

**TRANSITIONAL REVIEW MECHANISM OF CHINA**

Communication from China

The following communication, dated 17 November 2003, from the Delegation of the People's Republic of China, providing information specified in Annex 1A to its Protocol on Accession, is being circulated in the context of the transitional review mechanism under Section 18 of that Protocol.

**TRIPS (NOTIFICATION TO TRIPS COUNCIL)**

- (a) **Modifications to the Copyright Law, Trademark Law and Patent Law, relevant Implementing Rules that cover all areas included in the TRIPS Agreement and bring these measures into full conformity with the TRIPS Agreement, as well as protections to undisclosed information.**

**1. Copyright Law**

Modification to the Copyright Law and the Implementing Rules of the Copyright Law was completed, respectively, on 27 October 2001 and 2 August 2002 in accordance with the commitments made by China in relation to the TRIPS Agreement in the documents with respect to China's accession to the WTO. The modified copyright laws and regulations complement and consummate our commitments in relation to the following aspects: equivalent treatment to foreign copyright owners seeking administrative protection in China (Copyright Law Article 2, Implementing Rules Article 37), rental rights with respect to computer programs and movies (Copyright Law Article 10 (7)), mechanical performance rights (Copyright Law Article 10 (9)), rights of communication to the public (Copyright Law Article 10 (11) and (12), Article 30 (3) and (6), Article 44 (1)), protection of database compilation (Copyright Law Article 14), measures concerning infringing behaviours and property preservation (Copyright Law Article 49), evidence preservation measures (Copyright Law Article 50), legitimate compensation amount (Article 48) as well as strengthening the measures against infringing activities (Copyright Law Article 47, Article 51 and Article 52), including administrative fine amount (Implementing Rules Article 36) and jurisdiction of administrative law enforcement (Implementing Rules Article 37). Furthermore, the modification of Computer Software Protection Rules was finished on 20 December 2001.

With regard to the payment system of broadcasting organizations using recording products, Article 43 of the Copyright Law stipulates that detailed methods of payment will be developed by the State Council. Currently, the development of such methods has been listed in the 2003 legislative agenda of the State Council, and relevant research and drafting work is under way.

## **2. Trademark Law**

The Implementing Rules of the Trade Law was promulgated by the state council, which will come into effect on 15 September 2002. On 1 June 2003, the National Industrial and Commercial Administration adopted the Regulations on the Recognition and Protection of Well-known Trademarks, Registration and Administration Methods of Collective and Certification Marks and Implementing Methods for Madrid Agreement Concerning International Registration of Marks.

## **3. Patent Law**

On 28 December 2002, the State Council of the People's Republic of China issued the No. 368 Decree, modifying Article 101 and 108 of the Implementing Rules of the Patent Law of the People's Republic of China. Modifications only involve new provisions concerning the implementation of the patent cooperation treaty, i.e. that the time-limit for international applications entering into the phase for individual country consideration should be unified as 30 months upon the priority date.

On 13 June 2003, SIPO of the People's Republic of China issued the Methods of Compulsory Licensing for the Implementation of Patents, which will come into effect on 15 July 2003.

The Patent Law of the People's Republic of China was revised in August 2003. The Implementing Rules of the Patent Law of the People's Republic of China has been revised in June 2001 and December 2002. Such revisions have brought these laws and regulations into full conformity with the TRIPS Agreement.

## **4. Undisclosed Information**

With regard to protection to undisclosed information, the Anti-unfair Competition Law set forth relevant provisions in relation to the Article 39.2 of the TRIPS Agreement. According to relevant provisions of such law, the National Industrial and Commercial Administration has promulgated Provisions Concerning Prohibition on Infringing of Trade Secrets. Implementing Rules of the Drug Administration Law, Rules on Veterinary Medicine Administration and Rules on Forage and Additive to Forage Administration also contain provisions in relation to undisclosed information. Provisions with respect to the protection of undisclosed information in Chinese laws and regulations are consistent with Article 39 of the TRIPS Agreement.

- (b) As stated in the report, China is strengthening law enforcement in respect of IPRs by way of more effective administrative penalties. China has always attached much importance to IPR law enforcement and has been enhancing the strength of such law enforcement. Based on full awareness of the stimulative effect of IPR protection on economic development, governments at various levels have generally discarded the protection to local enterprises counterfeiting products and fought against counterfeiting activities through cross-region measures.**

## **1. IPR Law Enforcement**

In the wake of the overall revision of copyright laws and regulations, Chinese legislation and law enforcement system with respect to copyright have been further improved. In the year 2002,

copyright authorities at various levels all over the country have reinforced the regulatory efforts, achieving prominent successes in fighting piracy and protecting copyright. According to statistics, copyright authorities at various levels have accepted 6,107 cases, among which 95.3% closed, 5,350 cases led to penalties, 721 cases settled through intermediation, and 136 cases were referred to judicial proceedings. Copyright authorities at various levels have taken over more than 67,900,000 pics pirated products, including 20,020,000 volumes of books, 1,350,000 periodicals, 7,330,000 discs of electronic publication, 5,960,000 discs of software and other pirated products 6,150,000 pics. In special copyright rectifying activities of 2002, copyright authorities at various levels, in collaboration with relevant departments, have taken over 7,320,000 volumes of pirated textbooks and teaching-aid books, 2,700,000 pirated test papers and 1,520,000 pirated audiovisual products and software discs, representing a periodical achievement of the special rectification.

## **2. Trademark Law Enforcement**

In 2002, industrial and commercial authorities at various levels have made great efforts in substantializing the working arrangement of the state council, continuously focusing on market economy rectification and standardization, actively exploring and bettering a trademark law enforcement system that would accommodate the need of market economy and heavily beating offences such as infringing on proprietary rights with respect to registered trademarks and forging registered trademarks, so as to substantially safeguard the legitimate rights and interests of registered mark owners and consumers and contribute to a uniform, open and competitive market economy. According to statistics, industrial and commercial authorities at various levels have investigated and dealt with 39,105 cases of all kinds in 2002, taking over and removing 153 million illegal marks, capturing 14,882 pics of tools such as mould and printing block, destroying counterfeit goods 4,183.64 tons, imposing fines amounting to RMB 214 million, and transferring 59 cases which involved 78 people to judicial authorities to investigate criminal liabilities. In the case of protection to undisclosed information, they have investigated and dealt with 87 cases concerning infringing of trade secrets (of which the total value amounted to RMB 3,287,700), confiscated RMB 27,200 and imposed fines totalling RMB 1,881,800.

## **3. Law Enforcement at borders**

In 2002, the General Administration of Customs has verified, approved and recorded 844 items of IPR protection at customs. Various customs across the country have investigated and dealt with 569 cases with respect to infringing of IPR, of which the total value amounted to RMB 95,390,000.

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