https://perma.cc/T92H-P2GF] (“To make it easier for SMEs to leverage their IP when trying to get access to finance, the Commission will discuss with the financial community what IP valuation and capacity building can help them to better take into account SMEs’ intellectual assets.”).

149 *Shandong Province Intellectual Property Regulations*, supra note 103, art. 16.


complementary capabilities, and service providers. This gives these companies easier access to resources that support the exploitation of their intellectual assets. This measure is also manifested in intellectual property laws. For example, Article 11 of the Regulations on the Promotion and Protection of Intellectual Property in Nanjing City provides that the government “encourages the establishment of incubators for scientific and technological enterprises so as to provide policy, management, legal, financial, marketing, and training services for incubated enterprises... to improve the ability of the enterprises to create and apply intellectual properties.” This provision recognizes that these resources support innovative companies not only in the exploitation of intellectual products, but also in their creation. Research has shown that incubators enhance companies’ ability to innovate. In addition, the resources that incubators provide can serve as an incentive for companies to innovate, if the intellectual property law makes the possession of intellectual property a consideration for admission to them. For example, Article 16 of the Regulations on the Promotion and Protection of Intellectual Property in Xiamen Special Economic Zone gives entrepreneurs who own intellectual property priority for admission to incubators.


153 Nanjing City Intellectual Property Regulations, supra note 128, art. 11.

154 See Raymond W. Smilor, Commercializing Technology Through New Business Incubators, 30 RES. MGMT. 36, 36 (1987) (introducing the functions of incubators); Rustam Lalkaka, Technology Business Incubators to Help Build An Innovation-based Economy, 3 J. CHANGE MGMT. 167, 167 (2002) (describing the role of incubators in facilitating innovation); Jérôme Gonthier & Gabriel M. Chirita, The Role of Corporate Incubators As Invigorators of Innovation Capabilities in Parent Companies, 8 J. INNOVATION & ENTREPRENEURSHIP 1, 1 (2019) (noting how “established companies are increasingly relying on corporate incubators to fuel innovation and growth with entrepreneurial mindset”).

Even when companies have sufficient resources to utilize their intellectual products, they might not have the willingness to do so. In this case, an effective measure to promote the exploitation of intellectual products might be to facilitate the transfer of those intellectual products to entities that are willing to put them to use.¹⁵⁶ Local intellectual property laws have introduced two ways to do this. One is to provide incentives, i.e., to increase the transferor’s returns with tax benefits. For example, Article 20 of the Regulations on the Promotion and Protection of Intellectual Property in Nanjing City allows enterprises to be exempt from or to pay less corporate income tax on the proceeds from the transfer of rights to patented technology, computer software, and integrated circuit layout designs under certain circumstances.¹⁵⁷

The other approach is to reduce transaction costs. For example, Article 4 of the Regulations on Promotion and Protection of Patents in Fujian Province stipulates that local governments above the county level should develop markets for patent trading.¹⁵⁸ According to Article 10 of the Regulations on the Promotion and Protection of Intellectual Property in Jiangsu Province, the government “supports the construction of copyright trading platforms and promotes copyright trading and industrial conversion.”¹⁵⁹ Today there are a number of intellectual property trading platforms in the Fujian and Jiangsu provinces, typical examples being the National Patented Technology (Fujian) Exhibition and Trading Center and the Nanjing Digital Copyright Trading Platform in the capital of Jiangsu province. Research suggests that the establishment of intellectual property trading platforms can make the transfer of intellectual property smoother and more convenient.¹⁶⁰

¹⁵⁸ Fujian Province Patent Regulations, supra note 123, art. 4.
¹⁵⁹ Jiangsu Province Intellectual Property Regulations, supra note 104, art. 10.
¹⁶⁰ See Yan Zhang & Yan Li, Analysis of the Business Model of “Internet+” Intellectual Property Trading Platform—Based on Www. wtoip. com, 146 ADVANCES ECON.
C. Management

China’s intellectual property laws include three kinds of measures that governments have introduced to manage intellectual products and intellectual property rights: measures to promote the formation of intellectual property management systems in companies, measures to regulate intellectual products that are state-owned or related to important public interest and national security, and measures to collect and manage information regarding intellectual property rights.

Chinese companies are in a phase of transition from a manufacturing-driven model to an innovation-driven model for growth. While an increasing number of companies are engaged in the creation and exploitation of intellectual products, their ability to manage intellectual products and related intellectual property rights is inadequate compared to that of established foreign innovative companies. Although some Chinese multinational companies, such as Huawei, have established mature systems for managing intellectual products and related intellectual property rights, they are the minority among Chinese companies. Without a mature intellectual property management system, companies are less capable of employing intellectual property rights to gain a competitive advantage in the marketplace. Worse still, they can be at a disadvantage when dealing with disputes over intellectual property rights.

In order to enhance the ability of Chinese companies to manage intellectual products and related intellectual property rights, the Chinese government has taken several measures to assist them in adopting effective intellectual property management systems.

BUS. & MGMT. RSCH. 23, 28 (2020) (arguing that “[w]ithout intellectual property rights and innovation as a support, the real economy is difficult to upgrade and develop in the modern industry”).

161 Jia Chenjun (贾辰君), Lun Woguo Zhishi Chanquan Gonggong Fuwu Gongji De Xianzhuang He Gaijin (论我国知识产权公共服务供给的现状和改进) [On the Current Situation and Improvement of the Provision of Intellectual Property Public Services in China], 5 KEXUE GUANLI YANJIU (科学管理研究) [SCI. MGMT. STUD.] 5, 8 (2015) [Hereinafter Provision of Intellectual Property Public Services in China].

162 Li Xiliang (李西良), Qiye Zhishi Chanquan Guanli Tixi Chengshudu Pingjia Yanjiu (企业知识产权管理体系成熟度评价研究) [Research on the Evaluation of the Maturity of Enterprise Intellectual Property Management System], 3 ZHISHI CHANQUAN (知识产权) [INTELL. PROP.] 80, 81 (2018).
Starting in 2001, it promoted these systems to a wide range of companies by setting up exemplary companies. \(^{163}\) But in 2009 it changed its strategy and began to carry out research for a standardized “Enterprise Intellectual Property Management System.” \(^{164}\) It promoted early versions of this to companies in economically developed provinces, such as Guangdong and Jiangsu. \(^{165}\) On March 1, 2013, the General Administration of Quality Supervision, Inspection and Quarantine, and the National Standardization Management Committee approved and promulgated the National Intellectual Property Administration’s final version of the Enterprise Intellectual Property Management System. This system has become the national standard GB/T29490-2013 for enterprises setting up intellectual property management systems. \(^{166}\)

To encourage companies to adopt this system, local governments have created incentives through their intellectual property laws. \(^{167}\) For example, Article 10 of the Regulations on the Promotion and Protection of Patents in Fujian Province requires relevant departments to “guide and support enterprises in implementing the national standard for intellectual property management.” \(^{168}\) In accordance with this provision, the Fujian Provincial Intellectual Property Administration has issued the Measures for the Management of Intellectual Property Advantage Enterprises in Fujian Province, which provides privileges to enterprises implementing the standard. \(^{169}\) According to this document, the implementation of the national standard is one of the

\(^{163}\) Id.

\(^{164}\) Id.

\(^{165}\) Id.


