

Piracy – A Serious Topic in China

by

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WTO Dispute between China and US

- ✦ Increasing pressures came from international society recently, in particular the US;
- ✦ On April 10, 2007, the US filed with WTO two complaints against China. The very first time for the US to apply WTO instrument to challenge China on IP issues;
- ✦ Consultations were held between China and the US in Geneva in June 2007, but failed to achieve settlement;
- ✦ The US filed with WTO officially in September 2007.

Two Complaints

◆ Complaint I

- ★ (i) To lower the quantitative requirement for copyright infringement crime, which is 500 pieces of pirated CDs or VCDs, accounting to Euro 500;
- ★ (ii) Shall not allow counterfeit goods to flow into market by removing the marks or logos;
- ★ (iii) Foreign works shall be subject to IP protection before it goes through the censorship, and
- ★ (iv) Infringement of licensee's right shall be subject to criminal liabilities as well

◆ Complaint II

- ★ Accession barriers, not allowing US companies' subsidiaries to import American books or audiovisual works into China.

China IP Law Frame

Patent Law

- ★ (i) Enacted in 1984; revised in 1992 & 2000; The Implementing Rules came into force in 2001. Another amendment is in process.
- ★ (ii) The State Intellectual Property Office is one of largest patent office around the world.

Trademark Law

- ★ (i) Enacted in 1983, with amendments in 1993 & 2001; The Implementing Rules revised in 2002 & 2006
- ★ (ii) The largest Trademark Office in the world;
- ★ (iii) China has been the largest trademark application and registration country for the last five successive years in term of quantity.

China IP Law Frame (cont')

Copyright Law

- ★ (i) The first Implementing Rules was issued in 1991; Copyright Law in 2001; Revised the Implementing Rules in 2002; Regulations on Information circulated via Internet in 2006
- ★ (ii) Regulations of Software in 1994 and 2002.

Anti-unfair Competition Law

- ★ (i) Enacted in 1993; The most recent judicial interpretations were given by the Supreme Court with effect as of February 1, 2007

Legal Frame

- ★ (i) A systematic legal frame has been set up, and most laws and regulations were made since 2001;
- ★ (ii) China has been a member to TRIPS, Paris Convention, Berne Convention and many other international treaties.

Three-track IPR System

- Administrative – probably the world's largest administrative enforcement system
- Civil – Very brisk docket; More experienced judges needed; Balance of local interests and foreigner's IP rights
- Criminal – Significant progresses have been made

Administrative Authorities

- State IP Office (SIPO) – Patent prosecution
Patent Re-examination Board – review and invalidation
Local patent office – recognition of infringement
-- limitation in raid action
- Trademark Office – trademark prosecution
Trademark Review and Adjudication Board – review and disputes
- Administration of Industry and Commerce (AIC)
 - AIC raid against counterfeit and piracy in relation to trademark infringement matters
 - Administrative punishment to the infringer

Administrative Authorities (cont')

- Administration of Quality Supervision & Inspection
 - Assist in identifying counterfeit
 - Much weaker role nowadays in IP protection
- Copyright Bureau – Copyright registration and enforcement
- General Administration of Press and Publication – Approval of publication
- Customs – Customs Recordal and freezing infringing goods to be imported/exported

Civil Procedure

- Court system in China – Supreme Court in Beijing, People’s High Court in each province, Intermediate Court in the capital city of each province and central city of each “area”, and County/District level Court
- Foreign-related IP cases shall be heard by People’s High Court or Intermediate Courts located in the capital cities and major cities only
- Two Instances system – a party has one chance to appeal only.
- Cases heard by judges of IP Tribunal. Penal with three judges.
- Limited discovery
- Statutory Damage and no punitive damage

CRIMINAL

- Seven Crimes in relation to IP infringement, covering trademark, patent, copyright and commercial secret.
- Lower the threshold since 2004 and further lowering in 2007: for trademark and copyright infringement cases, selling or offering for sale 500 pieces of pirated CDs or making 2,500 copies without authorization; illegal profits over RMB 30,000 (Euro 3,000) or illegal sales of infringing product over RMB 50,000 (Euro 5,000).
- Up to seven (7) years' sentence
- Entity or individual providing facilities to crime are subject to criminal liabilities as well

Anti-piracy Actions

Various laws and regulations have been made recently

- Patent Examination Guidance amended July 2006;
- Immediate raid during trade show since 2006;
- Judicial Interpretations on anti-unfair competition with effect as of February 1, 2007;
- Judicial Interpretation on IP infringement criminal cases issued April 2007, and
- Patent Law and other 13 laws will be amended or enacted in 2007.

Many institutes have been set up:

- State IP Protection Committee of State Counsel led by Madam Wu Yi;
- State IP Strategy-making Committee of State Counsel;
- Anti-piracy Complaint Center on September 29, 2007.

Anti-piracy actions

Dialogues with international society:

- Very frequent dialogues with the US and the European Union;
- Sino – Italy IPR Symposium was held in Guangzhou in September 2006;
- The 15th Sino-Japan IPR Symposium held in Wuhan last September;
- China High-level Forum on IPR 2007 held in Beijing in April, 2007.
Hosted by the Minister of MOC, Madam Wu participated.
- International Trademark Forum held in Beijing in May, 2007;
- China and US Customs signed Memo on Strengthen IPR Enforcement on May 23, 2007 in Washington DC, etc.

Anti-Piracy Actions

Campaigns

- Seven national-wide campaigns were undertaken in 2006 alone;
- Pay more attention to key areas, key industries and key enterprises in future;
- Encourage and help domestic enterprises, in particular state-owned ones to use copyrighted software in 2007;
- The National IP Strategy Outlines will be officially published by the end of 2007;

TYPICAL EXAMPLES

Government disclose important IP cases on regular basis



Progresses

- ◆ -- PC software piracy rate drops 10% in the last three years, from 92% in 2003 to 82% in 2006 (statistic of Business Software Alliance published on May 15, 2007);
- ◆ -- More transparency: China published recently the Blue Book on China's Trademark and Industrial Economy 2007;
- ◆ -- In 2006, AICs on each level have handled totally 41,214 trademark infringement matters, 5.4% more than that of 2005 and about 25% concerned foreign marks. Among that, 252 files were suspected trademark crimes, involving 263 suspect individuals.
- ◆ -- Chinese courts heard totally 54,321 first trial civil cases in 2006, 17.1% more than that of 2005, of which 50% related to copyright, and concluded 769 criminal cases in 2006 (505 in 2005), of which 80% related to trademark.

Positive or Negative

- ◆ -- A system will work out only if every participant can become a beneficiary. Assistance in good faith vs. criticism.
- ◆ -- China has various other significant issues to deal with, such as energy, environment, trade surplus, social justice, corruption, inflation etc. Limited sources for multiple tasks.
- ◆ -- Patience, help and communication are needed.
- ◆ -- There is no doubt that China is on right direction and moving ahead.

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Thank you!