CHAPTER 7

Intellectual Property Protection for Space Activities in China

1 Introduction

With the end of the Cold War and the change in dynamics of the global order, what used to be competition regarding the military use of outer space has been replaced by the competition regarding comprehensive national strength, which centres on technological innovation and economic development. By contrast, the development of information technology and economic globalisation has inevitably led to competition over outer space as a new area for knowledge and technological innovation, which will further lead to privatisation and commercialisation of outer space. This kind of race for knowledge and innovation can potentially lead to both positive and negative outcomes.

As with many other fields involving technology and knowledge, while they may benefit society, somebody has to shoulder the upfront costs for the research and development of such intellectual assets. On the one hand, this usually leads to the commercialisation and privatisation of a field in order to get the private sector to invest in this kind of research; on the other hand, once an area looks like offering potential commercial rewards, the private sector becomes interested, but then wants protection of investments before actually starting to spend money. Accordingly, incentives are needed for the further development of these assets and this Chapter will talk about just that – the application of intellectual property protection for space activities in China.

Satellite launching, satellite communications, remote sensing, satellite positioning, satellite direct broadcasting, and space tourism are just some examples of space commercial activities making full use of high-key technologies. The special environment in outer space provides favourable conditions for specific scientific experiments that cannot be carried out on Earth. The existence of the International Space Station (ISS) has facilitated scientific research and experiments in outer space. These research results have already been

---


2 Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation,
successfully applied in our daily lives, including the space material processing and the space pharmaceutical industries.

Intellectual property protection, as an effective mechanism to encourage creative work in society, is most relevant to economic development, social progress and cultural prosperity. The protection of intellectual property rights is becoming more and more applicable to space activities as they become more and more commercialised and privatised – having much more involvement of private entities as opposed to only sovereign investment. Relevant rules should therefore be in place to provide protection for these space innovations so that private entities are more incentivised to conduct further research and development and come up with even greater technological achievements.

At the moment, no special treaties or national laws are in place to deal with space innovations. Thus, the existing general intellectual property laws and regulations should guide efforts to legally address how intellectual property is to be protected in the context of space-related endeavours. Whether the principle of territorial jurisdiction shall allow the application of national laws to space objects situated in outer space is an open question. Can space objects be considered as an extension of the state territory? From current state practice, the answer would seem to be positive. For example, the Outer Space Treaty provides the retention of jurisdiction and control over space objects and any personnel onboard the space objects by the state of registry, which is further confirmed in the Registration Convention. The ISS also provides clear rules on jurisdiction – “each Partner shall retain jurisdiction and control over the elements it registers.” Thus as long as elements are registered, they clearly fall under the jurisdiction of the specific Partner of the ISS.


5 Outer Space Treaty, Article VIII.

6 See Registration Convention, Article II.