



Asia-Pacific  
Economic Cooperation

# **APEC SEMINAR ON CAPACITY BUILDING TO IMPLEMENT ANTI- COUNTERFEITING AND PIRACY INITIATIVE**

Hanoi, Viet Nam, 31 May – 1 June 2007

**APEC Committee on Trade and Investment**

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## AGENDA

DAY 1 (Thursday, 31 May 2007)	
8:30 – 9:00	<i>Registration</i>
<u>OPENING CEREMONY</u>	
9:00 – 9:15	<p><b><u>Opening remarks</u></b>          Mr. Tran Quoc Khanh          Director General, Multilateral Trade Policy Department, Ministry of Trade</p>
9:15 – 9:45	<i>Morning coffee</i>
<u>SESSION 1</u>	
<ul style="list-style-type: none"> <li>▪ <i>Overview on counterfeit and piracy: fact, figure and specific violated cases</i></li> </ul>	
9:45 – 10:15	<p><b><u>The scope and global impact of piracy and counterfeiting</u></b>          Mr. Peter Fowler          United States Patent and Trademark Organization (USPTO)</p>
10:15 – 10:45	<p><b><u>WCO initiatives to combat counterfeiting and piracy</u></b>          Mr. Christophe Zimmermann          World Customs Organization</p>
10:45 – 11:15	<p><b><u>Report on MC IP</u></b>          Mr. Do Viet Dzung          Manager, Law Department, Asian Honda Motor Co, Ltd.</p>
11:15 – 12:00	<p><b><u>Q &amp; A</u></b>  <i>Moderator:</i> Mr. Pham Hong Quat          Senior Official, National Office of Intellectual Property of Vietnam, NOIP</p>
12:00 – 13:30	<i>Lunch Break</i>
<u>SECTION 2</u>	
<ul style="list-style-type: none"> <li>▪ <i>Current situation in APEC member economies and effective steps to combat counterfeit and piracy in APEC member economies: experience sharing among APEC members</i></li> <li>▪ <i>Experiencing sharing on the application of model guidelines on anti-counterfeit and piracy</i></li> </ul>	
13:30 – 14:00	<p><b><u>A Brief Introduction of China's Measures to Combat Piracy</u></b>          Mr. Xu Wei          Copyright Office, China</p>
14:00 – 14:30	<p><b><u>Trademark Counterfeiting Under Vietnamese Law and International Best Practice</u></b>          Mr. Tran Manh Hung          Partner, Baker &amp; McKenzie LLP</p>

14:30 – 15:00	<a href="#"><u>Indonesia's Measures to Combat Piracy</u></a> Mr. Ansori Sinungan Director of Copyright, Industrial Design of ID and Trade Secret, Indonesia
15:00 – 15:30	<i>Coffee Break</i>
15:30 – 16:00	<a href="#"><u>Australia experience with the implementation of the APEC model guidelines on piracy</u></a> Mr. Sam Ahlin Senior Legal Officer, Copyright Law Branch, Australia
16:00 – 16:30	<a href="#"><u>Anti-counterfeiting activities by Korea Intellectual Property Office</u></a> Mr. Au Yong Ho Director, Korea Intellectual Property Office
16:30 – 17:00	<b>Q &amp; A</b> <i>Moderator:</i> Mr. Sivakant Tiwari Principal Senior State Counsel, Chair of Intellectual Property Rights Working Group (IPEG)
DAY 2 (5 <sup>th</sup> December 2006)	
9:00 – 9:30	<i>Morning coffee</i>
<b>SECTION 3</b> ▪ <i>Keeping supply chain free of counterfeit and pirated goods</i>	
9:30 – 10:15	<a href="#"><u>APEC Anti-Counterfeiting &amp; Piracy Initiative</u></a> Mr. Sivakant Tiwari Attorney-General's Chambers, Principal Senior State Counsel, Singapore
10:15 – 10:50	<a href="#"><u>Keeping the supply chain free of counterfeit and pirated goods</u></a> Mr. Murray Hiebert Director of Southeast Asia Affairs, The US Chamber of Commerce
10:50 – 11:30	<a href="#"><u>Protection of Intellectual Property Rights in Hong Kong Special Administrative Region</u></a> Mr. Kwok Kai-chiu Jim Superintendent, Hong Kong Customs
11:30 – 12:00	<b>Q &amp; A</b> <i>Moderator:</i> Mr. Murray Hiebert, Director of Southeast Asia Affairs, The US Chamber of Commerce
12:00 – 13:30	<i>Lunch Break</i>
<b>SECTION 4:</b>	

- *Public-private cooperation to combating counterfeit and piracy*

13:30 – 14:00

**Public-private cooperation, practical experiences of the United States**

Mr. Murray Hiebert  
Director of Southeast Asia Affairs, The US Chamber of Commerce

14:00 – 14:30

**Public-private Cooperation in the Struggle against Counterfeiting – The Vietnam Experiences**

Mr. Do Gia Phan  
Vice President and General Secretary of the Vietnam Standard and Consumers Association (VINASTAS)

14:30 – 15:00

*Coffee Break*

15:00 – 15:30

**Public Education Program, Working hand in hand with Private sector**

Ms. Jennifer Chen  
Deputy Director (Customer & Corporate Communications Dept)  
Intellectual Property Office of Singapore

15:30 – 16:00

**Q & A**

*Moderator:* Mr. Peter Fowler

16:00 – 16:30

**Summary and Concluding Remarks**

Mr. Sivakant Tiwari  
PEG Chair

**Opening Speech by**  
**Director – General, Multilateral Trade Policy Department,**  
**Mr. Tran Quoc Khanh**  
**At**  
**APEC Seminar on Capacity Building to Implement Initiative on Anti-**  
**Counterfeiting & Piracy**  
*Horizon Hotel, 31 May – 1 June /2007*

*Distinguished Guests*  
*Ladies and Gentlemen,*

First of all, on behalf of the Ministry of Trade, the Socialist Republic of Vietnam, I would like to, convey my sincere thanks to you, distinguished guests for attending this APEC Seminar on Capacity Building to Implement the Initiative on Anti-Counterfeiting and Piracy, held in Hanoi, in 31 May and 1 June.

*Ladies and Gentlemen,*

Intellectual property rights (IPRs) represents one of the important aspects of trade in goods, fully acknowledged and governed in the TRIPS Agreement of the WTO. This attracts high attention of all nations worldwide.

Enhanced intellectual property rights is to protect the reputation and prestige of the enterprise, protect the rights and health of consumers, contribute to building confidence of enterprises and the public in the national legal system, thus promoting economic growth. In reality, however, violations of IPRs has been in increase in the world. Copyright infringement, counterfeiting and piracy have been sophisticated than ever due to the increased global trade. Counterfeiting and piracy not only exist in small manufacturing sectors but also expand to hi-tech sectors such as electronics and telecommunications, aviation industry, and in particular in food and pharmaceutical industries, adversely affecting consumers' health. Infringement of copyright, patent and trademark and the spread of counterfeit and pirated goods have caused billions of dollars losses to industries, damaging the prestige and benefits of producers and distorting competition.

This is the pressing issue not only for developing economies but also for developed ones, differing in the number and seriousness of cases. According to the OECD's statistics, counterfeit goods account for one tenth of the world trade and the total value of counterfeit goods traded annually makes up to approximately 500 billions of euros, which is double the budget of Germany.

Fully acknowledge the situation, nations in the world have paid efforts to implement IPRs protection in various forms and with diverse activities, in which worthy to name are: improving legal system, more stringent penalties for IPR violations, raising awareness of consumers, encouraging enterprises to use technologies to fight against counterfeit goods etc. However, due to the ever sophistication of violators in this area, plus remaining loose legal system in some countries and insufficiently heavy punishment to IPRs violators, this issue remains a big headache for different countries in the world.

APEC, in its efforts to boost trade, has been paying attentions to enhance cooperation in IPRs protection and enforcement. In 2005, APEC Leaders endorsed the Initiative on Anti-Counterfeiting and Piracy, laying the foundations for the existence of model guidelines on anti-counterfeiting and piracy which serve as good reference for member economies. In order to add value to this efforts, Vietnam has the honor to host APEC Seminar on Capacity Building to Implement Anti-Counterfeiting and Piracy in Hanoi. We highly hope that the Seminar will provide a good opportunity for APEC economies to share experiences on effective measures to combat counterfeit and pirated goods. Also, we hope this seminar will create a channel that bring together regulators, market control officers and customs officers in the fight against IPR violations. It is our expectation that the outcomes of the Seminar will help produce recommendations on future direction aimed at enhancing these activities in APEC in the time to come.

On behalf of the Ministry of Trade, I would like to declare the seminar open. May I wish you all good health and the seminar a fine success.

Thank you!.

## THE SCOPE AND GLOBAL IMPACT OF PIRACY AND COUNTERFEITING

**Peter N. Fowler**  
Senior Counsel, USPTO  
peter.fowler@uspto.gov

## Importance of IP

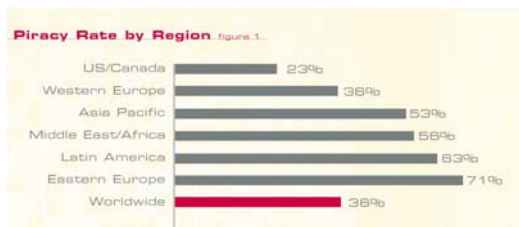
- "In recent decades, the fraction of the total output of [the U.S.] economy that is essentially conceptual rather than physical has been rising. The trend has, of necessity, shifted the emphasis in asset valuation from physical property to intellectual property and to the legal rights inherent in intellectual property."

--*Alan Greenspan, Former Chairman, U.S. Federal Reserve Board*

## Scope of IP Theft

- Virtually every product line and all regions of the world are vulnerable to IP theft.
- Factors contributing to IP theft:
  - High-tech equipment
  - Sophisticated global economy
  - Increased world trade
  - Skilled and determined counterfeiters and pirates

## Piracy Rate by Region





## Scope of IP Theft

- Counterfeiting and piracy are not limited to luxury goods and apparel-related products:

- Razor blades
- Shampoos
- Pharmaceuticals
- Foods
- Hand tools
- Auto parts
- Batteries
- Cigarettes
- Airline parts
- Light bulbs
- Film
- Skin lotions
- Laundry detergent
- Band-aids
- Insecticide
- Beverages/Spirits

## Impact of IP Theft

- **Costs to right holder**
  - Loss in revenues and profits
  - Diminished reputation/loss of goodwill
- **Costs to countries/economies**
  - Decreased FDI levels, impeded economic growth, discourages innovation
  - Reduces tax revenues and eliminates jobs
  - Exposes market to substandard and dangerous counterfeit goods that present public health and safety risks

## Economic Impact of IP Theft

- 5%-7% of world trade is in counterfeit goods
  - It is estimated that counterfeiting and piracy is a \$650 billion a year problem
  - "Up to \$1,000 billion in international trade was lost annually" to piracy and counterfeiting. --*Guy Sebban, Secretary General, International Chamber of Commerce*
- Counterfeiting has grown over 10,000 percent in the past two decades
  - The global trade in illegitimate goods has increased from \$5.5 billion in 1982 to approximately \$650 billion today

## Dollar Losses by Region



## Examples of Economic Impact

- Global losses to software piracy alone is about \$12 billion a year. --*Business Software Alliance*
  - In 2002, seizures of pirated Microsoft products alone exceeded \$1.7 billion
- Global losses to the major movie studios is over \$3 billion per year. --*Motion Picture Association of America (MPAA)*
- In 2003, the value of the pirate market for music was \$4.6 billion. *International Federation of Phonographic Industry (IFPI)*
  - Two out of every five physical recordings are illegal

