

COPYRIGHTABLE OR NOT: A REVIEW OF THE CHINESE PROVISION ON “ILLEGAL WORKS” TARGETED BY WTO DS362 AND SUGGESTIONS FOR LEGAL REFORM

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ABSTRACT

This article reviews the copyright dilemma with regard to illegal works in the context of China’s copyright system, and comments on the relevant WTO DS362 panel report. Under the current Chinese Copyright Law, not merely the works with illegal content, but also the works which do not fulfill the procedural requirements of the law will be denied copyright protection. Article 4(1) of China’s Copyright Law may find legitimacy at the domestic level, but does not comply with China’s WTO obligations. The three criteria in Article 13 of TRIPS Agreement can be applied to examine Article 4(1), and this approach is better than the WTO panel’s pure literary approach. By the “Three-step Test” approach,

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this article finds the key problem of Article 4(1): the uncertainty of the scope of denial of copyright. To comply with the WTO rules, China may employ a mechanism of “super-national treatment”, but it is not a preferred choice. Based on these analyses and considering the context of China’s legal regime, the article proposes some practical suggestions for legal reform.

KEYWORDS: *illegal works, TRIPS, three-step test, China, copyright reform, super-national treatment*