

TRANSITIONAL REVIEW MECHANISM OF CHINA

Communication from China

The following communication, dated 15 October 2007, 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.

- (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

On 26 March 2006, Ministry of Public Security and National Copyright Administration of China jointly issued the *Provisional Rules on Promoting the Joint and Cooperation in Combating the Infringement of the Exclusive Rights to Use Copyright*.

Decision (No.2) on Amending the Supreme People's Court's Interpretation on Certain Issues Concerning Application of Laws in Dealing With Cases Concerning Computer Network Copyright Disputes issued by the Supreme People's Court on 22 November 2006, further clarified the jurisdiction with regard to network copyright protection, the decision of the copyright owner after network communication and the legal liability of internet service provider, came into effect on 8 December 2006.

The Standing Committee of the 10th National People's Congress approved on 29 December 2006 the proposal of the State Council on China's accession into *the WIPO Copyright Treaty* and *WIPO Performances and Phonograms Treaty*, which came into effect on 9 June 2007.

On 5 April 2007, the Supreme People's Court (SPC) and the Supreme People's Procuratorate (SPP) issued *Judicial Interpretation of the SPC on Issues Concerning Application of Law in Dealing with Criminal IPR Cases (No.2)*, which further lowered the quantity threshold for infringement of Copyright and strengthened the crack-down on IPR infringement.

2. Trademark

In April 2006, SAIC made the draft of Trademark Law public to solicit opinions and comments from domestic and foreign bodies and entities. By the end of 2006, 48 mails and 1,012 pieces of opinions from 47 organizations including USPTO, JPO, INTA have been received. At

present, a new round of opinion solicitation on the draft of Trademark Law (August of 2007 Edition) is under way.

In November 2006, SPC issued *Notice on Recording and Filing System for Judicial Certification on Establishment of Famous Trademark*, with a view to enhancing the supervision and guidance on judicial certification on famous trademark.

Measures for the Administration of Special Signs of Geographical Indication Products was issued by SAIC in January 2007, and came into effect on 30 January 2007.

3. Patent

On 24 May 2006, the State Intellectual Property Office issued the *Guide on Patent Re-examination*, which came into effect on 1 July 2006.

On 12 October 2006, the State Intellectual Property Office issued *Measures for the Reduction or Postponement of the Payment of Patent Fees*, which came into effect on 13 November 2006.

On 27 August 2007, the State Intellectual Property Office issued *Relevant Rules Concerning Regulating Patent Application*, which came into effect on 1 October 2007.

4. New Plant Varieties

On 12 January 2007, SPC issued the *Provision on Application of Law in Dealing with Right Disputes over New Plant Varieties*, which came into effect on 1 February 2007.

5. Anti unfair competition

Interpretation of the SPC on Issues Concerning Application of Law in Dealing with Civil Cases of Unfair Competition was issued on 12 January 2007 by SPC, which came into effect on 12 January 2007, provided legal basis for dealing with civil cases of unfair competition, protecting legitimate rights and interests of business operators and safeguarding market competition order.

6. Customs Protection

The Provisional Regulation on Better Coordination in IPR Law Enforcement was jointly promulgated by the Ministry of Public Security and the General Administration of Customs on 24 March 2006.

(b) As stated in the report, China is strengthening law enforcement in respect of IPR by way of more effective administrative penalties.

From August 2004 to the end of 2005, the State Council of China conducted a nationwide special campaign on IPR protection mainly targeted on 15 provinces and cities including Beijing, Shanghai, etc. and focusing on the protection of trademark, copyright and patent under the circumstances of import and export of commodities, various exhibitions and commodity fairs, OEM, and printing and reproduction. With the support from the governments at all levels and various law enforcement and judiciary departments, campaign resulted in the investigation and punishment of a number of large and major cases.

From 2006 and 2007, the State Office of Intellectual Property Protection continued to carry out or initiated the following special actions and campaigns:

1. the Ministry of Public Security carried out "Mountain Eagle" action consecutively for two years;
2. the State Office of Intellectual Property Protection of China and the State Copyright Office took special actions jointly with a view to cracking down on copyright infringement through network;
3. eight departments including the National Office on the Elimination of Pornography and Illegal Publications and the General Administration of Press and Publication initiated the nationwide "100 Day Anti-Piracy Action";
4. the National Copyright Administration of China carried out special campaign to crackdown on the illegal preloading of software into computers;
5. Industry and Commerce Authorities carried out special actions on protecting exclusive rights on registered trademark;
6. the Ministry of Culture initiated the "Sunshine" campaign to crack-down upon piracy in the audiovisual products market;
7. Chinese customs offices actively took special actions towards import and export infringement activities in specific areas and particular channels;
8. the General Administration of Customs launched two campaigns, namely "the special campaign of concentrated striking on the IP infringement activities through the mail delivery channel of express luggage" and "the special IP enforcement campaign by the customs within the Yangtze Delta area", in August and in September respectively;
9. AQSIQ enhanced the IPR protection in the areas of food, agricultural material and architectural material;
10. Patent Authorities initiated special action on combating counterfeit patent, imitated patent and patent infringement;
11. SPC has established supervision system on large and major IPRs criminal cases and SPP carried out supervision activity combating manufacturing and sales of counterfeit products and IPRs infringement.

7. Statistics of IPRs Enforcement

In 2006, 1,910 cases of IP infringement were closed and 2,344 suspects were apprehended by the public security authorities across China with a total value concerned amounted to RMB 1.06 billion.

In 2006, 678 IPR criminal cases and 1,224 persons were authorized by procuratorial organs upon application for arrest on a nationwide basis, 752 cases and 1,370 persons were prosecuted.

In 2006, 2,277 criminal cases involving IP infringement, production of counterfeit and inferior goods and illegal business operation were closed by the courts across the nation with 3,507 criminals.

In 2006, a total of 2,475 batches of involving import and export IPR infringement goods with a total value concerned up to RMB 200 million were investigated and dealt with by the customs offices across China.

In 2006, 33,900 of trademark counterfeit cases were investigated and dealt with by industry and commerce administrative authorities at all levels.

AQSIQ deal and investigated 15,000 cases of forging and counterfeiting the factory names and address of others, 1,000 cases of producing and printing counterfeit labels and packages.

The culture authority investigated and dealt with some 37,962 cases, seized and destroyed 112,280,000 illegal audio and video products.

During the special action, press and publication authorities investigated and dealt with 12,142 cases of copyright infringement and outlawed 18,140 illegal business operators.

The patent authority investigated and dealt with 33 cases of patent counterfeiting, 933 cases involved counterfeiting the patent of another person and 1,227 cases involved patent infringement.