## Other Impacts of IP Theft

- **Counterfeiters do not pay taxes**
  - Less money for schools, hospitals, parks, and other social programs
- **Counterfeiters are unfair to their employees**
  - Unfair wages or benefits for employees
  - Poor working conditions
  - Forced child labor
- **Organized criminal groups and terrorist organizations are turning to IP theft as a means to raise funds**
  - Low risk of prosecution and enormous profit potential

## Public Health and Safety Dangers and/or Concerns

- **“Perhaps most troubling is the widespread threat counterfeiting poses to public health and safety.” --Orrin G. Hatch, Senator, R-Utah**

## Public Health and Safety Dangers and/or Concerns

- Counterfeit drugs account for 10% of all pharmaceuticals, and up to 60% in developing/least developed countries
- Counterfeit drugs may or may not have the intended effects and may even be harmful
  - 16% of counterfeit drugs contain the wrong ingredients
  - 17% contain incorrect amounts of the proper ingredients
  - 60% have no active ingredients whatsoever

- **Approximately 192,000 people died in China in 2001 due to counterfeit pharmaceuticals**
- **Dozens of infant deaths in eastern China may have been caused by counterfeit milk formula:**
  - Some infants weighed *less* after being fed the formula than when they were born
  - Other babies' heads grew larger abnormally while their bodies actually shrunk in size

- **Counterfeit diet pills in Japan may have caused at least:**
  - Four deaths attributed directly to ingestion of the counterfeit pills
  - Dozens of cases of liver disorders
  - 160 cases of general illness
  - Hundreds or thousands of cases of long-term negative health consequences

- **In 2001, the chief of security for Novartis International AG testified before the U.S. Congress regarding a counterfeit ring that:**
  - "Millions of yellow tablets that were virtually indistinguishable from the genuine product..."
  - "...Made of boric acid, floor wax, and lead based-yellow paint used for road markings"

### **Potential Benefit as a result of Stronger IP Enforcement**

- **Asia-Pacific region could gain US\$100 billion, gaining more benefits than any other region from piracy reductions**
  - Asia-Pacific IT sector has added 880,000 new jobs in last four years as sector grew \$195 billion a year
  - IT sector poised to generate 3.5 billion new jobs in next four years – more than any other region combined – with help of economic stimulus resulting from 10-point drop in its software piracy rate

## **Potential Benefit as a result of IP Enforcement**

- Slashing the Asia-Pacific region's piracy rate by 10% would lead to positive results:
  - Add US\$135 billion to regional economy
  - Directly create more than 2 million new jobs
  - Increase local industry sales by more than \$100 billion
  - Could add \$13 billion for governments in tax revenues

## **References**

- **Information in this presentation was gathered from the following sources:**
  - Business Software Alliance
  - International Anti-Counterfeiting Coalition
  - International Intellectual Property Alliance
  - U.S. Chamber of Commerce

**THANK YOU!**



## WORLD CUSTOMS ORGANISATION

### A WORLDWIDE APPROACH :

What is currently happening around the world...

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## FIGHT AGAINST WHOM, WHAT AND... WHY ? "An evolving and changing INDUSTRIAL phenomom"

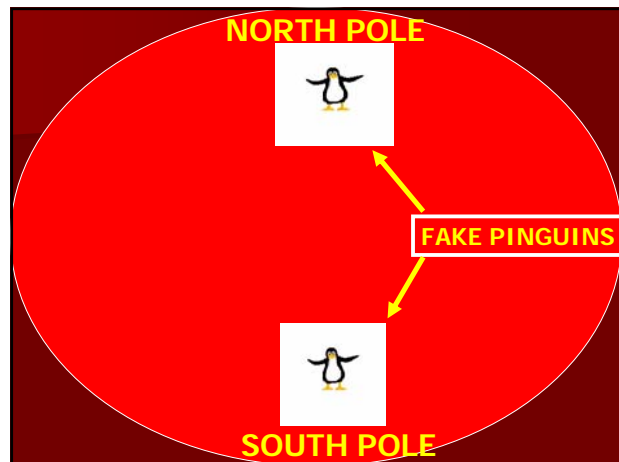
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## THE LATEST TECHNIQUES USED FOR IPR FRAUD

- Structured Fraud Organisations
- Industrial scale
- Methods of concealment
- Switching Routes
- "Multi-traffic" and "Multi-use"
- Money Laundering
- Octopus ...Internet

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## MONEY LAUNDERING...

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Between January and July 2005 6248.1 kilograms of Sildenafil Citrate (The Active Pharmaceutical Ingredient of Viagra) were exported from India.

This is enough to make 43,736,700 100mg Viagra tablets

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# LATEST TRENDS...

## FAKE: REAL TRAFFIC ON AN INDUSTRIAL SCALE BY A GLOBAL INDUSTRY...

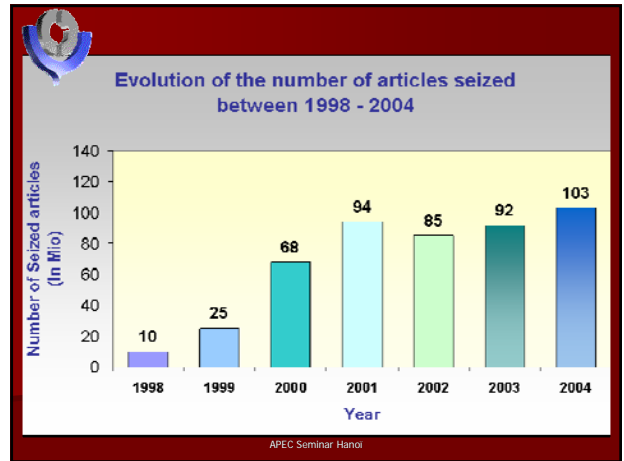
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Breakdown of the number of cases registered and the number of articles seized by product type

EU - 2004

Product type	Number of cases registered by Customs	%	Number of articles seized	%	Comparison 2003-2004 of the number of articles
Foodstuffs, alcoholic and other drinks	53	0%	4.432.161	4%	+197%
Perfumes and cosmetics	214	1%	784.268	1%	-22%
Clothing and accessories	13.928	63%	7.827.951	8%	+102%
a) Sportswear	4.070	29%	1.017.297	13%	+142%
b) Other clothing (...)	4.316	32%	1.372.446	20%	+22%
c) Clothing accessories (bags, sunglasses...)	5.342	39%	5.237.908	67%	+144%
Electrical equipment	829	4%	4.225.202	4%	+707%
Computer equipment (hardware)	122	1%	793.140	1%	+899%
Audio CDs, games, software, DVDs etc	2.785	12%	18.523.664	18%	-43%
Watches and jewellery	2.201	10%	491.588	0%	-27%
Toys and games	517	2%	18.106.924	17%	+47%
Other goods	1.346	6%	6.773.242	7%	+6%
Cigarettes	316	1%	41.588.030	40%	+25%
<b>TOTAL EU</b>	<b>22.311</b>	<b>100%</b>	<b>103.546.179</b>	<b>100%</b>	<b>+12%</b>



**THAT MEANS:**

- +/- 300.000 EVERY DAY...
- + 12.000 EVERY HOUR...
- + 200 EVERY MINUUT...
- +/- 4 EVERY SECOND...

articles seized 04

IN EU: 90% DONE BY CUSTOMS  
WORLDWIDE: 70%

Year	Number of Seized articles (In Mio)
1998	10
1999	25
2000	68
2001	94
2002	85
2003	92
2004	103

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**END OF 2005, THE TRANS SIBERIAN TRAIN HAS BEEN STOPPED IN MOSCOW COMING FROM CHINA FULL OF 450 000 PAIRS OF COUNTERFEIT NIKE SHOES...SO BEAUTIFULL TRAIN !!**

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**IN TOTAL IN ONE MONTH  
AROUND 170 CONTAINERS  
(5 100 TONS ) OF COUNTERFEIT  
NIKE SHOES HAVE BEEN SEIZED  
JUST IN 2 EU  
COUNTRIES...IMAGINE ALL  
AROUND THE PLANET...**

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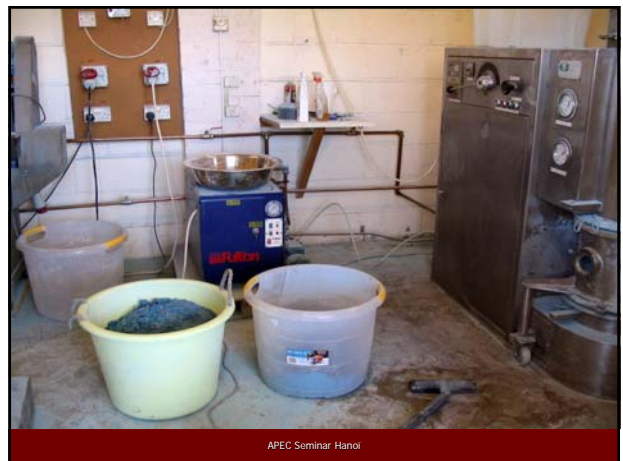
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**THE FUTURE....**

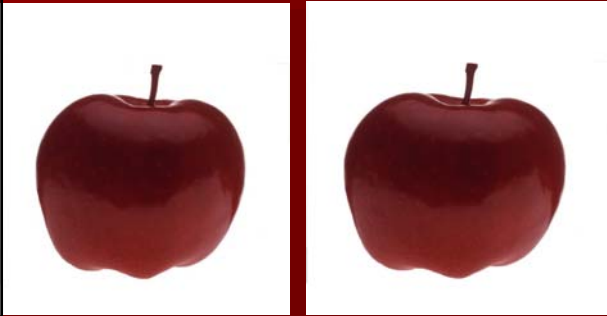
**A NIGHTMARE**

**for everybody if we don't  
react all together !!!**

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WHAT IS GENUINE WHAT IS FAKE



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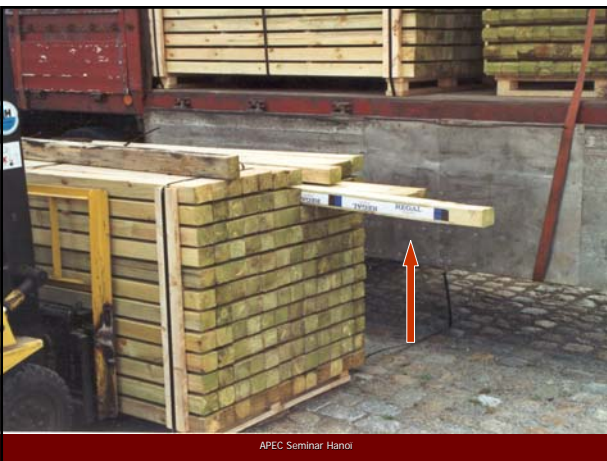
3.00 AM, at Hanoi International Airport  
You are a Customs Officer FAKE OR GENUINE ?



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**Customs CANNOT  
however STOP  
everything.....!**

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**BiPi**

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**Bulgaria**

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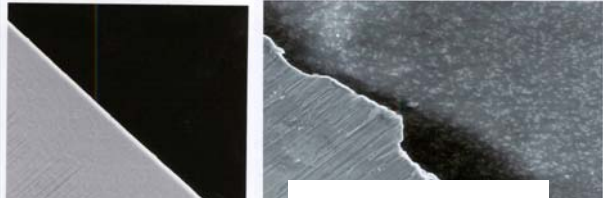
**“Louis Vuitton” for  
Canada -  
06/11/2004**

- More than 1.000 pills were confiscated in a priority mail shipment, sent from Brussels to Toronto (Ontario), Canada. The shipment was sent to a private address.

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# WHAT IS THAT ?????



# Varia 12/2006



Counterfeit tape?