\(^{167}\) Fujian Province Patent Regulations, supra note 123, art. 10; Shandong Province Intellectual Property Regulations, supra note 103, art. 15.

requirements for any enterprise that wants to be recognized as an “Enterprise with Advantages in Intellectual Property.” ¹⁷⁰ With this categorization, the enterprise will enjoy a number of government privileges, including priority participation in government-funded projects, priority arrangements for loan subsidies for patent financing, priority recommendation for patent projects for patent prizes, the use of a rapid protection mechanism for intellectual property rights, and government support in dealing with foreign-related intellectual property disputes.¹⁷¹ By 2021, a total of sixty-one enterprises had been recognized as “Enterprise with Advantages in Intellectual Property” in Fujian Province.¹⁷²

China’s intellectual property laws contain provisions for managing the intellectual property rights of state-owned intellectual products as well as intellectual products that affect important public interests or national security.¹⁷³ In general, these provisions restrict the disposition of these intellectual property rights. One of the key reasons why the Chinese government has placed such emphasis on the management of state-owned assets is to prevent asset controllers from disposing of assets at low prices for private gain at the expense of the state.¹⁷⁴ Currently, according to the requirements of the

¹⁷⁰ Id. art. 11.
¹⁷¹ Id. art. 9.
¹⁷³ See e.g., Patent Law 2020, supra note 115, art. 4 (“If the invention or creation for which a patent is applied involves national security or significant interests that require confidentiality, it shall be handled in accordance with relevant national regulations.”); Baotou City Patent Regulations, supra note 117, art. 32 (“When disposing of state-owned assets involving patent rights, the assessment report shall include a specific section on patent appraisal, and the results shall be promptly reported to the state-owned assets management agency at the same level for the record.”); Beijing City Patent Regulations, supra note 137, art. 37 (“When establishing a company by contributing patents as capital . . . If it involves state-owned enterprises or public institutions, it must comply with relevant state-owned asset management regulations.”); Fujian Province Patent Regulations, supra note 123, art. 21 (“In any of the following circumstances, the unit possessing state-owned patent assets should evaluate the patent assets in accordance with relevant national regulations: (i) when transferring patent application rights or patent rights”).
¹⁷⁴ Zhou Maoqing (周茂青), Xingzheng Shiye Xingguoyou Zichan Yu Falv Baohu Jizhi De JianGou (行政事业性国有资产流失与法律保护机制的建构) [On the Loss
Guidance on Further Standardizing and Strengthening the Management of State-owned Assets of Administrative and Institutional Entities, which the Chinese Ministry of Finance issued in December 2015, the disposal of the state-owned assets of administrative agencies and institutions should, in principle, follow an appraisal. Some local intellectual property laws have strengthened the restrictions on disposal by setting asset appraisal of state-owned intellectual property rights as a mandatory step.\textsuperscript{175} For example, Article 32 of the Regulations on the Promotion and Protection of Patents in Baotou City stipulates that if the disposal of state-owned assets involves patent rights, “the assessment report shall include a specific section on patent appraisal, and the results shall be promptly reported to the state-owned assets management agency at the same level for the record.”\textsuperscript{176}

The control of the disposal of property rights of intellectual products that would have an impact on national security and important public interest is consistent with prevailing international practice.\textsuperscript{177} In China, the relevant rules are scattered in the Foreign Trade Law, the Foreign Investment Law, the Regulations on the Administration of Import and Export of Technology, and the Measures for the Administration of Prohibited Exports of Restricted Technologies.\textsuperscript{178} In March 2018, the State Council promulgated the
General Office of the State Council on the Issuance of Measures Concerning the Foreign Transfer of Intellectual Property Rights (for Trial Implementation), which establishes a relatively comprehensive review mechanism for the transfer of Chinese intellectual property rights to foreign countries. While the State Council’s mechanism provides a broad framework, it becomes significantly more effective when local governments introduce supplementary provisions tailored to their specific regional conditions. This decentralization allows each locality to address unique challenges and contexts during implementation. For example, Article 16 of the Regulations on the Protection of Intellectual Property in Shanghai City stipulates that the municipal intellectual property, economic informatization, commerce, science, and technology departments should make these provisions together. In response, these departments have formulated the Detailed Rules for Review of Foreign Transfer of Intellectual Property Rights in Shanghai (for Trial Implementation), which lays out the steps in the review process.

Similar to the intellectual property laws of other jurisdictions, China’s intellectual property law concerns the collection and...
management of information relating to intellectual property rights. The provisions in the Patent Law and Trademark Law regarding the filing of applications and disclosure are typical rules that deal with the collection and management of information on intellectual property rights.\footnote{See Patent Law 2020, supra note 115, arts. 26, 39, 40; Zhonghua Renmin Gongheguo Shangbiao Fa (中华人民共和国商标法) [Trademark Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., April. 23, 2019, effective Nov. 1, 2019) (China) [hereinafter Trademark Law 2019], arts. 4, 27, 28, 33. Under the requirements of these legal provisions, the relevant information required to be disclosed can be accessed through the national intellectual property information systems, such as the Chinese Trademark Electronic Announcement System (https://wsgg.sbj.cnipa.gov.cn:9443/tmann/annInfoView/homePage.html) and the Patent Publication Announcement System (http://epub.cnipa.gov.cn/). This information pertains to the status of intellectual property rights, such as their validity, the date of coming into effect, and who the owner is, etc.} The Copyright Law allows authors and other copyright owners to register the copyrighted works with a registration agency, although it does not require them to do so.\footnote{Copyright Law 2020, supra note 114, art. 12.} Some local governments have introduced rules in their intellectual property laws giving copyright owners an incentive to register. For example, according to Article 14 of the Regulations on the Promotion and Protection of Intellectual Property in Jiangsu Province, the government will reward organizations or individuals who register their computer software copyrights.\footnote{Jiangsu Province Intellectual Property Regulations, supra note 104, art. 14.} The registration of copyright ownership information helps to reduce the transaction costs of licensing and the costs of resolving copyright disputes.

In addition, there are provisions in intellectual property law related to documenting information on the disposition of intellectual property rights. For example, Article 28 of the Copyright Law provides that where rights of a property nature in copyright are pledged, the pledgor and the pledgee must register the pledge.\footnote{Copyright Law 2020, supra note 114, art. 28.} Article 10 of the Patent Law provides that in the case of the transfer of patent application rights or patent rights, the parties should enter into a written contract and register it with the patent administrative department under the State Council, which will make a disclosure.\footnote{Patent Law 2020, supra note 115, art. 10.} The transfer of the patent application right or patent right takes effect on the date of registration.\footnote{Id.} Some local intellectual property laws encourage the registration of patent transaction information. For
example, Article 13 of the Regulations on the Promotion and Protection of Patents in Fujian Province stipulates that “if a contract for the transfer of patent application rights, a contract for the transfer of patent rights, or a contract for the license of patent implementation is registered or recorded in accordance with the law, [the registrant] can enjoy tax benefits in accordance with the law.” Documenting information on the disposition of intellectual property rights helps to reduce the transaction costs of intellectual property trading because the participants do not need to incur the significant costs of collecting the information themselves in order to assess the value of the transferred rights and the risks of the transactions.

