

**TRANSITIONAL REVIEW MECHANISM OF CHINA**

Communication from China

The following communication, dated 21 October 2009, from the delegation of China, providing information specified in Annex 1A of its Protocol of Accession, is being circulated in the context of the transitional review mechanism under Section 18 of that Protocol.

- (a) **Amendments to *Copyright Law, Trademark Law and Patent Law*, as well as relevant implementing rules covering different areas of the *TRIPS Agreement* bringing all such measures into full compliance with and full application of the *TRIPS Agreement* and the protection of undisclosed information.**

**1. Trademark and Anti-Unfair Competition**

In December 2008, the State Administration for Industry and Commerce submitted the *Anti-Unfair Competition Law (Revision)* to the State Council for inspection after extensive soliciting of the opinions from all walks of life, many researches and demonstrations as well as 11 revisions.

The *Trademark Law (Revision)* (draft for examination) has been worked out and will be submitted to the Legal Affairs Office of the State Council after further study and examination on the basis of many researches, demonstrations and soliciting of the opinions from relevant ministries and commissions, trademark agency organizations, experts and scholars, representatives of enterprises, relevant trademark authorities of China and the chambers of commerce, as well as associations.

On April 21, 2009, the Supreme People's Court released the *Interpretations of the Supreme People's Court on Several Issues Concerning the Application of Law to the Trial of Cases of Civil Disputes over the Protection of Famous Trademarks*.

**2. Patent**

On 27 December 2008, the 6th session of Standing Committee of the 11th National People's Congress of the People's Republic of China discussed and passed the *Resolution of the Standing Committee of the National People's Congress Concerning the Amendment of the Patent Law of the People's Republic of China*, which came into effect on 1 October 2009.

On 27 February 2009, the State Intellectual Property Office submitted to the State Council for examination of the *Revised Draft of the PRC Patent Law Implementing Rules* (draft for examination). Currently, the revised draft has been submitted to the Executive Meeting of the State Council for review.

### **3. Customs Protection**

On 31 January 2008, the General Administration of Customs issued the new version of *Customs' Administrative Measures on Enterprises Classification*, which took into consideration enterprises' IPR violation records when implementing the classification administration.

In 2009, the new *Implementing Measures on Customs Protection Regulations of Intellectual Property Rights* was promulgated.

### **4. Others**

On 6 May 2009, the 62nd executive meeting of the State Council discussed and passed in principle the *Payment Methods on the Broadcasting the Phonorecords in Radio Stations and Television Stations (Draft)*, and later the draft was announced to be implemented by the State Council after further amendments according to the guidance of the executive meeting.

In February 2009, nine ministries and commissions including the State Intellectual Property Office, the Ministry of Commerce and others printed and issued the *Notice of Intellectual Property Work on Enterprises Taking Part in Overseas Exhibitions*.

On 30 March 2009, the Supreme People's Court released the *Opinions on Several Issues Concerning the Implementation of the State's Intellectual Property Strategies*; and thus to work out the detailed plans and requirements for the work of the People's Court.

In 2009, based on the *Administrative Measures on the Geographical Indications of Agricultural Products*, the Ministry of Agriculture formulated 17 relevant and complementary departmental standards successively including the *Quality Identification Standard of Geographical Indications Products of Agricultural Products*, the *On-Site Supervision Standard of Geographical Indications of Agricultural Products*, the *Administrative Measures on the Testing Institutions of Quality Identification Standard of Geographical Indications Products of Agricultural Products*, the *Name Inspection Standard of Geographical Indications Products of Agricultural Products* etc.

#### **(b) Enhanced IPR enforcement efforts through the application of more effective administrative sanctions as described in the Report.**

From 2008 to 2009, while strengthening IPR law enforcement, China continued to carry out special campaigns with good results. The Supreme People's Procuratorate promoted to establish the "Online Integration and Information Sharing" mechanism for IPR administrative enforcement and criminal justice to facilitate the timely referral of IPR criminal cases. Focusing on the welcome of Beijing Olympic Games, the Ministry of Culture carried out the "Olympic Games Guarantee Campaign" in the culture market and severely cracked down on the operating activities of illegal audio and video products. In April 2008, the Ministry of Culture launched the 10th national audio and video market law enforcement campaign all over China, taking the "Protecting Intellectual Property Rights, Fighting Against Infringement and Piracy" as the theme. According to the task deployment, local culture and administrative sectors continuously launched the special campaigns concentrating on fighting against the illegal publications and piracy and insisted on anti-piracy every day. The National Copyright Administration continuously carried out the special campaigns concerning the utilization of copyrighted software in enterprises and the punishment for pre-installed illegal computer software, implemented the special campaigns fighting against internet infringement and piracy activities and jointly engaged in the Olympic copyright protection work in the new media environment with the Ministry of Industry and Information Technology and the State Administration of Radio Film and Television together. The Ministry of Public Security established and improved the coordination and supervision systems for key legal cases, strengthened the investigation on the

criminal cases of infringement and piracy, severely attacked the original crime sources of infringement and piracy and enforced the supervision of printing and copy enterprises under the help of the press and publication and other sectors. The Ministry of Public Security also actively advocated the international cooperation for law enforcement and deployed the "Eagle Action" in line with the clues provided by United States Department of Homeland Security. The State Intellectual Property Office organized the intellectual property offices nationwide to carry out the "Thunderstorm Action" and "Sky Network Action" for the term of one year to fight against intellectual property violations and patent fraud behaviors.

## **5. Statistics of IPRs Enforcement**

- In 2008, public security authorities across the country uncovered 1,455 IPR-violating cases involving RMB1.65 billion Yuan and caught 2,642 suspects.
  - In 2008, procuratorial organs approved to arrest 2,107 persons in 1,210 IPR-violating cases and prosecuted 2,697 persons in 1,432 IPR-violating cases.
  - In 2008, local courts across the country totally accepted and settled 24,406 and 23,518 IPR civil cases of first instance respectively.
  - In 2008, local courts across the country settled 3,326 IPR-violating criminal cases. Verdicts on 5,388 persons resulted in legal effect and 5,386 persons were sentenced guilty.
  - In 2008, copyright administrative agencies at all levels and cultural sectors jointly inspected 782,670 commercial entities, shut down 36,601 entities due to illegal behavior, removed 694 underground dens, imposed 9,032 administrative penalties, referred 238 cases to judicial bodies and confiscated 45,648,426 pirated goods including 8,983,933 volumes of books, 1,805,029 periodicals, 30,536,277 discs of audio and video products, 1,111,311 discs of electronic publications, 1,592,772 pieces of software and 1,619,104 pieces of others, which involved the amount of RMB 14,188,386 Yuan.
  - In 2008, industry and commerce administrators at all levels investigated and handled 56,634 cases of trademark violations.
  - In 2008, IPR Bureaus across the country accepted 1,092 patent disputes, investigated and handled 59 cases of imitated patent and 601 cases of counterfeited patent.
  - In 2008, nationwide culture administrative authorities at all levels investigated and handled 11,665 cases of IPR infringement, suspended the operation of 5,151 involved entities, revoked business licenses of 1,098 violators, referred 273 offenders to judicial bodies and confiscated 62,440,000 discs of illegal audio and video products.
  - In 2008, the Customs intercepted 11,135 batches or over 600 million pieces of goods for import & export that were involved in IPR violation.
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