26/11/2006

Since about 15 years is Belgian customs, using the tape, mentioned on the first picture (red letters on white tape). We were very surprised that a shipment which arrived last week from Congo (Kinshasa) was closed with exactly the same tape. The only difference was the colour of the tape (bleu). The shipment didn't contain any illegal goods, but we don't know who is using this tape.

# And for the dessert...



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# 旺角出現 仿LV Monogram



# Cigarettes concealed among potatoes...






**AND FINALLY ...**

**IT KILLS !!!!!!**

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**Paediatric vaccine**



Pre-filled syringe and needle packs seized during police raid on a pharmacy

NOT FOR PUBLICATION



"Sterile" needles found to be stained with blood and tissue

Used packs have been recovered from waste and refilled / diluted. The incidents have been reported to local authorities, and a criminal investigation is in progress.

NOT FOR PUBLICATION



**NOTHING IS GENUINE ANYMORE ...**

**EXECPTED ...**

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**HIS HEAD...**

**ALLEZ LES BLEUS !!!! WE WILL WIN THE NEXT WORLD CUP...IN 2010...**

**SEIZED DURING THE WORLD CUP 2006**



**HUNGARY**

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## WHICH SOLUTIONS FOR CUSTOMS IN THIS CONTEXT?

Even on a legislative point of view, it's a nightmare !!!

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## Customs: key player in the fight against counterfeiting

- a) Customs administrations are the primary public service to control goods crossing borders
- a) In Europe 90% of counterfeit products seized are intercepted by Customs
- a) The TRIPS Agreement confers on Customs an essential role, especially in an international context

## TRIPs agreement

1. April 1994: the TRIPs agreement establish a minimum of world IPR protection
2. Members of the WTO are obliged to respect this agreement.
3. The legislator designates Customs as the main actor to fight against counterfeiting and piracy

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## Article 51

Suspension of Release by Customs Authorities

*Members shall, in conformity with the provisions set out below, adopt procedures to enable a right holder, who has valid grounds for suspecting that **the importation of counterfeit trademark or pirated copyright goods** may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.*

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- Article 51 TRIPS only obliges the Customs Administrations of the Member States of the WTO to control IMPORTS of trade mark and copyright infringements... since 1994 the situation has changed!

In the EU more than 70% of infringing goods are seized in TRANSIT and TRANS-SHIPMENT

The number one victim in the EU for IPR infringements is a PATENTS rightholder

## Article 69

International Cooperation

*Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between **customs** authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.*

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## A WCO IPR ACTION PLAN

**VERY SOON !!**

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## S.E.C.U.R.E.

**Standards Employed by Customs for Uniform Rights Enforcement**

**Global Customs standards to Counter Intellectual Property Rights Infringements**

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**SECTION I. IPR LEGISLATIVE AND ENFORCEMENT REGIME DEVELOPMENT**

**SECTION II. RISK ANALYSIS AND INTELLIGENCE SHARING**

**SECTION III. CAPACITY BUILDING AND CO-OPERATION**

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## PART 1: LEGISLATION

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• Give Customs administrations a mandate to control goods that could infringe intellectual property rights

• Extend the possibility for intervention by the Customs authorities to all Customs procedures (import, export, transit, warehouses, etc.) and to all Customs operations (transit sheds, transshipment, free zone, etc.).

• Extend the scope of application of Customs regulations to other intellectual property rights (trademarks, designs and models, copyright and related rights, patents, supplementary protection certificates, geographical indications, designation of origin, etc.).

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• Cancel or reduce the amount of securities requested from right holders in the context of the detention or suspended release of goods

• Requests for intervention free of charge or at reduced cost

• Extend the scope of application of Customs regulations to other intellectual property rights (trademarks, designs and models, copyright and related rights, patents, supplementary protection certificates, geographical indications, designation of origin, etc.).

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## **PART 2:**

# **IMPLEMENTATION OF A RISK ANALYSIS SYSTEM FOR COMBATING COUNTERFEITING AND PIRACY**

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- Implement targeting criteria specific to combating counterfeiting and piracy, developed according to local, national or international traffic

- Target summary declarations and transport documents prior to Customs clearance

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- Set up teams specialized in combating counterfeiting and piracy in the main ports, airports and land frontier points, or have specialized IPR agents within existing enforcement units.
- Implement "Selection" techniques (establishment of visual recognition techniques for "at risk" packages).
- Use, within the framework of training programmes, of the WCO IPR E-Learning programme focusing on risk analysis to combat counterfeiting and piracy

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- Set up an information exchange network between IPR experts from the various units.
- Designate a National Contact Point responsible for collating information and directing controls
- Designate a National Contact Point responsible for regulations

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## **PART 3 :**

# **CAPACITY BUILDING CO-OPERATION**

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## **THANK YOU FOR YOUR ATTENTION**

Christophe Zimmermann,  
World Customs organisation  
Co-ordinator Fight against counterfeiting and piracy  
Tel: + 32 2 209 92 47  
e-mail: christophe.zimmermann@wcoomd.orgC

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# Report on MC IP

Phuc Yen, 26 May '07

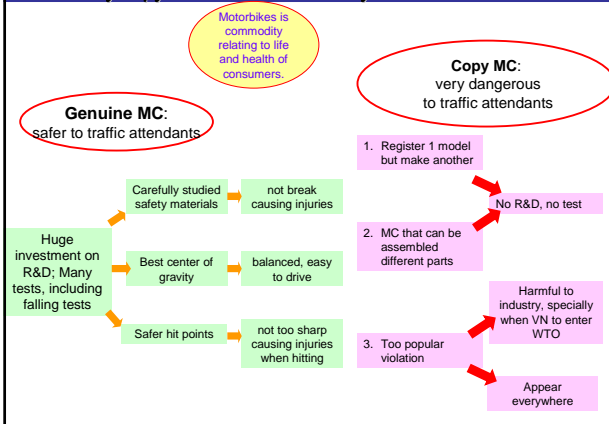
## IP situation

### I. Why copy MC harmful to Society & Consumers

### II. Situation of violation to Honda's IPR

### III. Petition

### I. Why copy MC harmful to Society & Consumers



### II. Situation of violation to Honda's IPR

## 1. Situation

## 2. HVN's actions

## 3. Issues

## 1. Situation:

- Popular violation to Honda design (~250,000 sold 1H '06)
- Violating MC are of many brands & makers
- Trademark violation happens whitely
- Invention (patent) violation popular

## IP situation

**1. Situation:**

- Popular violation to Honda design (~250,000 sold 1H '06)
- Violating MC are of many brands & makers

Revised 1H '06 by brand		
No	Brand	No. of arrested MC
1	Haridlo	1078
2	Waysea 88, Noble	662
3	Hondai	160
4	Deashen	160
5	Detech	148
6	Chirantal, Hamico	96
7	Haiton	70
8	Stufat	68
9	Kaiser	60
10	Diamango	60
11	Vyiam	48
12	Electric, Darnear	48
<b>Total</b>		<b>2642</b>

**3. Issues:**

- Hot issue: too many violations to eliminate.
- Difficult to solve: manufacturers do not assemble copied MC in factory, but in secret places outside factory.
- No violation judge.
- Sometimes authority not strict.

**HVN's activities:**

- Check market, take photos of violation and petition authority.
- Organize seminars to train concerned authority & businesses on Honda IP, how to recognize & penalties on violation.
- Investigate violating makers' routine, collect evidence to bring to authority & court as necessary.
- PR on IP to raise society's awareness.

**MC maker** (no violating design) vs **parts maker** (plastic covers, electrical system parts, no violation)

**g) Invention violation**

**MC maker** (no violating design) vs **parts maker** (plastic covers, electrical system parts, no violation)

**assembled into violating MC in secret places**



### IP situation

1. Situation:

a) Popular violation to Honda design (~250,000 sold 1H '06)

b) Violating MC are of many brands & makers

2. HVN's activities:

a) Check market, take photos of violation and petition authority.  
 b) Organize seminars to train concerned authority & businesses on Honda IP, how to recognize & penalties on violation.  
 c) Investigate violating makers' routine, collect evidence to bring to authority & court as necessary.  
 d) PR on IP to raise society's awareness.

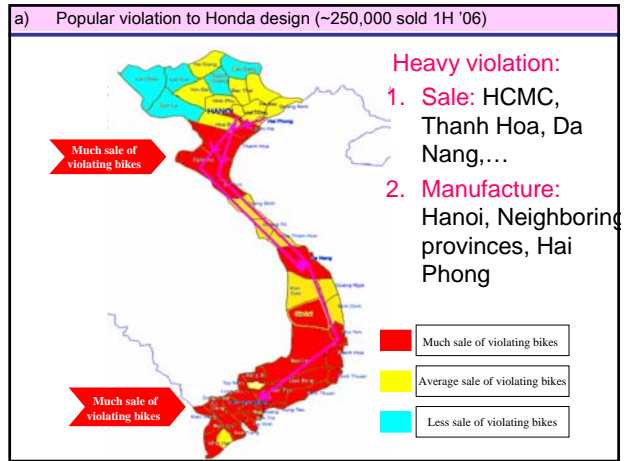
3. Issues:

a) Hot issue; too many violations to eliminate.  
 b) Difficult to solve; manufacturers do not assemble copied MC in factory, but in secret places outside factory.  
 c) No violation judge.  
 d) Sometimes authority not strict.

4. Trademark violation happens whitely

5. Invention violation

Raided 1H '06 by brand		
No.	Brand	No. of arrested MC
1	Honda	1078
2	Wraysea @ Nobbi	582
3	Honlei	180
4	Deaslan	160
5	Deatch	145
6	Oriental_Hamco	95
7	Slam	70
8	Surat	65
9	Kaiser	60
10	Deaswango	60
11	Nyan	45
12	Technic_Diamisan	45
<b>Total</b>		<b>2642</b>



### HIỆN TRẠNG VI PHẠM QUYỀN SHCN CỦA CÔNG TY HONDA TẠI VIỆT NAM

Forms of violating activities:

- Manufacture
- Transport
- Sell

a) Popular violation to Honda design (~250,000 sold 1H '06)

<Comment>

- Infringed Motorcycle on Sales is popular
- Mainly infringing Design of old Wave (certificate No. 4306)



Violations in Thai Binh province



Violations in Thanh Hoa province



Violations in Ha Tinh province



Violations in Gialai province



Violations in Kontum province



Violations in An Giang province





### IP situation

**1. Situation:**

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**Raided 1H '06 by brand**

No	Brand	No. of arrested MC
1	Handle	1075
2	Waysea @, Noble	562
3	Honlei	160
4	Deahan	160
5	Detch	145
6	Oriental, Hamco	95
7	Halim	70
8	Sufat	65
9	Kaiser	60
10	Deamango	60
11	Vyem	45
12	Technic, Damsan	45
<b>Total</b>		<b>2542</b>

**4. Invention violation**



### b. Violating MC are of many brands & makers

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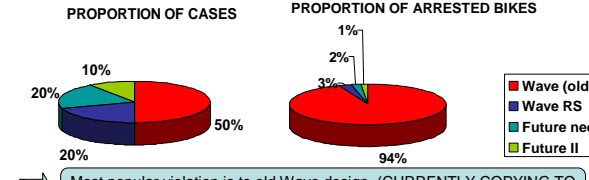


### b. Violating MC are of many brands & makers

by copied model	No of cases	No of arrested bikes
Wave (old)	30	2390
Wave RS	12	64
Future neo	12	56
Future II	6	32
<b>TOTAL</b>	<b>60</b>	<b>2542</b>

**PROPORTION OF CASES**

**PROPORTION OF ARRESTED BIKES**



Most popular violation is to old Wave design. (CURRENTLY COPYING TO WAVE RS DRASTICALLY INCREASING!)

