



Anti-Piracy Policies in China

Thomas Pattloch
Intellectual Property Officer
EU Delegation of the European Commission



Counterfeiting: China's assessment

- NIPS No. (3): "...infringement of intellectual property is still a relatively serious problem; there are still some cases of abuse of intellectual property..."



Counterfeiting situation

- Border seizures at EU borders increased more than 1000% between 1998 and 2004. Trend continuously strong, in 2007 goods seized coming from China constituted 81% at US borders, and more than 50% of all seizures at EU borders
- Transshipment, repackaging in Free Trade Zones
- “Bundling” of counterfeits
- US/”safe” countries of origin also used for onward shipping
- Express delivery routes, new channels of transport
- Range of products counterfeited increased, consumer products and industrial goods, documents etc.
- Chinese and foreign products concerned alike



“Anti-Piracy”

- Stability and market order – “anti pornography and anti-piracy” conjunction in copyright sector
- Definition of “piracy”
 - e.g. patent infringements and patent “passing-off”
- Holistic assessment of counterfeiting
 - historical justification of phenomenon
- Problem-solution approach: National IP Strategy



Policy

- Economic growth
- Social stability
- Competitiveness
- Cultural enrichment
- Protection – “win-win” prospect



China's answer

- Accumulate as many IPRs as possible to become competitive
 - Quality is secondary concern to policy makers
 - Avoiding payment for technology and winning access to foreign markets are primary concerns
 - Labour seen as only real competitive advantage so far
 - Lack of brands to penetrate foreign markets and gain strength also outside China
 - IPR seen as tool of superior foreign companies to block access to information, technology



China's answer

- Educate your own companies about value of IPRs
 - Technical assistance programs, including foreign ones
 - Governmental and trade promotion educational programs
 - New Hi-Tech Enterprises as models, award-based incentive system



China's answer

- Promote utilization of IPRs
 - Patent subsidies
 - Brand building subsidies
 - Securitization of IPRs
 - IPR trading platforms



China's answer

- Strengthen enforcement:
 - Campaigns, action plans
 - NIPS
 - Courts: Higher cost of infringement, higher damage compensations
 - Administrative authorities: Higher penalties, more transfers to criminal authorities
 - Police: Higher level of investigation, stronger sanctions for counterfeiters



China's problems

- New leadership with different focus
 - Wang Qishan - Wu Yi
- Complex agency structure
 - Case transfers do not work
 - Competing relationships
 - Administrative enforcement vs. courts?
- Ongoing resource problem
 - NCAC
 - Rising case numbers in courts and administrative agencies
 - Rising filing for IPRs
 - Lack of attorneys



China's problems

- Anti-counterfeiting measures not by all stakeholders equally perceived
 - Provinces
 - Industry in China
 - Public/academia/young elite
 - Nationalism
 - Shanzhai phenomenon



China's problems

- Systemic weaknesses of China's enforcement system
 - System favours use of administrative agencies
 - Complexity of issues
 - Lack of accountability
 - Local protectionism
 - Resources
 - No deterrence for attempted fraud/forgery of documents and evidence in legal procedure
 - Access to enforcement system depending on arbitrary decisions, not rule of law
 - Case acceptance system “li an”
 - High formality requirements, modified accordingly by local administration, sometimes even courts
 - Threshold system
 - Review of administrative decisions exception, not rule – pronounced fear of liability stifles decision making
 - Decentralized enforcement structure – loss of power of influence by central government authorities



China's problems

- Systemic weaknesses of China's enforcement system
 - Implementation of case decisions often hindered
 - Protectionism and corruption
 - Lack of legal deterrence against disregard of (civil) court orders
 - Social order prerogative



Summary

- Efforts made by central government to improve situation, yet often incapable, sometimes unwilling because of overriding priorities
- Campaigns and party-based actions still main means of implementation, not rule of law (Wu Bangguo warning of “Western influence”) – top down vs. bottom up philosophy
- Mid-term strategy, relying on historical examples of Japan and Korea that with improved domestic industry counterfeiting will become less
- No drastic systemic changes envisaged by leadership – gradual change for social stability
- Strong efforts by individual agencies, but clear lack of ability to coordinate beyond the individual mandate (“divide et impera” model of state)
- More cases are likely, but not necessarily qualitative improvement, abuse of IPR and risk of more industry policy embodied in jurisprudence



Thank you!

Contact: Thomas Pattloch
IP Officer EU Delegation Beijing
Tel.: +86-10-8454 8131
Fax: +86-10-8454 8011
Email: thomas.pattloch@ec.europa.eu



uschamber.com