D. Services

Companies that operate in an intellectual property system can receive certain benefits, but they also have to deal with the issues that derive from it, such as infringement disputes. To reap the benefits and deal with the problems, companies need to have the knowledge and skills related not only to the creation and exploitation of intellectual products but also to the way the intellectual property system operates. Companies can train their personnel for this or recruit experts from the marketplace. When the cost of doing either of these is too high, they might choose to obtain services from third parties. However, in China, the supply of intellectual property-related services on the market does not currently match the demand of companies. As the Chinese government pointed out in the 2008 Outline, “[o]verall . . . China’s intellectual property system is still inadequate . . . [as] the institutional support of intellectual property service . . . is lagging.” To cope with the situation, in its 2021 Outline, the Chinese government proposed increasing the supply of intellectual property-related services in two ways: by “enhancing public services” and by “developing intermediary services related to intellectual property.”

Currently, the government gives financial support, which government agencies or institutions affiliated with government agencies provide, to most of the intellectual property-related public

188 Fujian Province Patent Regulations, supra note 123, art. 13.
189 2008 Outline, supra note 6.
190 2021 Outline, supra note 7.
services.191 These institutions include the Intellectual Property Press, the China Intellectual Property News, the China Patent Information Center, and the China Intellectual Property Training Center.192 Local governments may also commission or require social organizations and educational institutions to provide public services.193 These services generally involve information provision, consultation, legal aids, training, and education.194

In fact, the disclosure mechanism of the patent system might be considered as a form of public service in information provision. To enhance this, the Chinese government is building systems that will offer information that is more detailed and broader reaching than the information available from patent documents.195 The 2021 Outline states that one of the reasons for the development of public service information provision systems is to “increase the depth and breadth of access to various types of basic intellectual property

192 Id.
193 See, e.g., Shenzhen City Intellectual Property Regulations, supra note 99, art. 40 (“The municipal competent department shall organize and carry out public welfare intellectual property professional training, and strengthen intellectual property talent training. The training can be entrusted to higher education institutions, research institutions, relevant industry associations, and intellectual property service organizations for implementation”); Jiangsu Province Intellectual Property Regulations, supra note 104, art. 17 (“The education department shall regard intellectual property knowledge as an important part of student quality education, and encourage and guide students to carry out inventions and creations, as well as intellectual property applications and registrations, cultivating their innovative spirit and practical abilities. Higher education institutions are encouraged and supported to incorporate intellectual property education into their curriculum, establish intellectual property specialties and colleges, strengthen cooperation with enterprises, research institutes, service organizations, etc., and cultivate talents needed for the development of the intellectual property industry”); Beijing City Patent Regulations, supra note 137, art. 46 (“The relevant industry associations in this city shall carry out the promotion and training of patent knowledge, enhance the patent awareness of their members, standardize member behaviors, guide and support members to establish patent alliances and patent pools, and provide members with services such as patent information consultation, early warning, and rights protection assistance.”).
194 Id.
195 Many local governments in China are building patent information systems for the public. As of 2015, there were thirty-six such information systems. See Quanguo Zhuanli Xinxi Gonggong Fuwu Ziyuan (全国专利信息公共服务资源) [National Patent Information Public Service Resources], CNIPA (Apr. 7, 2015), https://www.cnipa.gov.cn/art/2015/4/7/art_2137_152002.html [https://perma.cc/5N2A-73JB] (listing examples of these information systems). The information provided by these systems is more extensive than what is recorded in patent documents. For instance, the Beijing Intellectual Property Public Information Service Platform (www.beijingip.cn) not only offers patent document searches but also provides searches for regulations, patent service institutions, and patent statistical data.
Currently, China’s National Intellectual Property Administration provides various basic information and statistical reports related to intellectual property. Local governments legislate to promote the establishment of local intellectual property information provision mechanisms. For example, Article 8 of the Regulations on Patent Promotion and Protection of Chongqing City stipulates that “the municipal patent administration department shall establish a public information platform for intellectual property . . .”

In the 2021 Outline, the Chinese government also highlights the importance of enhancing the professionalism and convenience of intellectual property consultation public services. Even though public sources provide a wide range of intellectual property information, it can be too costly for some companies to analyze and process that information. More importantly, in the event of a legal dispute, some companies might need external advice on the legal or technical aspects of the claim. Government administrative agencies can provide some of this advice, such as determining the validity of a patent and whether they did or did not in fact violate others’ patent rights. For companies without sufficient financial resources to purchase legal services, legal aid can help them enforce their intellectual property rights or respond to lawsuits. Some local governments promote access to legal aid in their intellectual property laws. For example, Article 23 of Regulations on the Promotion of Patents in Shenyang City provides that the relevant patent administrative agencies should establish mechanisms to provide aid for the protection of patent rights for enterprises, institutions, and individuals.

https://scholarship.law.upenn.edu/alr/vol19/iss1/3
DOI: https://doi.org/10.58112/alr.19-1.3
Some local governments adopt legislation that requires social organizations to provide these public services. For example, Article 37 of the *Regulations on the Promotion and Protection of Patents in the Xinjiang Uygur Autonomous Region* stipulates that “[i]ndustry associations, chambers of commerce, and other social organizations should provide guidance and assistance to their members in the creation, application, protection, implementation, and maintenance of patents.” Research suggests that these organizations might have a comparative advantage over governmental organs in providing public services because they are closer to enterprises and the market.

Government administrative agencies provide intellectual property-related training and education services to the public themselves. They may also commission or require universities and research institutes to do so. For example, according to Article 40 of the *Regulations on the Protection of Intellectual Property in Shenzhen Special Economic Zone*, the government may commission universities and scientific research institutes to provide intellectual property-related training.

Further, in order to cultivate experts who are familiar with the intellectual property system, some local governments use intellectual property legislation to promote the inclusion of intellectual property education in the curriculum of higher education institutions. Some local governments even encourage primary and secondary schools to enhance their students’ “awareness of innovation and intellectual property protection.”

Apart from providing public services, the Chinese government also encourages private entities to provide intellectual property-related services. For example, Article 39 of the *Regulations on the Protection of Intellectual Property in Shenzhen Special Economic Zone* provides that relevant administrative agencies should

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204 *See Provision of Intellectual Property Public Services in China*, supra note 161, at 6 (suggesting that industry organizations and other non-governmental organizations tend to provide standards and services that are exhibit a greater level of market vitality than governmental organs do).
205 *See, e.g., Shenzhen City Intellectual Property Regulations*, supra note 99, art. 42 (“The Municipal Competent Department shall, together with the administrative department of justice, provide legal advice, agency, legal aid, notarization, judicial appraisal, specialized legal training and other public legal services relating to intellectual property rights protection.”).
206 *Id.* art. 40.
207 *Jiangsu Province Intellectual Property Regulations*, supra note 104, art. 17.
208 *Suzhou City Patent Regulations*, supra note 117, art. 9.
“formulate plans” for the development of intellectual property-related services, and “encourage and support” the development of services such as consulting, training, agency, appraisal, evaluation, operation, and the use of big data.\(^{209}\) However, most intellectual property laws do not specify precisely what kinds of encouragement and support the government should employ.\(^{210}\) The *Regulations on Promotion and Protection of Intellectual Property in Jiangsu Province* reveal one option—exempting service providers from business taxes.\(^{211}\)

Along with its support for private providers of intellectual property-related services, the Chinese government retains the power to regulate them. In the *2021 Outline*, the Chinese government states that it will build a regulatory system that combines government regulation, social supervision, industry self-regulation, and institutional self-governance for the intellectual property-related services industry.\(^{212}\) Government regulation of private service providers manifests itself in intellectual property legislation through rules that restrict their behavior, such as rules prohibiting improper solicitation of business\(^{213}\) and prohibiting commissions from assisting in malicious trademark applications.\(^{214}\)

\section*{E. Protection}

The Chinese government provides three types of protection for intellectual property rights: judicial, administrative, and social. Judicial protection refers to the protection the court system gives to

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\(^{209}\) *Shenzhen City Intellectual Property Regulations*, supra note 99, art. 39.