### IP situation

**1. Situation:**

a) Popular violation to Honda design (~250,000 sold 1H '06)

**2. HVN's activities:**

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12	Technic, Damsan	45
<b>Total</b>		<b>2542</b>

**4. Invention violation**



### c) Trademark violation happens whitely

**Violating Signboard**



<Comment>  
Infringement of trademark is so popular

### IP situation

**1. Situation:**

a) Popular violation to Honda design (~250,000 sold 1H '06)

**2. HVN's activities:**

a) Check market, take photos of violation and petition authority.  
 b) Organize seminars to train concerned authority & businesses on Honda IP, how to recognize & penalties on violation.  
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12	Technic, Damsan	45
<b>Total</b>		<b>2542</b>

**4. Invention violation**



**d) Invention (Patent) violation popular**

**Frame structure of M/c similar to Patent**


Patent "A frame structure of a motorcycle"  
 Patent No. 2944  
 Granting date: 26.07.2003

**Body cover structure of motorcycle similar to Patent**

Patent "A body cover structure of a motorcycle"  
 Patent No. 2942  
 Granting date: 26.07.2002

**<Comment>**

- Infringement of patent is so popular
- Mainly focus on infringing of patent of Body cover structure of motorcycle and frame structure.



**IP situation**

**1.Situation:**

a) Popular violation to Honda design (~250,000 sold 1H '06)

b) Violating MC are of many brands & makers

**2.HVN's activities:**

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- Hot issue: too many violations to eliminate.
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- No violation judge.
- Sometimes authority not strict.

**Reided 1H '06 by brand**

No	Brand	No. of arrested MC
1	Haricle	1078
2	Waysisa 88, Noble	652
3	Honle	160
4	Deshan	160
5	Detech	148
6	Oriental, Hamico	98
7	Haimo	70
8	Stufat	68
9	Kaiser	60
10	Dasmango	60
11	Vyiam	48
12	Technic, Damsan	48
<b>Total</b>		<b>2642</b>

c) Trademark violation happens whitely

d) Invention violation



**2. HVN's activities:**

- Check market, take photos of violation and petition authority.
- Organize seminars to train concerned authority & businesses on Honda IP, how to recognize & penalties on violation.
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- PR on IP to raise society's awareness.

**Result of raid 1H '06**

No	Province	MC Brand	MC No.	MC Brand	MC No.	MC Brand	MC No.	MC Brand	MC No.	MC Brand	MC No.
1	Hanoi	MMD & EP	1250000	17-Jan-06	24-Feb-06	Waiting for sanctions	△	Huyth, Ward	52		
2	HCM	EP	1250000	9-Mar-06	24-Apr-06	4-May-06	○	Handa, Victory River	1075		
3	An Giang	MMD	1000000	18-Apr-06	19-Apr-06	25-May-06	○	Subit, CTR, Oriental, Hossun, Hamun, Honle, Haim, Saiter	72		
4	Bac Giang	MMD & EP	880000	21-Mar-06	24-Mar-06	9-May-06	○	Kaiser, Subit, Oriant, Haxico, Hossang	42		
5	Hau Giang	MMD	2000000	2-Dec-05	21-Dec-05	30-Dec-06	○	Subit	71		
6	TienGiang	MMD	3250000	14-Mar-06	20-Mar-06	Waiting for sanctions	△		32		
7	BachNinh	MMD & EP	3100000	5-Jan-06	20-Jan-06	20-Jan-06	○		42		
8	Tayninh	MMD	1000000	24-Mar-06	14-Apr-06	18-Apr-06	○		55		
9	Soria	MMD	4000000	23-26-Mar-06	14-Apr-06	26-Apr-06	○	SubitNeo, Subit, Sidel W, Fatinh, Indmax, Hossun, Saiter	103		
10	Khangang	MMD	Waiting (for the first time)	5-Mar-06	20-Apr-06	9-May-06	○	Foshida, Pelican, Smoter, Saiter	15		
11	Vinhlong	MMD	7100000	6-Sep-05	17-Nov-05	29-Jun-06	○	Victory, Liohaka, River, Hoxter	22		
12	Lamdong	MMD		25-Apr-06	16-Jun-06	Waiting for sanctions	△		118		
13	Bentre	MMD		18-May-06	13-Jun-06	Waiting for sanctions	△		304		
14	Thanhhoa	MMD	1500000	18-19-May-06	6-Jun-06	29-Jun-06	○		48		
15	Kontum	MMD		19-Jun-06	30-Jun-06	Waiting for sanctions	△		149		
16	Stale	MMD		20-Jun-06	20-Jun-06	Waiting for sanctions	△		109		
17	Nghe An	MMD		21-23-Jun-06	23-Jun-06	Waiting for sanctions	△		76		
18	Can Tho	MMD		23-Jun-06	23-Jun-06	Waiting for sanctions	△		60		
19	Ninh Thuan	MMD		1-Jun-06	1-Jun-06	Waiting for sanctions	△		47		
20	Dong Nai	MMD		7-Jun-06	7-Jun-06	Waiting for sanctions	△		10		
<b>Total</b>			<b>41250000</b>			<b>The average fine is only 260,000 (VND) per unit</b>			<b>2542</b>		

**TYPICAL CASE: DUC PHUONG**



official assembly place of Duc Phuong

**IP situation**

**1.Situation:**

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**2.HVN's activities:**

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- Hot issue: too many violations to eliminate.
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- Limits in decree on administrative sanctions

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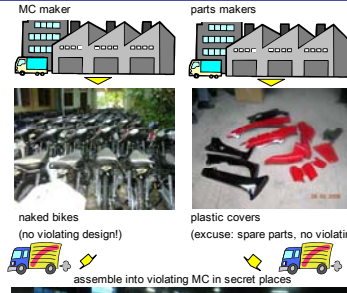
d) Invention violation



### 3. Issues:

- a) Hot issue: too many violations to eliminate.
- b) Difficult to solve: manufacturers do not assemble copied MC in factory, but in secret places outside factory.
- c) No violation judge.
- d) Sometimes authority not strict.
- e) Limits in decree on administrative sanctions

### Manufacturers assemble copied MC in secret places outside factory



### Trick to avoid penalty:

- MC makers make naked MC.
- Parts makers do not sell directly to MC makers.
- Assemble into violating MC outside of main factory.



### Infringement trick

July 2006  
Honda Vietnam

MAKER

VN REGISTER

Get Certification from NOIP for model A



Apply to VR for license to manufacture  
Check & issue QIR



Manufacture Model B



SELL to Customers

### TYPICAL CASE: DUC PHUONG



official assembly place of Duc Phuong

### TYPICAL CASE: DUC PHUONG



official assembly place of Duc Phuong

### TYPICAL CASE: DUC PHUONG



official assembly place of Duc Phuong





### LIMIT IN DECREE ON ADMINISTRATIVE PENALTIES

- ALL PENALTIES OVER VND20MLN. (USD1,100) MUST BE DECIDED BY CHAIRPERSON OF PROVINCE
- WITH NEW IP LAW, MOST IP ADMINISTRATIVE CASES PENALTIES OVER VND20MLN. => USUALLY TAKES MANY MONTHS TO CLOSE A CASE DUE TO TOO MANY CASES AND THE CHAIRPERSONS DO NOT UNDERSTAND IP.

### III. Petitions regarding IPR enforcement

- a) TO QUICKLY ESTABLISH IP JUDGING BODY.
- b) TO WITHDRAW DOC. 4880 (1)
- c) NOT TO LIMIT "IP VIOLATIONS THAT ARE HARMFUL TO SOCIETY" JUST AS FOOD AND MEDICINE. (2)
- d) REVISE ADMINISTRATIVE PENALTY DECREE TO GIVE DECIDING POWER TO LOCAL MMD.

1. Honda would like to propose 127 Steering Committee to withdraw doc. 4880.

2. Honda would like to propose to the Government REGARDING item a point 1 Article 211 of the new IP law:  
"Activities of manufacture, import, sale, transport of IPR infringed motorcycles should be consider as violations which cause damages to the consumers and society", not to limit them as only food and medicines

# A Brief Introduction of China's Measures to Combat Piracy

Xu Wei, National Copyright Administration of China  
May 31, 2007

## Outline

- I. Legislation
- II. Enforcement of the law
- III. Enhancement of cooperation with other Organizations
- IV. Public awareness

## I. Legislation

**Basic framework of the Copyright law system: one law and four regulations**

- *Copyright law* (adopted in 1990, modified in 2001)
- *Regulations on Computers Software Protection* (2001)
- *Regulations for the Implementation of the Copyright Law* (2002)
- *Regulations on Copyright Collective Administration* (2004)
- *Regulations on the Protection of the Right of Communication through Information Network* (2006)

## I. Legislation

***Regulations on the Protection of the Right of Communication through Information Network***

- issued on May 18, 2006 by the State Council and enter into force on July 1, 2006
- based on the situation of China, take open legislation and with respect to the suggestions from other organizations, with reference to the measures of the WCT&WPPT(WIPO), DMCA(USA) and relative Directive (EU), etc.
- 27 articles in total, provide provisions on technological protection measures (TPM), right management information (RMI) and internet service provider (ISP).

## I. Legislation

**Copyright protection system of China**

- Double track system: administrative protection and Judicial Protection
- Questions: high threshold for criminal liability, replacing criminal sanctions with administrative sanctions.
- Measures:
  - Judicial Interpretations* (1)(2004) and (2)(2007) by the Supreme People's Court and the Supreme Public Procuratorate to lower the threshold of criminal penalty
  - Interim Regulations on Strengthening Interface and Coordination in the Strike on Illegal Act and Crime of Infringing on Copyright* (2006) issued by National Copyright Administration and Ministry of Public Security

## I. Legislation

**Join WCT and WPPT**

- To study and discuss the matters concerned about joining since 2005
- On Dec. 29, 2006, the Standing Committee of the National People's Congress decided to join WCT and WPPT
- On March 6, 2007, the Government of China presented the instruments of accession to the WIPO; WIPO replied with the acknowledge receipt on March 9, 2007
- WCT and WPPT will enter into force in China as of June 9, 2007



## II. Enforcement of the law

### Efforts to publicize legitimate software

- using legitimate software in Governmental Departments Completed between 2002 to 2005
- *Notification concerning the Mandatory Requirement that Computers Procured by Governmental Departments for Office Use Shall be Pre-installed with Legitimate Operating System Software* issued on March 30, 2006
- Start to promote enterprise users to use legitimate software since March, 2006
- Established Joint Ministerial Conference of organizations and departments
- Personnel training
- Make detailed working plan

## II. Enforcement of the law

### To establish and strengthen the organization of copyright collective management

- *Regulations on Copyright Collective Administration* (2004)
- Approved the setup of the Music Copyright Society of China, the Audio-Video Works Collective Society of China
- Promote the establishment of collective management organization concerning the literary works and photographic works

## II. Enforcement of the law

### Strike on the optical disc piracy production lines

- From January to June, 2006
- Involved 48 disc production enterprises in 18 provinces
- Results: conduct administrative sanctions against 13 disc copying enterprises

## II. Enforcement of the law

### 100-day anti-piracy action

- 100 days from July 15 to October 25, 2006
- 10 departments of the Central Government including the National Copyright Administration, the General Administration Press and Publishing the Ministry of Public Security, and so on
- Emphases: fighting pirated audio-video products and computer software
- Conducting inspections 881 thousands person-time, inspecting 153 thousands various marketplaces, and inspection 116 thousands enterprises
- investigated and dealt with 7634 various infringement and pirated cases, captured 55671 thousands pirated goods

## II. Enforcement of the law

### Special action on against network infringement and piracy

- Emphases of the strike:
  - (a) fighting infringement of illegal distribution of music, film, software and textbook through the internet;
  - (b) fighting those infringing activities of illegal pirated servers and cheat programs, circumvention of technological protection measures and removal or alteration of right management information

