

TRANSITIONAL REVIEW MECHANISM OF CHINA

Communication from Japan

By means of a communication from the delegation of Japan, dated 2 October 2009, the Secretariat has received the following contribution in the context of the transitional review mechanism under Section 18 of China's Protocol on Accession.

I. COPYRIGHTS

1. "Outline of the National Intellectual Property Strategy" issued in June 2008 says, "(8) Laws and regulations concerning IPRs need to be improved. Special intellectual property laws, such as ...Copyright Law, and related regulations need to be promptly revised."

Also, "China Action Plan on IPR Protection 2009" issued in April 2009 says, "2.4 To promote the revision, formulation and implementation of Regulations on the Copyright Protection of Folklore and to work on the revision, formulation and implementation of Administrative Measures for Voluntary Registration of Works and Reward Rules for Legal Licensing of Textbooks."

Please provide us with the detailed schedule for the establishment, revision and implementation of the above laws and regulations, including the opportunity for public comment from relevant stakeholders and submission of the comments to the State Council.

2. Please provide us the detailed schedule for the establishment of the regulation on the royalty regulation for broadcasting and television organizations, which Article 43 of the Chinese Copyright Law stipulates that the State Council is to establish.

Also, please tell us China's view on the time when the Chinese Government is planning to start collecting the royalties. Especially, whether the provisions concerning collecting royalties will be effective retroactive to October, 2001, when the Chinese Copyright Law was revised to introduce Article 43.

3. It is our understanding that collective management societies in China are not able to distribute royalties to right holders appropriately because users of copyrighted works often do not report their actual usages fully. To solve this problem, Japan believes that there is a need to ensure the full enforcement of a user's obligation to provide full information about their usages, and need to encourage them to build an adequate system for distribution, as stipulated under Article 27 of the Regulation for Collective Management of Copyright. Please inform us of China's view on this matter. Also, if the Chinese Government is planning to take any measures against this problem, please provide us with their details.

4. Concerning the permission of distributing visual content which should be protected its copyright properly over mobile network, please provide us with the detailed information, including the regulations, relevant authorities, the procedures, and the documents to be submitted.

II. TRADEMARKS

A. EXAMINATION PERIOD OF TRADEMARK

5. In 2008, China answered through the TRM that the average pendency period in the year 2008 was about 28 months (i.e. from the receipt of an application to the issuance of first Office action). Please let us know how long it takes on an average now. Your informing us of the future perspective of possible reduction in the average pendency period would be appreciated.

6. Please let us know an average length of time from a receipt of a request for an opposition processed by the China Trade Mark Office (CTMO) to a start of a substantial examination on the opposition and from a start of a substantial examination to a final decision respectively. In addition, please provide us with an average length of time from a receipt of a request for a review processed by the Trademark Review and Adjudication Board (TRAB) to a start of a substantial review and from a start of a substantial review to a final decision respectively.

B. EXAMINATION OF TRADEMARK

7. Please let us know whether the CTMO has a system to examine trademark applications together or not when a same trademark is filed designating several classes of goods and/or services respectively.

III. ENFORCEMENT

8. We would like to know what kind of concrete measures based on relevant provisions of Criminal code you have undertaken to meet your obligations of imposing sufficiently deterrent punishment against wilful trademark counterfeiting or copyright piracy. And would you please provide us with figures/statistics, concrete cases of detection and other data to support the establishment and effective management of the system to impose deterrent punishment. (*See Article 61 of TRIPS Agreement*)

9. According to Article 61 of the TRIPS Agreement, in appropriate cases, remedies available shall include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. We would like to know what kind of cases your Government is considering to be "appropriate cases" to fulfill the requirement under the Article.

IV. INTELLECTUAL PROPERTY TRIBUNAL

10. The Supreme People's Court of the People's Republic of China issued its regulation regarding allocation of judicial reviews of administrative decisions on intellectual property cases including patent and trademark on 22 June 2009, where the term of intellectual property tribunal is found. This tribunal can expedite a judicial review. Please let us know how long you are expecting the tribunal will shorten the pendency period of a case.

11. Please let us know whether a judge familiar with intellectual property is or will be strategically allocated with the intellectual property tribunal established. If so, please let us know how many such judges have already been or will be allocated and how much they are familiar with intellectual property, such as experience in judging intellectual property cases.

12. Please let us know whether a civil case concerning infringement of intellectual property right is or will be judged at intellectual property tribunal. In addition, please provide us with coordination between a civil tribunal and intellectual property tribunal when intellectual property right in a judicial review case is the same as the intellectual property right in a civil case and when both cases are pending.