\(^{210}\) See, e.g., *Shandong Province Intellectual Property Regulations*, supra note 103, art. 40 (“Governments at the county level and above should take measures to support the development of intellectual property services such as agency, appraisal, operation, evaluation, consultation, training, and information utilization.”); *Xiamen City Intellectual Property Regulations*, supra note 155, art. 34 (“The city and district people’s governments should take measures to promote the development of intellectual property services such as agency, law, operation, assessment, consultation, training, and information utilization, and introduce high-quality intellectual property service institutions.”). Both of these provisions require the government to “take measures” to “support” or “promote” the intellectual property service industry, but do not specify what measures to take.

\(^{211}\) *Jiangsu Province Intellectual Property Regulations*, supra note 104, art. 23.

\(^{212}\) *2021 Outline*, supra note 7.


owners of intellectual property rights. Several studies have examined this form of protection.\textsuperscript{215} A recent study by Bian Renjun, based on statistical data from the Chinese judicial system, suggests that judicial protection in China is stronger than many people realize.\textsuperscript{216} She found that foreign patent holders were just as likely as domestic patent holders to sue, and their outcomes were better, with higher success rates, injunction rates, and average damages.\textsuperscript{217} This evidence shows that the Chinese government has no tendency to favor its own citizens, and even gives foreigners supranational treatment in the protection of patent rights. She also found that plaintiffs in patent infringement litigations prevailed in 80.16\% of the cases, and in 90.25\% of cases where courts found patent infringement, they issued permanent injunctions automatically.\textsuperscript{218} Based on this finding, one might conclude that the Chinese court system has granted a relatively high level of protection to patent rights. While studies on the judicial protection of intellectual property rights in China have given us some insight into this aspect, few studies have focused on the administrative protection of intellectual property rights. Yet administrative protection is no less important than judicial protection in China.\textsuperscript{219} Chinese scholars often refer to the juxtaposition of these two kinds of protection as a “dual-track” system for protecting intellectual property rights.\textsuperscript{220}


\textsuperscript{216} Bian, \textit{supra} note 3, at 475.

\textsuperscript{217} \textit{Id.}

\textsuperscript{218} \textit{Id.}

\textsuperscript{219} Li Weimin (李伟民), \textit{Zhishi Chanquan Xingzheng Zhifa Yu Sifa Caijue Xianjie Jizhi Yanjiu} (知识产权行政执法与司法裁判衔接机制研究) [Research on the Mechanism of Connecting Administrative Enforcement and Judicial Adjudication of Intellectual Property Rights], 02 ZHONGGUO YINGYONG FAXUE (中国应用法学)[CHINESE APPLIED JURIS.] 100, 104 (2021) (hereinafter \textit{Research on the Mechanism of Connecting Administrative Enforcement}) (“It can be said that administrative enforcement and judicial adjudication are like ‘two wings of the same bird’ in the legal system for intellectual property protection, and both are indispensable.”).

\textsuperscript{220} Wu Handong (吴汉东), \textit{Zhongguo Zhishi Chanquan Fazhi Jianshe De Pingjia Yu Fansi} (中国知识产权法制建设的评价与反思) \textit{[Evaluation and Reflection on the Establishment of China’s Intellectual Property Legal System]}, 1 ZHONGGUO FAXUE (中国法学)[CHINESE JURIS.] 51, 57 (2009).
Unlike judicial protection, *Trademark Law*, *Copyright Law*, and *Patent Law* all grant administrative agencies the power to investigate and sanction acts that violate these laws.\(^{221}\) Some local intellectual property laws incorporate an inspection scheme, making such proactive administrative enforcement routine.\(^{222}\) Local governments might put more efforts into investigating and sanctioning the violation of intellectual property laws in certain situations. Typical instances include the violation of intellectual property laws in an internet environment;\(^{223}\) patent infringement cases and counterfeit patents at exhibitions, shows, promotions, bidding fairs, auctions, and similar events;\(^{224}\) the publication of advertisements involving intellectual property;\(^{225}\) the use of intellectual property in major international and domestic games;\(^{226}\) and the infringement of the intellectual property rights of overseas providers of service outsourcing.\(^{227}\)

Some scholars have criticized the lack of transparency in administrative protection, claiming that the obscurity of administrative enforcement standards can be susceptible to abuse of power.\(^{228}\) The Chinese government is making efforts to increase this

\(^{221}\) *Trademark Law*, supra note 29, art. 62; *Copyright Law*, supra note 39, art. 55; *Patent Law*, supra note 33, art. 69.

\(^{222}\) *Zhejiangsheng Zhuzuoquan Guanli Banfa* ([Regulations on Copyright Management of Zhejiang Province](https://scholarship.law.upenn.edu/alr/vol19/iss1/3)) (promulgated by Zhejiang Province People’s Gov’t, Apr. 2, 2012, effective Apr. 2, 2012) (China), art. 20.


\(^{224}\) *Yunnan Patent Regulations*, supra note 125, art. 35.

\(^{225}\) *Nanjing City Intellectual Property Regulations*, supra note 128, art. 42.

\(^{226}\) *Id*. art. 37.

\(^{227}\) *Id*. art. 40.

\(^{228}\) *See, e.g.*, Research on the Mechanism of Connecting Administrative Enforcement, supra note 219, at 104 (noting that the lack of transparency, adversarial defense, evidence procedures, and effective oversight in administrative law enforcement can result in overreach and misuse of power, hindering a balanced protection of rights holders and action against infringers.); Dong Tao (董涛), *Guojia Zhili Xiandaihua Xia De Zhishi Chanquan Xingzheng Zhifa* ([National Administration of Intellectual Property under the Modernization of National Governance](https://scholarship.law.upenn.edu/alr/vol19/iss1/3)), 05 *ZHONGGUOU FAXUE* ([Chinese Juris.], 63, 72–74 (2022) (noting that the administrative enforcement of intellectual property in China is marked by opacity due to broad discretionary powers resulting in arbitrary enforcement, inconsistent penalties for similar cases,
transparency by making the standard of administrative enforcement consistent with that of judicial adjudication. Despite its shortcomings, many intellectual property owners prefer administrative protection to judicial protection. This is because administrative protection offers four comparative advantages. First, it is more convenient to initiate administrative protection than judicial protection. Any entity or individual can trigger administrative protection by reporting an intellectual property infringement to the relevant administrative agency, without having to prove a standing to sue. Some local governments even give incentives to the reporting parties by offering them rewards.

The second comparative advantage of administrative protection is its ability to collect evidence on intellectual property infringements. Intellectual property laws give administrative agencies significant power to do this. For example, according to Article 55 of the Copyright Law, when investigating and dealing with suspected copyright infringements, the relevant administrative agencies may question the parties concerned, inspect and copy documents related to the suspected violations, carry out on-site inspections of the premises and articles of the suspected violations,
and seize or detain these premises and articles. Article 69 of the Patent Law and Article 62 of the Trademark Law grant similar powers to the relevant administrative agencies.