## II. Enforcement of the law

### Special action on against network infringement and piracy (continued)

- Duration: from September to December, 2005
- Results: investigated and dealt with 172 cases, captured 39 servers
- Closed 76 websites, fined 29 websites, and charged 137 websites to delete those infringing contents
- Transferred 18 cases suspected crime to the judicial organs

## II. Enforcement of the law

### Special action on against network infringement and pirate (continued)

- Duration: from September, 2006 to January, 2007
- investigated and dealt with 436 cases
- Closed 205 websites
- Captured 71 servers
- Ordered to stop infringement in 361 cases
- Fined RMB705,100 yuan

## II. Enforcement of the law

### Special action on illegal software Pre-installation

- On Mar. 30, 2006, the National Copyright Administration and the Ministry of Commerce and the Ministry of Information Industry issued *the Notification concerning the Pre-installation with Legitimate Operating System Software*
- requiring that all the computers made in China must be pre-installed with legitimate operation system; imported computers must be pre-installed with legitimate operation system before distribution.
- Duration of the special strike: from June to August, 2006
- Local copyright administrative branch established a law enforcement system with 232 computer markets, inspected 9639 computer enterprises and 605110 computers, fined RMB170,000 yuan and captured 75774 pieces of pirated computer software discs

## III. Cooperation with other organizations

### Cooperation between governmental departments

- Cooperation with the Hong Kong Customs
- Cooperation with the Ministry of Information Industry and the Ministry of Public Security, and so on

## III. Cooperation with other organizations

### Public-private cooperation:

- Maintain a close cooperation with association of rightholder, for example IFPI, MPA and BSA
- Approved the Japan Recording Industry Association and Korea Copyright Commission to establish resident representative offices in Beijing
- On December 15, 2006, the NCA signed the *Memorandum of Establishing Cooperation System for Network Copyrights Protection* in Beijing with MPA, BSA, the Association of American Publishers and the Association of UK Publishers

## IV. Public awareness

### Copyright-based industry

- In 2006, translated and published *Guide on Surveying the Economic Contribution of the Copyright-Based Industries* of WIPO
- In 2007, cooperated with the WIPO to carry out studies on economic contribution of China copyright-based industry

## IV. Public awareness

### “Refuse pirated goods, start with me” campaign

- In 2005, carry out special article solicitation activities among the middle school students, prepared a reading book *Understanding the Copyright*, resulting in positive effect
- in 2006, hosted academicians debate competition on copyright protection, students from 8 famous colleges in China attended the competition

## IV. Public awareness

### Lecture circuit on copyright protection and innovation around the country

- start from April, 2007
- select 5 to 10 cities
- speeches by government officials, famous scholars and company leaders
- emphasize on the advertisement of the effects of the promotion made by copyright protection to economic society, the actuality of the copyright protection law, and the actuality and developing trend of the copyright-based industry, etc.

## IV. Public awareness

### Other measures aiming to improve public awareness

- make posters about copyright protection
- carry out cartoon competitions on copyright protection
- choose exemplary copyright protection unit through public appraisal
- .....

**The End**

**Thank You All!**

xuwei@gapp.gov.cn

Vietnam

BAKER & MCKENZIE

# Trademark Counterfeiting under Vietnamese Laws



Tran Manh Hung  
Partner

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Trademark Counterfeiting under Vietnamese Laws

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## Agenda

- Definition
- TM counterfeiting and TM Infringement
- Tips


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Trademark Counterfeiting under Vietnamese Laws

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## Example

- Please have a look!




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Trademark Counterfeiting under Vietnamese Laws

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## Example

- Trademark counterfeiting or trademark infringement?



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Trademark Counterfeiting under Vietnamese Laws

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## Definition

- Penal Code: ⇒ COUNTERFEIT GOODS

```

    graph TD
      A[COUNTERFEIT GOODS] --> B[Counterfeit as to quality]
      A --> C[IP counterfeiting]
      C --> D[Trademark counterfeiting]
      C --> E[Pirated goods]
  
```

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Trademark Counterfeiting under Vietnamese Laws

BAKER & MCKENZIE

## Definition "trademark counterfeiting"

- Article 213.2 of IP Law:  
*"Counterfeit trademark goods are goods or their packaging **bearing a mark or a sign which is identical with or substantially indistinguishable from a mark** or geographical indication which is protected for such goods without consent of the owner of such mark or the management organization of such geographical indication respectively"*

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### Definition “trademark counterfeit”

- Article 11.5 of Decree 105/ND-CP implementing IP Law:
 

*“Where any products or services **bear a sign which is identical to or difficult to be distinguished, in terms of the overall composition and the way of display** [of such sign], from a protected trademark for the same goods and services falling within the protection scope [of the protected trademark], such products and services shall be regarded as counterfeit goods defined in Article 213 of the Intellectual Property Law.”*

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### Manufacturing and/or trading in trademark counterfeit goods in Penal Code

- Article 156.** Manufacturing and/or trading in counterfeit goods
- Article 157.** Manufacturing and/or trading in counterfeit goods being food, foodstuffs, curative medicines, preventive medicines
- Article 158.** Manufacturing and/or trading in counterfeit goods being animal feeds, fertilizers, veterinary drugs, plant protection drugs, plant varieties, animal breeds.

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### Related Crimes



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### Differentiating Trademark

#### COUNTERFEITING and INFRINGING Tips



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### Seriousness vs. ordinary trademark infringements



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### Seriousness reflected in crime composition

- |                          |  |
|--------------------------|--|
| Trademark counterfeiting | • Value of over 30 million, or   |
|                          | • Value of less than 30 million but causing serious consequences and having been put under administrative punishment |
| ↑                        |  |
| Trademark infringement   | • Serious consequences, or   |
|                          | • Administrative violation, or   |
|                          | • Recidivism   |

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## Classification of counterfeit goods Seriousness

Counterfeit goods being food, food stuff, curative medicines and preventive medicines  
(Article 157 - Penal Code)

Maybe considered a crime in any case

↑  
Other counterfeit goods  
(Articles 156 & 158 – Penal Code)

Only considered a crime in certain cases

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## Tips

- An act shall only be considered a counterfeit trademark crime when the trademark is protected in Vietnam
  - Well-known mark?

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## Tips

Trademark Counterfeiting      IDENTICAL      ⇒ Art. 156-158  
to genuine goods

Trademark infringement      SIMILAR      ⇒ Art. 171  
to genuine goods

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## Thank you


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**Directorate General of Intellectual Property Rights (DGIPR)**



Ministry of Law and Human Rights  
of the Republic of Indonesia

11/01/2007 Dte of Coop & Development 1

**Areas Coverage of the DGIPR**  
(Approximately 6500 like from Istanbul, Turkey to London of UK)



Mapping Specialists, Ltd.

11/01/2007 Dte of Coop & Development 2

**Vision of DGIPR**

The establishment of an effective/internationally competitive IPR system that supports the national development

11/01/2007 Dte of Coop & Development 3

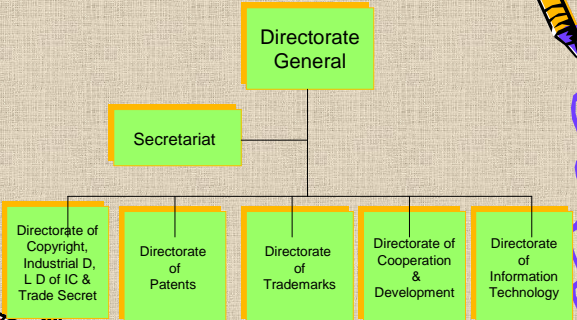
**Missions of DGIPR**

DGIPR administers the IPR system by

- ☺ granting protection, rewards and recognition to every creativity,
- ☺ promoting technology and knowledge-based investment and economic growth,
- ☺ encouraging an innovative and inventive culture.

11/01/2007 Dte of Coop & Development 4

**Organizational Structure**  
(For more detail on DGIPR Structure, please see Annex 1)



```

graph TD
    DG[Directorate General] --- S[Secretariat]
    DG --- D1[Directorate of Copyright, Industrial D, LD of IC & Trade Secret]
    DG --- D2[Directorate of Patents]
    DG --- D3[Directorate of Trademarks]
    DG --- D4[Directorate of Cooperation & Development]
    DG --- D5[Directorate of Information Technology]
  
```

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**Human Resources**

Total number of staff = 491

- ☺ Secretariat = 95
- ☺ Directorate of Patents = 124
- ☺ Directorate of Copyrights, ID, LDIC & Trade Secret = 62
- ☺ Directorate of Trademarks = 140
- ☺ Directorate of Cooperation & Development = 34
- ☺ Directorate of IT = 36

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## Laws which are administered

- ✗ Copyright Law (*Law no. 19/2002*)
- ✗ Patent Law (*Law no. 14/2001*)
- ✗ Trademark Law (*Law no. 15/2001*)
- ✗ Trade Secret Law (*Law no 30/2000*)
- ✗ Industrial Design Law (*Law no 31/2000*)
- ✗ Layout Design of IC Law (*Law no 32/2000*)
- ✗ Plant Variety Law 9 law No.29 /2001
- ✗ Unfair Competition Law No.5/1999

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## Membership in International Conventions

- ✓ Agreement establishing the World Trade Organization (WTO); 1994
- ✓ Paris Convention for the Protection of Industrial Property; 1997
- ✓ Berne Convention for the Protection of Literary and Artistic Works; 1997
- ✓ Patent Cooperation Treaty (PCT); 1997
- ✓ Trademark Law Treaty (TLT); 1997
- ✓ WIPO Copyright Treaty (WCT); 1997
- ✓ WIPO Performances and Phonograms Treaty (WPPT) 2000.

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## Current Strategic Policies

- 🌱 **Legislation**
- 🌱 **Public Awareness**
- 🌱 **Law Enforcement**
- 🌱 **National and international Cooperation**

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## **PRIORITY WATCH LIST and WATCH LIST of 2007**

SOURCE : 2007 Special 301 Report  
by USTR

PRIORITY WATCH LIST	WATCH LIST	
Argentina	Belarus	Jamaika
chili	Belize	Kuwait
China	Bolivia	Lithuania
India	Brasil	Malaysia
Israel	Dominika	Meksiko
Lebanon	Ekuador	Pakistan
Mesir	Guatemala	Filipina
Rusia	Kanada	Polandia
Thailand	Kolumbia	Rumania
Turki	Korea Utara	Saudi Arabia
Ukraina	Kostarika	Taiwan
	Hungaria	Tajikistan
	<b>Indonesia</b>	Turkmenistan
	Italia	Uzbekistan
		Vietnam

## Legislation

- Promoting and upholding strong laws and deterrent penalties
- Implementing strong IP laws for penalty and imprisonment
- Imposing criminal and administrative penalties to any IP violations
- Providing ex officio action to customs officers to suspend or seize the goods deemed to be pirated, counterfeit or infringing goods.

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## Public Awareness

- Implementation of various public awareness campaigns/activities:
  - seminars;
  - workshops;
  - inter-active talk-shows;
  - IP publication (posters, booklets, brochures, stickers)
  - IP awards

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## Law Enforcement

- Strengthening better coordination & cooperation between DGIPR and law enforcement agencies (police, prosecutor, court, customs);
- Setting up MoU for combating piracy between DGIPR with stake holders
- The Establishment of a National Task Force on IP Law Enforcement (Presidential Decree No.4 of 2006)
- IP training for law enforcement
- Destroying infringed, counterfeit, and pirated goods
- Public awareness campaign
- Strengthening Optical Disc Regulation

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## National and International Cooperation

- National Cooperation : with Gov.Agencies, Associations, Universities, Chamber of Commerce etc.
- International Cooperation: with WIPO, APEC, USPTO, JPO, EPO etc

## Problems to be solved

- Lack of coordination among related agencies;
- Lack of knowledge and understanding on IPR for IPR enforcers;
- Low of public awareness;
- Limited budget on IPR enforcement.
- The Cultural behavior of IP
- The unrealistic price for original product

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## Some policy and strategy for the enforcement of IP

- Establish a working group of IP Enforcement at the National Tim to discuss the solution of combating piracy
- Set up data base to monitor the IP cases
- Sending warning letters to the Management or owner of Office, Stand and malls

## Cont.

- Distribute posters, stickers, banners to stop and combat piracy
- In cooperation with IP Association conducting raids to vendors, manufactures, shops etc.
- Ex Officio Actions by Customs officers to inspect import or export goods
- Removing infringing Goods from commercial channels
- Giving rewards to police officers who successfully investigate IP crimes

## Thank You Very Much for Your Attention

- Address: DGIPR, Ministry of Law & Human Rights of RI.  
– Jalan. Daan Mogot Km. 24,  
Tangerang, Banten 15119  
Indonesia
- Telephone: +62 21 5517921,  
5524994 (direct)
- Facsimile: +62 5525366,  
5517921
- Web Site: [www.dgip.go.id](http://www.dgip.go.id)



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## 'Australia's experience with the implementation of APEC model guidelines on piracy'

Sam Ahlin  
A/g Principal Legal Officer  
Copyright Law Branch  
Attorney-General's Department  
[sam.ahlin@ag.gov.au](mailto:sam.ahlin@ag.gov.au)  
61-2-6250 6095

## Outline

- Background – copyright enforcement in Australia
- Australia's experience in implementing Model Guidelines to Protect Against Unauthorised Copies
- Other model guidelines/measures
- Conclusion

## Australian IP legislation

- Copyright Act 1968 (main focus of presentation)
  - Trade Marks Act 1995
  - Plant Breeders Rights Act 1994
- Criminal liability – normally involve infringing activity for commercial advantage or profit.

Not criminal:

- Patents Act
- Designs Act

## Government agencies & IP enforcement

Attorney-General's Dept.  
copyright policy and law

IP Australia -  
industrial property  
policy and law

Australian Federal & State  
police enforce criminal  
laws

Director of Public  
Prosecutions prosecutes  
criminal offences

Australian Customs  
- border enforcement

## Australian criminal IP standards

- World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights (Art 61)
  - "Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale".
- Australia-United States Free Trade Agreement (Art 17.11.26)
  - "Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale".
  - However – wilful copyright piracy on a commercial scale includes: 'significant wilful infringements of copyright, that have no direct or indirect motivation of financial gain' and 'wilful infringements for the purposes of commercial advantage or financial gain'

## APEC Model Guidelines to Protect Against Unauthorised Copies

1. Establish protections for the digital age
  - GENERAL
    - Copyright Amendment (Digital Agenda) Act 2000
    - Australia-US FTA obligations
    - recent reforms in Copyright Amendment Act 2006,
    - accession to the WIPO Internet treaties.

## APEC Model Guidelines to Protect Against Unauthorised Copies



### 1. Establish protections for the digital age

(Fully implemented by sections 31, 85 and 86 of the Copyright Act)

- Direct or indirect reproduction of works, performances and phonograms
- Making available to the public of the original and copies of works, performances and phonograms through sale or transfer of ownership
- Commercial rental to the public of the original and copies of computer programs and works and performances fixed in phonograms, and
- Making available to the public of their works over the Internet (note recent court decisions in Australia – *Cooper* and *Sharman*)

## APEC Model Guidelines to Protect Against Unauthorised Copies



### 2. Provide effective enforcement

(Fully implemented by Part 5, Divs 2 and 5 of Copyright Act)

- Adequate civil and criminal remedies etc (recent copyright enforcement law reforms)
- Effective administrative or judicial procedures
- Enhancing effectiveness and deterrence of enforcement procedures
- Criminal penalties imposed at level sufficient to deter future infringements
- Competent authorities investigate and prosecute acts of copyright infringements
- Appropriate action to enhance remedies where appropriate (eg proceeds of crime)

## APEC Model Guidelines to Protect Against Unauthorised Copies



### 3. Support consumer education

- Supporting campaigns and programs etc (websites, A-G supporting industry launches)
- Publishing enforcement procedures, significant administrative and judicial decisions (legal websites in Australia)
- Fostering partnerships with consumers, ISPs, rights holders etc (legislative consultations)  
(Note also fact sheets, annual reports, government/industry consultative groups)

## Other APEC Model Guidelines



- Prevent the Sale of Counterfeit and Pirate Goods Over the Internet
- Reduce Trade in Counterfeit and Pirated Goods
- Secure Supply Chains Against Counterfeit and Pirated Goods
- Effective Public Awareness Campaigns

## Other Australian measures



- Evidential presumptions (subsistence, ownership of copyright, Industry labelling presumptions)
- Proceeds of Crime
- Infringement notices (on-the-spot fines)

## Non-legislative enforcement measures



1. Law enforcement coordination  
- prioritisation, resources
2. Enforcement and industry cooperation  
- Intellectual Property Enforcement Consultative Group
3. Work at international level

## Contact details



AGD website: [www.ag.gov.au](http://www.ag.gov.au)

Sam Ahlin  
A/g Principal Legal Officer  
Copyright Law Branch  
[sam.ahlin@ag.gov.au](mailto:sam.ahlin@ag.gov.au)  
tel: 61-2-6250 6095



Contents	
1	IPR Protection in Korea
2	Improving IPR Protection Laws
3	Anti-counterfeiting Activities
4	New Activities for IPR Protection

- 1 -

- ### 1. IPR Protection in Korea
- Strengthening IPR Protection
    - Korean Government's policy
      - To Improve the IPR Protection system
      - To strengthen enforcement activities
  - Legislative Protection of IPR in Korea
    - Patent, Utility Model, Design, Trademark
      - : Korean Intellectual Property Office(KIPO)
    - Copyright, Sound Record, Video product : Ministry of Culture and Tourism
    - Computer Program : Ministry of Information and Communications
- 2 -

- ### 1. IPR Protection in Korea
- Public Prosecutors' Office
    - Every district prosecutors' office has ;
      - Prosecutor who exclusively investigates IPR violations
    - Annual meetings to discuss IP crimes
      - Prosecutors' Office, Ministry of Foreign Affairs and Trade, Ministry of Culture and Tourism, Ministry of Information and Communication, National Police Agency, Korea Customs Service, Korea Food & Drug Administration, Korean Intellectual Property Office
- 3 -

- ### 1. IPR Protection in Korea
- Korean Intellectual Property Office(KIPO)
    - Industrial Property Protection Team
      - Administering the *Unfair Competition Prevention and Trade Secret Protection Act*, and warning infringement of well-known trademarks
      - Supporting public prosecutors and the police's crackdown on counterfeiting
  - Korea Customs Service
    - Anti-counterfeiting activities at the earliest stage
    - Export, Import, Transshipment
- 4 -

- ### 2. Improving IPR Protection Laws
- Strengthened penalties

  - Penalties for IPR infringements (2001)
    - Imprisonment: up to 5 years → up to 7 years
    - Fine: up to 50M KRW → up to 100M KRW
  - Penalties for trade secret infringements (2004)
    - Prosecution requirements :
      - Offense subject to complaint → Offense not-subject to complaint
    - Fine: up to 50M KRW → up to 2 ~ 10 times the profit
- 5 -



## 2. Improving IPR Protection Laws

- Simple damage calculation(2001)
  - Damage = # of sales of violating goods × Profit for each item

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## 2. Improving IPR Protection Laws

- Prohibition rules introduced against unfair competition practices
  - Dilution of well-known marks (2001)
  - Cyber-squatting (2004)
  - Copying the design of goods (2004) - "Dead Copy" -

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## 3. Anti-counterfeiting Activities

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## (1) Crackdowns on Counterfeit Goods

- Local governments also have Regular Investigation power
  - Every local governments appoints field officers to do crackdown (250 people)
  - KIPO inspects and evaluates delegated duties, and conducts training
  - Evaluations affect each local government's performance at the national level
- "Counterfeiting Report Center" operated by KIPO
  - Reports can be made by phone and the Internet (with guaranteed anonymity)
  - Independent investigations or joint crackdowns by the prosecution or the police are executed in some cases
- Counterfeiting crackdown performance in 2006
  - Stores: 1,094 (128 criminal charges filed)
  - Quantities: 14,852

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## Counterfeiting Report Form via the Internet

위조상품신고			
신고일자	2004.11.10	비밀번호	
업소명		주소	
업주		전화번호	
주변건물위		건물형태및층단구(역상등)	
지		신고유무 및 위치	
도형상표및			
문목			
업주인상학	나이	신장	체중
의	차량종류	차량번호	안경
	기타		
신고사항			
	주민번호	이메일	
신고자	성명	전화번호	
	주소		
기타사항			

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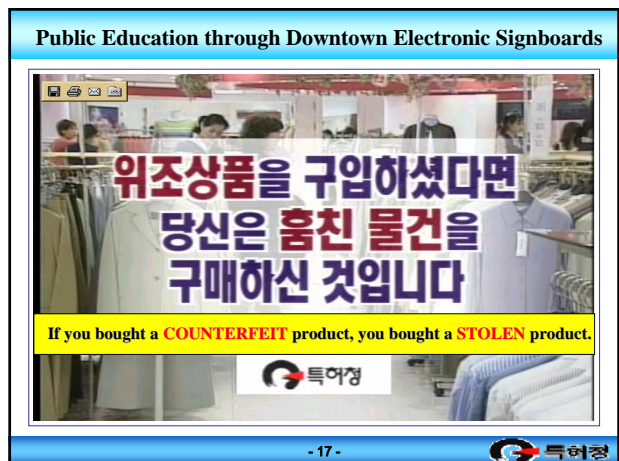




- ### (2) Training and Incentives for Field Officers
- Training for local governments' officials**
    - On-site courses for field officials and joint investigations in local areas
      - \* 20 on-site courses in 2006 (one course: 4~5 days), for 325 field officials
  - "Course on Enforcement of IPRs" at the IP Training Institute**
    - Aims to provide investigators of the prosecution, customs officers, police officers and local governments' officials with increased knowledge and skills in IPR enforcement
      - \* 4 classes in 2006 (one course: 5 days), for 185 officers
  - Awards for outstanding field officials**
    - Awards given to individuals and one local government
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- ### (3) Greater Public Awareness
- Promotion through the "Cyber IP Protection Center"**
    - Introduces IP policies and the latest IP news, offers consultations on IPR disputes, reports counterfeit goods. (Established in March 2004)
  - Advertisements on 95 electronic signboards in downtown**
    - Publicize the illegality of marketing counterfeit goods (supported by the Government Information Agency)
  - Distribution of educational and informational publications**
    - "The Frequently Counterfeited Trademarks List"
    - "Anti-counterfeiting Activities in Korea"
    - "The way of crackdown on counterfeit goods"
- 15 -



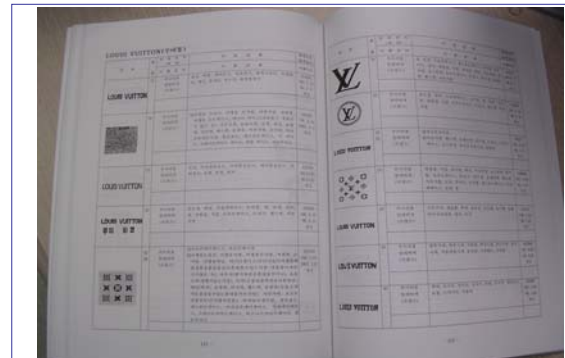
Public Education through Downtown Electronic Signboards



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Frequently Counterfeited Trademarks List



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4. New Activities for IPR Protection