Third, administrative agencies can resolve infringement disputes relatively quickly. China’s administrative agencies have the power to make administrative adjudications concerning civil patent infringement disputes upon request. This allows the parties in a patent infringement dispute to resolve it through administrative agencies without going to court. Intellectual property laws generally require administrative agencies to conclude cases within four months of a proceeding’s initiation. However, according to Zhang Zhicheng, the director of the Intellectual Property Protection Department of the National Intellectual Property Administration, at a press conference on November 30, 2022, the average time for administrative adjudication to process a case is only about two months. From 2013 to 2021, the national intellectual property administration handled about 241,000 patent infringement disputes, with an average annual increase of 28.8%. As Zhang pointed out, “administrative adjudication has become an important channel for market participants to resolve patent infringement disputes” in China.

Fourth, some of the remedies that administrative protection provides might be more useful to rights holders than judicial protection. For example, according to Article 60 of Trademark Law, if an administrative agency finds an infringement, it can not only stop it with an administrative injunction, but also confiscate and destroy the infringing goods and the tools that were used primarily for the manufacturing of infringing goods and the forging of registered

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233 Copyright Law 2020, supra note 114, art. 55.
236 Yunnan Patent Regulations, supra note 125, art. 31; Fujian Province Patent Regulations, supra note 123, art. 31; Chongqing City Patent Regulations, supra note 146, art. 21.
238 Id.
239 Id.
trademark marks.  It may impose fines on the infringer that can be several times the amount of its illicit business turnover. Article 53 of Copyright Law also gives the administrative agencies similar abilities. Article 65 of Patent Law grants administrative agencies the power to issue injunctions against infringement of patent rights, but not the power to confiscate, destroy infringing products and tools, or impose fines. However, in Article 68, it permits these agencies to issue orders to correct acts of patent counterfeiting, confiscate the illegal proceeds, and impose fines, which might be up to five times the illegal proceeds.

Some local governments have used their intellectual property legislation to further strengthen the administrative agencies’ powers. For example, Article 47 of the Regulations on the Protection and Promotion of Patents in Beijing City provides that the administrative agencies may, if the same infringer infringes the same patent right again, impose an order to make corrections, confiscate the unlawful income, and impose a fine no less than 20,000 RMB and no more than 200,000 RMB. Administrative agencies may also disqualify infringers from receiving governmental financial support. For example, according to Article 38 of the Regulations on the Promotion and Protection of Intellectual Property in Kunming City, if an infringer infringes intellectual property rights in a way that constitutes a crime or is subject to administrative punishment with serious consequences, fraudulently accesses government projects, funds, or awards with false intellectual property materials, or refuses to execute administrative or judicial decisions on intellectual property rights, the administrative authorities will, for three years, refuse to accept the infringer’s applications for government-funded projects, government awards, or participation in government project bidding or exhibition events in the administrative region.

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240 Trademark Law 2019, supra note 182, art. 60
241 Id. (If a person’s illegal business turnover is more than 50,000 RMB, the relevant agency may impose a penalty of up to five times the amount of that turnover.).
242 Copyright Law 2020, supra note 114, art. 53.
244 Id. art. 68.
245 Beijing City Patent Regulations, supra note 137, art. 47. See also, e.g., Shenzhen City Intellectual Property Regulations, supra note 99, art. 30 (If a person “infringes the same intellectual property right again within five years, or infringes others’ intellectual property rights more than three times within five years . . . the penalty shall be doubled.”).
246 Kunming City Intellectual Property Regulations, supra note 223, art. 38. See also Shenzhen City Intellectual Property Regulations, supra note 99, art. 60 (stating that anyone
China’s intellectual property law also promotes the development of social norms that protect intellectual property rights. In the 2021 Outline, the Chinese government proposed the establishment of a synergistic framework of judicial, administrative, and social protection of these rights. Social protection means the formation of social norms for the protection of intellectual property rights to realize “disciplined regulation by the market participants, self-discipline and self-governance by industry organizations, and compliance with the law in good faith by the public.”

Intellectual property legislation is one of the ways to foster the formation of these social norms. Article 54 of the Regulations on the Protection of Intellectual Property in Shenzhen Special Economic Zone stipulates that “[e]-commerce platform operators shall establish a mechanism for handling complaints of intellectual property infringement and strengthen the protection of intellectual property rights.” This legislation is an example of promoting market participants to set up disciplined regulation. Article 7 of the Regulations on the Protection and Promotion of Intellectual Property in Shandong Province promotes self-discipline and self-governance by industry organizations. It provides that “[i]ndustry associations, chambers of commerce, etc. shall promote industry self-discipline, guide their members to raise awareness of intellectual property protection and promotion, and resist violations of intellectual property who provides false intellectual property application materials, refuses to execute any administrative decision or judicial judgment on intellectual property that has already taken effect, infringes intellectual property rights of others, which constitutes a crime, or engages in other acts of infringing intellectual property rights of others, causing significant social impact, shall, within five years, not undertake government-invested projects, participate in government procurement and bidding, or apply for relevant government support funds, commendations and awards; Nanjing City Intellectual Property Regulations, supra note 128, art. 49 (stating that anyone whose infringement of intellectual property rights constitutes a crime, whose infringement of intellectual property rights has been subject to significant administrative penalties, whose fraudulent use of false intellectual property materials to obtain government funds and government rewards, or who refuses to execute judicial decisions on intellectual property rights that have entered into force is forbidden from application of government-funded projects, participation in government project bidding and government procurement activities, and participation in relevant exhibitions in the city within five years.).

247 2021 Outline, supra note 7.
248 Id.
249 Shenzhen City Intellectual Property Regulations, supra note 99, art. 54.
250 Shandong Province Intellectual Property Regulations, supra note 103, art. 7.
property laws.”251 Publicity and education strengthen the public’s willingness to comply with these laws. For example, Article 41 of the Shenzhen’s local intellectual property law stipulates that the relevant administrative agencies “shall strengthen the publicity and education of intellectual property laws and regulations, spread knowledge related to intellectual property, and raise the awareness of intellectual property protection in society as a whole.”252

III. IMPLICATIONS

A. Intellectual Property Legislation Holism and Innovation Policy Pluralism

Through a systematic survey of intellectual property legislation in China, this article argues that the Chinese government is adopting a holistic approach towards developing its intellectual property system. It has not only passed legislation to protect

251 Id. See also Shantou City Patent Regulations, supra note 126, art. 28 (“The relevant industry associations shall carry out publicity and training on patent knowledge among their members, support members to make inventions, apply for and implement patents, educate and urge members to respect the patent rights of others, establish a self-regulatory mechanism for the protection of patents, and provide members with services such as consulting on patent information, early warning, and assistance in the protection of rights.”); Tianjinshi Zhuanli Cujin Yu Baohu Tiaoli (天津市专利促进与保护条例) [Regulations on the Promotion of Patents in Tianjin City] (promulgated by the Standing Comm. Tianjin City People’s Cong., Mar. 30, 2016, effective Mar. 30, 2016) (China) [hereinafter Tianjin City Patent Regulations], art. 37 (“Relevant industry associations, chambers of commerce, and other organizations shall guide and help members apply for and implement patents, safeguard members’ own rights and interests, and urge members to respect the patent rights of others . . . ”).

252 Shenzhen City Intellectual Property Regulations, supra note 99, art. 41. See also e.g., Nanjing City Intellectual Property Regulations, supra note 128, art. 6 (stating that “governments and their relevant departments shall strengthen the publicity of intellectual property laws and regulations, popularize knowledge of intellectual property rights, enhance the awareness of intellectual property rights in the whole society, and create a social atmosphere of respect for and protection of intellectual property rights”); Luoyang City Patent Regulations, supra note 125, art. 6 (“Departments that manage patent work and other relevant departments shall strengthen the publicity and popularization of patent knowledge. Media at all levels and of all kinds should publicize patent knowledge and patent laws and regulations, and enhance the patent awareness of the whole society. Encourage educational institutions to carry out education on basic knowledge of patents”); Xinjiang Uygur Autonomous Region Patent Regulations, supra note 157, art. 8 (“Governments and their relevant departments shall strengthen the publicity and popularization of patent knowledge. Radio, television, newspapers, networks, and other media should carry out patent knowledge and patent laws and regulations to publicize and enhance the patent awareness of society as a whole.”).
intellectual property, but has also gradually broadened this legislation to cover other aspects. The holistic approach of this legislation is a manifestation of China’s innovation policy pluralism—a concept that Daniel J. Hemel and Lisa Larrimore Ouellette have proposed to describe the diversity of innovation policies that countries might implement and the variety of ways that they can combine these policies to create a system that advances the goals of innovation.253 The Chinese government has adopted a variety of innovation policies and legalized them in the form of intellectual property laws. One might view intellectual property legislation holism as a framework for describing China’s intellectual property law system. While understanding the protection that this system gives intellectual property rights is important if one is to evaluate it, it is also critical to recognize the system’s other aspects, such as its role in stimulating the creation of intellectual products, its role in facilitating the scientific management of intellectual property rights and intellectual products, its role in improving the efficiency of the implementation of intellectual products, and its role in improving the quality of IP-related services before we draw conclusions about the Chinese intellectual property system as a whole. Even when assessing the protection that Chinese law provides for intellectual property rights, scholars should focus not only on the court system’s enforcement of rights, but also on the administrative and social mechanisms that contribute to this enforcement.

Like its counterparts in Europe and the United States, the Chinese government uses a strategy of mixing, as Hemel and Ouellette describe, where the granting of intellectual property rights along with other policy tools serves as an incentive for innovators to create intellectual products.254 But the Chinese government uses not only conventional incentives such as prizes, grants, tax credits, and government procurement, but also less common incentives such as providing support to go public, giving priority access to incubators, and granting eligibility for professional and technical positions.255 These are ex-post incentives because the creators engage in their

253 See Hemel & Ouellette, Innovation Policy Pluralism, supra note 110, at 544–49 (2019) (discussing different countries’ innovation policies including fixed salary, patent buyout and others).
254 See id. at 574 (“Policy makers also can—and often do—mix IP and non-IP tools on the same side of the divide. That is, they can mix IP and non-IP innovation incentives, or IP and non-IP allocation mechanisms.”).
255 See supra notes 125, 128, 132, 133, 137, 155.
innovative efforts without knowing whether they will ultimately receive any of these benefits for having done so. For creators who face severe capital constraints and tend to be risk-averse, these incentives might not have a significant effect. Moreover, the magnitude of these benefits seems not to be determined solely by the government. While government support might improve the success rate of an initial public offering, the extent to which a company can benefit from the capital market still depends on the perception of investors. Getting into an incubator and securing a professional position might increase the likelihood of success of a company or individual, but that success is dependent on many other factors as well.

Chinese intellectual property laws suggest that there might be a domino effect between the mixed innovation policy tools. A domino effect is the cumulative effect generated when a particular event triggers a chain of other events that have similar effects. The cumulation of similar effects can exist between the intellectual property right incentive and the non-intellectual property right incentive. Frequently, Chinese intellectual property law treats creators’ acquisition of intellectual property rights (especially patent rights) as an important factor for their eligibility to benefit from other incentive policies. Two examples are making the quantity and quality of patents that creators can obtain an important criterion for participating in government-funded projects, and making patented products a priority for government procurement. Typically,

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257 See, e.g., Malcolm Baker & Jeffrey Wurgler, Investor Sentiment and the Cross-Section of Stock Returns, 61 J. Fin. 1645 (2006) (stating that “investor sentiment may have significant effects on the cross-section of stock price”).
259 See, e.g., Luoyang City Patent Regulations, supra note 125, art. 11 (“Projects supported by government financial funds for research and development, technological transformation, and the commercialization of high-tech industries should take into account the number and quality of patents obtained. The related costs for patent application and maintenance can be included in the project budget.”); Shenyang City Patent Regulations, supra note 117, art. 9 (“Relevant departments of the municipal and district/county (city) people’s government should consider the quality and quantity of patents obtained as
investors in the capital markets view creators’ participation in government-funded projects and their access to government procurement as a signal that the government has certified them as capable, with a promising future. Studies show that government grants and procurements increase the likelihood that companies, especially small- and medium-sized ones, will receive investment. In these instances, the economic benefits of patent exclusivity, participation in government funding projects, access to government procurement, and capital from investors give creators a compound incentive to patent their creations. The ex-ante benefits provide a greater incentive for creators to disclose their technology, because even if the benefits of patent exclusivity are less than the costs of disclosure, the compound benefits could be greater.

Similar to the way that the United States combined its innovation policies, Chinese intellectual property law also matches intellectual property rights and other allocation mechanisms to distribute intellectual products among users. In China, these allocation mechanisms can either increase or impede users’ access to intellectual products. Measures to facilitate the transfer of important indicators for the approval, examination, and acceptance of projects supported by financial funds for research and development, technological transformation, and the commercialization of high-tech industries.”

260 Robin Kleer, Government R&D Subsidies as A Signal for Private Investors, 39 Rsch. Pol’y 1361, 1367 (2010); Guo Yue (郭玥), Zhengfu Chuangxin Buzhu De Xinhao Chuandi Jizhi Ya Qiye Chuangxin (政府创新补助的信号传递机制与企业创新) [Signaling Mechanisms of Government Innovation Subsidies and Firm Innovation], 9 Zhongguo Gongye Jingji (中国工业经济) [China Indus. Econ.] 98, 113 (2018) (finding that the signal that government subsidies for innovation produces has a leveraging effect, i.e., the fact that firms receive subsidies serves as a positive signal to outsiders, and puts those firms in position to secure more resources from society).


263 Id. at 594 (noting the practice in which IP innovation incentives are matched with non-IP allocation mechanism).

264 See, e.g., Zhang & Li, supra note 160, at 28 (suggesting that the building of trading platform facilitates intellectual property trade); Xie Di (谢地), Shilun Guoyou Keji
intellectual property rights are access-increasing mechanisms, such as the establishment of patent and copyright trading markets or platforms. By reducing transaction costs, these mechanisms help users to gain access to intellectual products from holders who are not exploiting them.\textsuperscript{265} In contrast, measures that restrict the disposition of intellectual products that are state-owned, that have national security implications, or that have significant public interest implications can reduce users’ access to them. Whether the loss of the use-value that these restrictions cause outweighs the benefits that the restrictions preserve is a matter for assessment on a case-by-case basis. Research suggests that some restrictions are excessive and lead to the inefficient use of intellectual products.\textsuperscript{266}

In addition to its function of describing the Chinese intellectual property system, the idea of intellectual property legislation holism has methodological implications, at least in terms of legislation. It reminds lawmakers that innovation is a process in which various players interact to operate as a system. Legal reform initiatives should therefore not only involve the creators and users of intellectual products, but also involve other actors such as financial institutions, service providers, industry associations, educational institutions, and the public at large.