Anti-counterfeiting Reward System

- Powerful system for collecting information on counterfeits
- Reward (from 0.1M to 10M KRW) for report manufacturers, large-scale distributors or sellers

Collaboration among Relevant Agencies

- ▶ “IPR Protection Policy Council”
  - \* 12 Gov. Agencies
  - Strengthening Crackdown
  - Improvement Legal Structure & IPR protection recognition
- ▶ Collaboration among Gov. agencies and IPR owners

Upgraded IPR Protection

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FTA with US

- Pre-established damage for trademark and copyright
  - Civil law : damages adequate to compensate for the injury the right holder has suffered as a result of the infringement
  - In case of **trademark counterfeiting**, establish **pre-established damages**, which shall be available on the election of the right holder
- Seizure of alleged infringing goods, materials and implements
  - Judicial authorities order the seizure of alleged infringing goods, materials and implements relevant to the act of infringement

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FTA with US

- Judicial order regarding **Protection of confidential information**
  - Impose sanctions on parties a civil judicial proceedings, their counsel, experts, or other persons subject to the court’s jurisdiction, for violation of judicial orders regarding the protection of confidential information produced or exchanged in a proceeding

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Thank you for your attention

Industrial Property Protection Team  
Korean Intellectual Property Office(KIPO)





# APEC Seminar on Capacity Building to Implement Anti-Counterfeiting & Piracy Initiative

**S Tiwari**

Principal Senior State Counsel, AGC, Singapore  
APEC IPEG Chair

## Introduction: Importance of IP to APEC economies

- ▶ APEC – Diverse group of 21 economies
  - Good mix of developed & developing economies
  - Rich cultural heritage
  - Accounts for approximately 40% of world population, 55% of world GDP & 50% of world trade
- ▶ IP – A growing significant contributor to APEC economies
  - Increasing recognition of the value of IP
  - More attention placed on combating IPR infringements, such as counterfeit and pirated goods

## APEC Anti-Counterfeiting & Piracy Initiative

- ▶ APEC endorsed this Initiative in 2005 at the 17<sup>th</sup> APEC Meeting in Korea
- ▶ Five Model Guidelines also endorsed by APEC by 2006
  - Facilitate dialogue on best practices
  - Encourage knowledge sharing
  - Provide a platform for exchange of views on different regimes and different practices
    - ▶ Seminars like this are positive examples

## Keeping the supply chain free of counterfeit & pirated goods

- ▶ Background
  - Motivated by the increase of trade in counterfeit & pirated goods
  - Underscored by the need for greater private sector involvement & private-public sector collaboration
- ▶ Guidelines to Secure Supply Chains against Counterfeit & Pirated Goods
  - Comprehensive list of best practices for private sector use
  - Provides areas of private-public sector cooperation

## Issues / Challenges

- ▶ Policy issues in relation to possible over-interference in private sector decisions
  - For example, how should economies:
    - ▶ Encourage businesses to implement best practices that prevent counterfeit / pirated goods from entering the supply chain?
    - ▶ Restrict businesses from undertaking transactions when prices are "too good to be true"
    - ▶ Mandate businesses put in place procedures / practices that guard against counterfeits?

## Issues / Challenges

- ▶ Legal issues in relation to contracts and right to enter into agreements
  - Should economies mandate certain provisions in sales contracts such as inventory monitoring, goods verification etc?
  - If so, how should these provisions be worded?
  - Should there be penalties for non-compliance?
  - Should they apply to all industries?
  - What measures can economies put in place to balance against overly restrictive business practices?

## Conclusion

- ▶ Aim and intent of the APEC Anti-counterfeiting and Piracy Initiative and Guidelines is admirable
- ▶ Economies need to give serious thought and consideration to the Guidelines
  - Potential policy and legal issues
  - Collaboration with private sector is a good way forward
  - Ultimately, the Guidelines underline the need for a mindset change among businesses

## KEEPING THE SUPPLY CHAIN FREE OF COUNTERFEIT AND PIRATED GOODS

APEC SEMINAR ON CAPACITY BUILDING  
ANTI-COUNTERFEITING AND PIRACY INITIATIVE

Hanoi, Vietnam  
June 1, 2007

Murray Hiebert  
U.S. Chamber of Commerce



## PIRACY PROBLEM

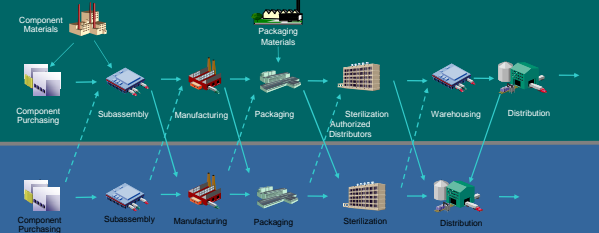
- Growing problem of counterfeiting threatens businesses and consumers
- Counterfeiting affects a broad range of industries including:
  - Pharmaceutical & medical devices (10% drugs sold worldwide counterfeit)
  - Consumer products
  - Auto and aircraft parts
  - Luxury goods

## NEGATIVE IMPACT OF FAKES

- Threaten the health and safety of consumers.
- Cost businesses lost revenue (Ford estimates it loses \$1 billion/year)
- Damage to company's brand name.
- Governments lose tax revenue and jobs.
- Criminals run much of the production of counterfeits.

## Increased Supply Chain Complexity Means Greater Vulnerability to Counterfeit Products

### IN-HOUSE OPERATIONS



### THIRD-PARTIES

**Key Takeaway:** Each touch point is a potential "point of entry" for counterfeit products

Source: Ernst & Young

## CRITICAL ROLE OF GOVERNMENTS IN FIGHTING FAKES

- Create the necessary legal infrastructure to protect IPR.
- Enforce IP laws to deter fraudulent behavior.

## ROLE OF COMPANIES IN FIGHTING COUNTERFEIT GOODS

- Prevent the production & sale of pirated products.
- Exert control over the security of their supply chain.
- Lax security creates opportunities for counterfeit goods to enter the supply chain.
- The Internet and advanced technology make it easier for pirates to infiltrate fake products into the supply chain.

## SECURE LEGITIMATE INPUTS

- Be vigilant to ensure that raw materials & parts are authentic.
- Purchase inputs & equipment only from company-approved suppliers.
- Qualify vendors through regular audits of facilities and documents.
- Regularly audit received products & components to ensure they meet company specifications.

## STRICT LIABILITY” OF SUPPLIERS

- Hold suppliers strictly liable for failing to deliver authentic inputs.
- Include financial penalty provisions in contracts to hold suppliers liable for fraudulent goods.
- Stop buying from companies that repeatedly fail to comply.

## PROTECT SHIPMENTS

- Develop guidelines to ensure security of all factories in supply chain.
- Use seals on all shipping containers.
- Develop partnerships with customs officials to exchange information and target suspected shipments.

## VERIFY LEGITIMACY OF CUSTOMERS AND DISTRIBUTORS

- Manufacturers should ensure they only sell to legitimate distributors.
- Develop guidelines for company sales force on how to assess legitimacy of customers.
- Conduct thorough due diligence before entering into commercial relationships.
- Refuse to do business with groups that trade in counterfeit goods.

## MANAGE WASTE AND DAMAGED INVENTORY

- Traders in counterfeits often prey on scrap yards and waste centers.
- Ensure that production waste and damaged products are destroyed and not diverted back into the supply chain.

## ENSURE LEGITIMACY OF PURCHASED PRODUCTS

- Monitor consumer complaints and goods returned for warranty claims.
- Audit shipments to verify authenticity of packaging.
- Develop procedures to authenticate distribution partners.
- Establish through contract provisions that products are original and unadulterated.
- Repackaged or recycled products should raise suspicion.



## MONITOR BRAND IDENTITY

- Rights holders must monitor retail space and report IP infringements.
- Register trademarks with customs officials.
- Train law enforcement officials to recognize contraband.
- Inform customs about “bad actors” so they watch for shipments from these companies.

## BOLSTER MARKET INTELLIGENCE

- Hire investigators to gather random samples of products.
- Constantly monitor the market and Internet auction sites.
- Test product authenticity.
- Use technology (bar codes, radio frequency identification tags, GPS technology, watermarks) to ensure product security.

## PURSUE LEGAL REMEDIES

- Take action when you discover counterfeiting.
- Pursue legal action to show pirates that they are at risk.
- Contact law enforcement officials.
- Terminate contracts or agreements.
- Utilize restraining orders and asset seizures.
- Pursue civil litigation.

## REACH OUT TO ENFORCEMENT OFFICIALS

- Companies can benefit from educating law enforcement officials in their efforts to stop piracy.
- Educate officials on how counterfeiters carry out illegal activities.





**HONG KONG  
CUSTOMS & EXCISE DEPARTMENT**

APEC Seminar on Capacity Building  
for APEC Member Economies to  
Implement Initiative on Anti-counterfeit and Piracy

**Protection of Intellectual Property Rights in  
Hong Kong Special Administrative Region**

*Presented by*  
**Jim KWOK**  
Superintendent



**Introduction**



**Infringement of Intellectual Property Rights**

- ◆ **Examples of IPR infringement acts:**
  - ✦ selling/ manufacturing goods with counterfeit trademarks
  - ✦ selling pirated VCD, DVD, MCD
  - ✦ showing or playing music in public without right owners' permission
  - ✦ bootlegging
  - ✦ photocopying of books etc.



**Distinction between Civil and Criminal Liabilities**

- ◆ **Civil remedies**
  - ✦ Infringement of copyright, trade marks, patents and registered designs
- ◆ **Criminal sanctions**
  - ✦ Willful copyright piracy and trade mark counterfeiting on a commercial scale





### Comprehensive Legislation

- ◆ Copyright Ordinance
- ◆ Prevention of Copyright Piracy Ordinance
- ◆ Trade Descriptions Ordinance
- ◆ Import & Export Ordinance
- ◆ Organized and Serious Crimes Ordinance



### Maximum Penalties

#### Offences under the Copyright Ordinance

- ◆ Make, sell, possess or import/ export an infringing copy of a copyright work for commercial purposes:
  - ➔ imprisonment for 4 years and fine of HK\$50,000 per infringing copy
- ◆ Make, sell, possess or import/ export an article specifically designed or adapted for making copies of a particular copyright work for commercial purposes:
  - ➔ imprisonment for 8 years and fine of HK\$500,000



### Maximum Penalties (con't)

#### Offences under the Trade Descriptions Ordinance

- ◆ Possess, supply or import/ export goods with false trade descriptions/ forged trade marks for commercial purposes
  - ➔ imprisonment for 5 years and fine of HK\$500,000



### Maximum Penalties Imposed by Court

- ◆ Copyright Cases
  - ➔ Imprisonment – 48 months
  - ➔ Fine – HK\$1.98M
- ◆ Trade Descriptions Cases
  - ➔ Imprisonment – 45 months
  - ➔ Fine – HK\$0.4M



### Enforcement



## Resources Commitment

- ◆ Enforcement strength for combating IPR infringement activities in HK Customs:
  - ✦ 250 officers in the Intellectual Property Investigation Bureau
  - ✦ 150 officers in the Special Task Force
- ◆ Customs officers at entry/ exit points including the Airport, container terminals and boundary control points are actively involved in IPR protection.