\textsuperscript{265} See supra notes 158–160 and the accompanying text.

\textsuperscript{266} See Yi Tao (易涛), Junmin Ronghe Beijing Xia Goujian Guofang Zhuanli Chuzhiquan Zhi Tantao (军民融合背景下构建国防专利处置权之探讨) [Discussion on the Establishment of the Right to Dispose of National Defense Patents in the Context of Military-Civilian Integration], 34 Faxue Luntan (法学论坛) [F. LEGAL STUD.] 130, 132 (2019) (discussing the merits in Defense Intellectual Property Area); Xie Di (谢地), Guoyou Zichan Guanli Zhidu De Falu Tiaozheng Lujing—Yi Xin <Cujin Keji Chengguo Zhuanhuafa> De Shishi Wei Beijing (国有资产管理制度的法律调整路径—以新《促进科技成果转化法》的实施为背景) [The Path of Legal Adjustment of State-owned Assets Management System—The Implementation of the New Promotion of Transformation of Scientific and Technological Achievements Law as a Background], 19 Nanjing Youdian Daxue Xuebao (Shehui Kexue Ban) (南京邮电大学学报(社会科学版)) [J. NANJING U. POSTS & TELECOMM. (Soc. SCI. EDITION)] 40, 45–46 (2017) (discussing the demerits in laws related to the transformation of scientific and technological achievements).

institutions, and occasionally, government agencies. Even lawmakers in countries that export intellectual property law can reflect on their own intellectual property systems and legal reform proposals by examining China’s intellectual property legislation.

China’s holistic approach to intellectual property legislation might also have normative implications. This article does not attempt to provide an overall evaluation of the Chinese intellectual property system, nor does it argue that other countries should adopt a similar system. It does, however, suggest some issues that legislators in other countries might want to address. For example, emerging economies typically have booming innovation industries on the one hand, and a large domestic consumer demand for intellectual products on the other.

It can be difficult for legislators in these developing countries to balance the tension between creators and consumers only by adjusting the level of protection that their intellectual property rights system grants. Moreover, while increasing the protection of intellectual property rights might encourage technology owners in developed countries to export that technology, if companies in these emerging economies do not develop the capacity to absorb technology as well as to create and exploit it, they will not be able to compete with the technology exporters in the long run and might find themselves trapped at the bottom of the value chain. A holistic legislative approach that strengthens the protection of intellectual property rights while enhancing domestic companies’ ability to create, implement, and manage intellectual property offers a potential solution to these issues.

B. Rationale and Challenges for a State-driven Innovation System

A common question among scholars in the fields of intellectual property law and innovation is: which activities related to the creation and utilization of intellectual products should the government leave to market players, and which should it actively support? While state involvement in innovation is not exclusive to any one country, the Chinese approach offers a unique perspective.


269 See, e.g., Jue Wang, Innovation and Government Intervention: A Comparison of Singapore and Hong Kong, 47 RSCHL POL’Y 399 (2018) (suggesting that Hong Kong is
Some Chinese scholars characterize this as a state-driven system (juguo tizhi), suggesting a coordinated national strategy that marshals resources towards overarching goals. This approach is echoed in China’s intellectual property system, which intertwines with the broader contours of its innovation model. Some mechanisms that actors in the market would normally develop spontaneously, such as the market supply of intellectual property-related services and the formation of internal intellectual property management systems in innovative companies, fall under the aegis of the government. Moreover, by providing some companies with, for example, support for going public or a package of privileges, the government potentially affects their competitive standing in the market.

Many Chinese scholars believe that this state-driven innovation system is well-suited to China, for the system can

known for its non-intervention policy that minimizes the role of government in the market); Thomas J. Allen et al., Government Influence on the Process of Innovation in Europe and Japan, 7 RSCH. POL’Y 124 (1978) (noting that in France, West Germany, Holland, the United Kingdom, and Japan, government intervention in innovation was evident, with regulatory constraints, notably influencing project outcomes); David C. Mowery & Nathan Rosenberg, The US National Innovation System, in NATIONAL INNOVATION SYSTEMS: A COMPARATIVE ANALYSIS 29, 29–75 (Richard R. Nelson ed., 1993) (providing a description of the national innovation system of the U.S., under which government’s R&D funding drives innovation in various technological areas); Hemel & Ouellette, Innovation Policy Pluralism, supra note 110, at 569 (noting the Bayh-Dole Act of 1980 streamlined policies for federal research grant recipients, which is an example of government intervention in innovation by ensuring that universities and other beneficiaries can commercialize their research outcomes).


Lei Lifang (雷丽芳) et al., Keji Juguo Tizhi De Neihan Yu Moshi (科技举国体制的内涵与模式) [The Connotation and Pattern of State-driven System of Science and Technology], 38 KEXUEXUE YANJU (科学学研究) [SCI. STUD.] 1921, 1922 (2020).

See supra Section II A–D (illustrating that the powers given by intellectual property law to the government are not only in the aspect of protecting intellectual property rights but also in the creation of knowledge products, the utilization of knowledge products, the management of knowledge products and intellectual property rights, as well as the intervention in the intellectual property service market; showing that doing so involves a variety of methods, including providing information, building trading platforms, establishing incubator facilities, offering training, and education, etc.).

See supra notes 162–166; 209–211 and accompanying text.

See supra notes 128–130; 167–172 and accompanying text.
“concentrate power to do great things.” 275 In the context of intellectual property law, it means that this system can concentrate resources on the creation and exploitation of important intellectual products. 276 As China currently faces intense global competition in science and technology, as well as technological blockades, the concentration of resources might help China to catch up in important technological fields more quickly. 277 This is particularly true in the technological fields where China can enjoy the benefit of hindsight. 278 In addition, R&D in some important technological fields requires large investments over a long period of time and bears a high risk of failure. 279 The government’s involvement in the allocation of resources might overcome the capital constraints and the limits that a single market actor in a free competitive environment faces, allowing this R&D to happen. 280

But when the Chinese government gets involved in innovation, it runs into at least two challenges. One is of decision-making. What China’s intellectual property legislation reflects is that

276 Zhou Wen (周文) & Li Jiliang (李吉良), Xinjing Juguo Tizhi Yu Zhongguoshi Xiandaihua (新型举国体制与中国式现代化) [New National System and Chinese Modernization], 6 JINGJI WENTI TANSUO (经济问题探索) [ECON. ISSUES EXPL.] 1, 1–2 (2023); Luo Ying (罗影) & Wang Yilin (汪毅霖), Quanqiu Hua Houfa Daguojingji Chengzhang De Biyao Yu Houfa De Fazhan De Biyi Xingzhi (全球化时代后发大国经济成长的比较优势、后发优势与增长优势) [Comparative Advantages, Late Development Advantages, and Competitive Advantages of Late-Developing Major Economies in the Globalized Era], 5 JINGJIXUEJIA (经济学家) [ECON.] 24, 30 (2023).
279 See Michael Kahn, Luiz M. De Melo & Marcelo G. Pessoa de Matos, The Financing of Innovation, in FINANCING INNOVATION 1, 2 (Michael Kahn, Luiz Martins De Melo & Marcelo G. Pessoa de Matos eds., 2020) (noting that innovation is characterized by long development lead times, inherent uncertainty, and high risk, and that these inherent characteristics of the innovation process cause banks and even markets to resist financing early-stage innovation).
280 Yan, supra note 275, at 69.
the Chinese government not only develops market mechanisms to allocate resources, but also makes a lot of specific decisions regarding that allocation, such as deciding who will participate in government-funded projects, who will receive government procurement or prizes, who will enter the incubators, and who will be the beneficiary of financing subsidies. Difficulties in information collection and the complexity of innovation activities limit the government’s ability to make decisions that result in efficient resource allocation. Empirical research suggests that Chinese government subsidies, when they exceed certain threshold, inhibit the growth of productivity of firms.\textsuperscript{281}

China’s intellectual property legislation reveals a potential explanation for government’s misallocation of resources. When allocating resources, the Chinese government makes patents an important consideration in its decisions.\textsuperscript{282} A typical example is the prioritization of patented products for government procurement.\textsuperscript{283} The fact that a technology qualifies for a patent only means that it is useful, novel, and non-obvious, but it does not mean that the technology is better than the alternatives. Prioritizing patented products for government procurement can result in the allocation of taxpayer money to inventors who produce low-quality technology. As Clarisa Long points out, patents provide signals for decision-making, but these signals are ambiguous.\textsuperscript{284} Companies at a disadvantage in accumulating resources would have an incentive to manipulate patent signals to attract input.\textsuperscript{285} Outsiders’ over-reliance on these signals raises the risk that they will be misled. This is particularly true in China, where a number of studies have shown that

\textsuperscript{281} Shao Min (邵敏) & Bao Qun (包群), Zhengfu Butie Yu Qiye Shengchanlv—Jiyu Woguo Gongye Qiye De Jingyan Fenxi (政府补贴与企业生产率—基于我国工业企业的经验分析) [Government Subsidies and Firm Productivity—An Empirical Analysis Based on Industrial Firms in China], 7 ZHONGGUO GONGYE JINGJI (中国工业经济) [CHINA INDUS. ECON.] 70, 81 (2012).

\textsuperscript{282} See supra Section II A and B (illustrating how Chinese government takes an entity’s possession of intellectual property rights, primarily patents as an important criterion for preferential measures such as government procurement, tax reductions, prizes, and financial subsidies).

\textsuperscript{283} See, e.g., Fujian Province Patent Regulations, supra note 123, art. 12 (“Government procurement and other use of financial funds for procurement, shall, under equal conditions, give priority to the purchase of patented products.”).


\textsuperscript{285} Id. at 655, 676–77.
the quality of patents is relatively low. Another problem is that in order to release patent signals to attract government funding, many firms over-invest in activities to obtain patents, which misallocates resources. A study by Shen Yu found that local governments’ reliance on patent signals has led to the growth of “patent bubbles,” companies focus on increasing the number of patents to obtain government policy benefits rather than focusing on the quality of patents.

Another challenge that the Chinese government faces when it gets involved in innovation is rent-seeking by its officials. Government officials can abuse their powers by collecting rents from companies for their own benefit. While intellectual property law gives government agencies the power to allocate public resources in many aspects of innovation, it also gives government officials opportunities to use public funds for private gain. The risk of rent-seeking is not negligible in China. Empirical studies found that firms that have close ties to the government receive more tax credits and more government financial subsidies. The more financial

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287 Yan Zhijun (闫志俊) & Yu Jinping (于津平), Zhengfu Butie Yu Qiye Quanyaosu Shengchanlv—Jiyu Xinxing Chanye He Chuantong Zhizhaoye Duibi Fenxi (地方政府“创新崇拜”与企业全要素生产率——基于新兴产业和传统制造业的对比分析) [Government Subsidies and Total Factor Productivity of Firms—A Comparative Analysis Based on Emerging Industries and Traditional Manufacturing Industries], 1 Chanye Jingji Yanjiu (产业经济研究) [INDUS. ECON. STUD.] 1, 1–2 (2017).


290 Wu Wenfeng (吴文峰) et al., Zhongguo Shangshi Gongsi Gaoguan De Zhengfu Beijing Yu Shuishou Youhui (中国上市公司高管的政府背景与税收优惠) [Government Background of Executives in Listed Companies in China and Tax Credits], 3 Guanli Shijie (管理世界) [MGMT. WORLD] 134, 134 (2009).

291 Yu Minggui (余明桂) et al., Zhengzhi Lianxi, Xunzhu Yu Difang Zhengfu Caizheng Butie Youxiaoxing (政治联系、寻租与地方政府财政补贴有效性) [Political
subsidies that a private enterprise with local government political ties receives, the lower the business efficiency and social contribution of the enterprise. The risk of rent-seeking falls into the purview of mechanisms beyond the intellectual property system, such as anti-corruption measures. Research shows that the anti-corruption policies that by the Chinese government has adopted in recent years have had a positive effect on innovation.

CONCLUSION

The literature on China’s intellectual property system has focused on examining whether the system creates and enforces intellectual property rights. By reviewing the history of Chinese government intellectual property legislation and systematically surveying existing intellectual property laws, this article finds that the Chinese government has shifted from a legislative approach centered on the creation and protection of intellectual property rights to a holistic approach. This has allowed China to expand its legislative focus from the establishment and protection of intellectual property rights to the creation of intellectual products, the implementation of intellectual products and intellectual property rights, their management, and the services associated with them. The holistic approach to intellectual property legislation is a legal manifestation of China’s adoption of pluralistic innovation policies. While the intellectual property laws that the government has enacted using this approach address many aspects of innovation, they generally emphasize the government’s role in it. Given the current domestic and international situation in which China finds itself, this emphasis on the government’s role seems to be a reasonable approach, but it

Connections, Rent Seeking, and the Effectiveness of Local Government Financial Subsidies], 3 JINGJI YANJIU (经济研究) [ECON. STUD.] 65, 76 (2010).

292 Id.


294 Dang Li (党立) et al., Fan Fubai Yu Qiye Chuangxin: Jiyu Zhengzhi Guanlian De Jieshi (反腐败与企业创新：基于政治关联的解释) [Anti-Corruption and Corporate Innovation: An Explanation Based on Political Association], 7 ZHONGGUO GONGYE JINGJI (中国工业经济) [CHINA INDUS. ECON.] 146, 158–59 (2015).
also raises challenges regarding decision-making and in dealing with rent-seeking behaviors.

As a primary survey of China’s holistic approach to intellectual property legislation, this article will have accomplished its mission if it has given its readers a more comprehensive view of China’s intellectual property system. If this prompts legislators in other jurisdictions to reevaluate their own intellectual property systems and consider options for reform, it would be a favorable outcome. China’s intellectual property legislation might not offer the optimal approach to promoting innovation, but some aspects of it suggest issues that should be of concern to legislators outside of China. They might want to analyze the cumulative effects of the innovative policies that their legal system adopts and the impact that their intellectual property system has on each actor that participates in the process of innovation.