## Anti-Internet Piracy Teams (AIPT)

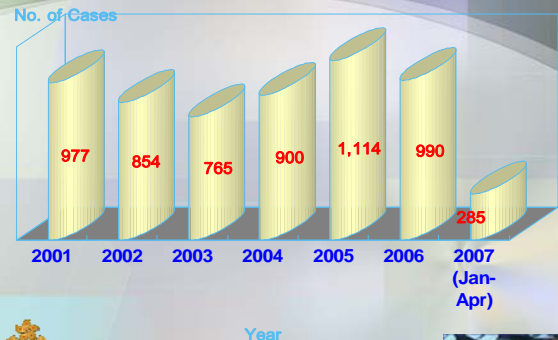
- ◆ 2 AIPTs to fight against piracy and counterfeiting activities on the Internet
  - ✦ Members trained in local & overseas professional institutions
  - ✦ Equipped with advanced investigation tools
- ◆ Achievement –
  - ✦ First-ever successful enforcement action against illegal P2P activities on the Internet
  - ✦ Person who was found to upload three movies of different titles to a local BT discussion forum arrested in Jan 2005.
  - ✦ Sentenced to three months' imprisonment in Nov 2005. Appeal dismissed in Dec 2006. Court of Final Appeal hearing dismissed on 18 May 2007.



## Enforcement Results (Copyright Ordinance)



## Enforcement Results (Trade Descriptions Ordinance)



## Enforcement Strategies

- ◆ Four levels
  - ✦ Manufacture, import/ export, distribution and retail
- ◆ Strategies
  - ✦ Intelligence-led operations (self-developed, informers, IPR owners & international counterparts)
  - ✦ Pro-active boundary interception
  - ✦ Surveillance & in-depth investigation
  - ✦ Frequent & repeated raids
  - ✦ Restraint of crime proceeds



## Restraint of Crime Proceeds

- ◆ Application of the **Organized and Serious Crimes Ordinance (OSCO)** to freeze the crime proceeds of syndicates involved in IPR offences to impose heavier penalty and create a greater deterrent effect
- ◆ Up to now, **HK\$98.7 million** has been frozen





### First OSCO Case in Copyright Piracy

- ◆ Operation "Spur" (July 2004 )
  - ✦ Major local pirated optical disc syndicate rooted out after one year of intensive investigation
  - ✦ Led to withdrawal of other syndicates
  - ✦ Crime proceeds of HK\$20M frozen
  - ✦ Sentenced to 55 months' imprisonment



Residential premises of syndicate mastermind



### First OSCO Case in Counterfeiting

- ◆ Operation "Sniper" (July 2005 )
  - ✦ 153,000 pieces of counterfeit clothes and leather goods worth HK\$66M seized
  - ✦ 18 locations raided, including a shop, eight companies, three warehouses, and five residential premises
  - ✦ Crime proceeds of HK\$22M frozen



## International Cooperation

### International Cooperation

- ◆ Cooperation with international organizations, overseas customs administrations and Mainland China agencies
- ◆ TRIPS Border Measures
- ◆ Exchange of intelligence and information sharing
- ◆ Other activities
  - ✦ International & regional meetings
  - ✦ Liaison visits
  - ✦ Training, seminars

### Cooperation with International Organizations & Overseas Customs Administrations

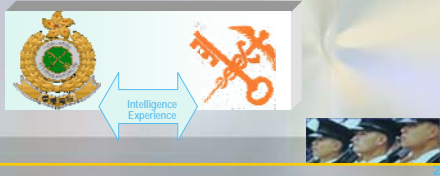
- ◆ World Customs Organization (WCO)
- ◆ Regional Intelligence Liaison Office (RILO)
- ◆ Mutual administrative assistance

### WTO TRIPS Agreement

- ◆ Implemented since 10 May 1996
- ◆ Complies fully with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)

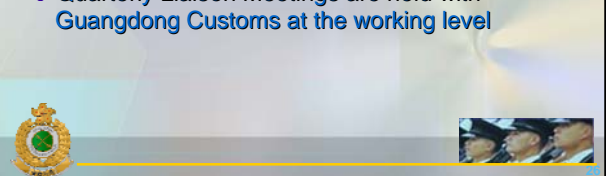
### Cooperation with Mainland China

- ◆ Customs General Administration
- ◆ Guangdong Customs
- ◆ National Copyright Administration (NCA)
- ◆ Other IPR enforcement agencies in Guangdong Province - Guangdong/HK Expert Group on Protection of IPR



### Cooperation with Customs General Administration

- ◆ A Customs Cooperative Arrangement was signed in March 2000 for mutual cooperation in Customs enforcement including IPR protection
- ◆ Annual Review Meetings are held to monitor progress and development at the strategic level
- ◆ Quarterly Liaison Meetings are held with Guangdong Customs at the working level



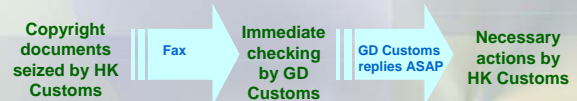
### Cooperation with Guangdong Customs

- ◆ Direct liaison channel on IPR protection since 1996 with designated Liaison Officers
- ◆ Meet every 6-8 weeks for information exchange and discussion on cooperative arrangements
- ◆ Parallel operations
  - ✦ 38 parallel operations since 1996
  - ✦ In 2006, 3 operations resulted in 5 cases effected, 5 persons arrested and 138 pcs of counterfeit goods seized
- ◆ Fast Verification Mechanism



### Fast Verification Mechanism

- ◆ Established with Guangdong Customs on 1 Oct 2004
- ◆ Speed up the verification process on the authenticity of Mainland China copyright documents



### Cooperation with National Copyright Administration

- ◆ A Cooperative Arrangement was signed in August 2002 to establish mutual assistance in the fight against piracy
- ◆ Requests are made to NCA for verification of suspicious Mainland copyright authorizations encountered in IPR investigations
- ◆ Annual meetings to review progress of cooperation



### Guangdong/HK Expert Group on Protection of IPR

- ◆ Established in August 2003
- ◆ To enhance cooperation on enforcement and dissemination of information on cross-boundary IPR infringement cases
- ◆ Through this Expert Group, Hong Kong Customs is able to establish liaison and communication with all IPR enforcement agencies in Guangdong





### Cooperation with Industry

- ◆ Assistance sought from the industry:

- Intelligence Exchange
- Seizure Identification & Examination
- Technical Assistance
- Training on product identification
- Public Education

### IPR Protection Alliance (IPRPA)

- ◆ Established in March 2004 by HK Customs in collaboration with the IPR industry
- ◆ Objectives:
  - ✦ To strengthen enforcement actions in partnership with IPR owners
  - ✦ To protect consumers and tourists against pirated and counterfeit sales

### IPRPA (con't)

- ◆ IPRPA Website ([www.iprpa.org](http://www.iprpa.org)) launched in Sep 2004 to provide an efficient platform for intelligence exchange and public education
- ◆ 46 members from the copyright and trademark industry have joined
- ◆ Greatly increased efficiency and effectiveness of investigation

### Cooperation Campaigns

- ◆ "E-auctioning with Integrity" Scheme
  - ✦ auction site operators to step up screening of auction items and remove listings of suspected infringing goods upon receiving reports from IPR owners
  - ✦ 25,000 listings removed since inception
- ◆ "Jewellery Integrity Campaign"
  - ✦ jewellery traders encouraged to adopt clear trade descriptions
  - ✦ to sustain the image of Hong Kong as a shopping paradise and to facilitate Customs' criminal enforcement

### Fast Action Scheme

- ◆ Launched in July 2006 in collaboration with Hong Kong Brands Protection Alliance (HKBPA)
- ◆ To expedite enforcement actions against infringement activities at large-scale exhibitions
- ◆ First implemented in Oct 2006
- ◆ Up to now, implemented in 8 exhibitions with 32 cases effected



## Fast Action Scheme (cont)

### ◆ Fast response mechanism -

- ✦ Participants in exhibition provide information on brands and copyright of their products to HKBPA in advance
- ✦ Information vetted by HKBPA and kept in a database (in line with Customs recordation requirement)
- ✦ Infringement discovered on-the-spot will be reported to the Customs via HKBPA
- ✦ Customs accesses the database, validates the information and sparks off criminal investigation within 24 hours



## Reward Schemes

### ◆ Cash rewards to informers

- ✦ Anti-piracy Reward Scheme – optical discs (except retail level) & Internet piracy
- ✦ Scheme funded by Business Software Alliance – corporate piracy
- ✦ Scheme funded by Hong Kong Association of the Pharmaceutical Industry – pharmaceutical products
- ✦ Scheme funded by Hong Kong Reprographic Rights Licensing Society – photocopying shops



# Public Education

39

## Measures

- ◆ Co-organize IPR awareness seminars with Intellectual Property Department and other organizations
- ◆ Media publicity on significant seizures
- ◆ Talks at schools and community activities
- ◆ Tourist education
- ◆ Roadshows, exhibitions, pamphlets, posters



## Raise Public Awareness

### ◆ Recent publicity campaigns:

- ✦ Promotion through IPRPA website, e.g. online cartoon for youngsters, information on production identification
- ✦ Anti-piracy posters to schools
- ✦ Talks to Parent-Teacher Associations
- ✦ Boy Scouts Badge on IPR protection
- ✦ Youth Ambassador Scheme



## Youth Ambassador Scheme

- ◆ Launched in July 2006 to fight against illegal file-sharing through the BitTorrent (BT) software

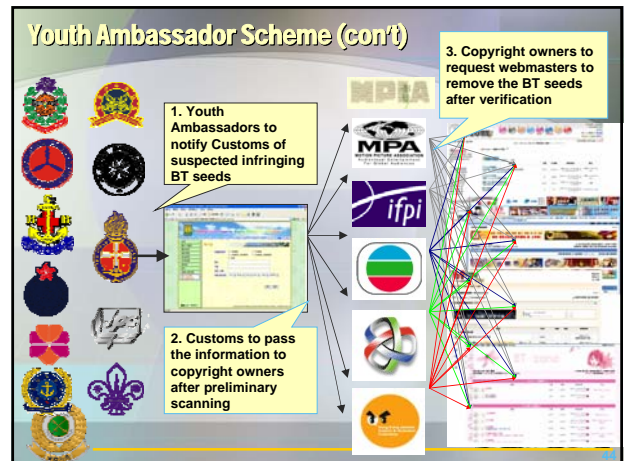
### ◆ 3 major objectives -

1. promoting the importance of IPR
2. expanding the channels for monitoring illegal Internet activities
3. reducing the flow of BT seeds on the Internet

### ◆ Achievements

- ✦ 900 notifications received
- ✦ Of the notifications processed, 70% of the infringing BT seeds deleted





## PUBLIC-PRIVATE COOPERATION IN COMBATING COUNTERFEITING AND PIRACY

APEC SEMINAR ON CAPACITY BUILDING  
ANTI-COUNTERFEITING AND PIRACY  
INITIATIVE

Hanoi, Vietnam  
June 1, 2007

Murray Hiebert  
U.S. Chamber of Commerce



## PUBLIC-PRIVATE COOPERATION

- public-private cooperation helps both parties maximize their expertise & outreach.
- private sector in many countries has raised public awareness about importance of IP and helped boost expertise of law enforcement officials in protecting IP.
- private sector has heightened awareness about impact of piracy on public safety & lost government revenue.

## OPS TULEN (Malaysia)

- goal: reduce use pirated software, estimated at 70% when campaign launched in 2002.
- joint venture Ministry of Domestic Trade & Business Software Alliance.
- threat of enforcement serves as catalyst to educate companies on compliance.
- mailings to companies, advertisements, news articles carried message that harsh fines & jail time faced companies using pirated software.
- result past 5 years: 10% drop in software piracy rates.

## OPS TULEN: CARROT AND STICK

- companies caught using illegal software fined over \$5,000.
- BSA produced ads and billboards using slogans like: "Manufacturing Company Convicted for Using Infringing Software."
- BSA launched educational forms with ministry for CEOs, managers, IT personnel in 6 major cities.
- companies that volunteered for audits given 1-2 years immunity to switch to legal software.

## PFIZER COOPERATION WITH CHINA

- Pfizer has 2 security professionals in Hong Kong, 1 in Beijing, 1 in Shanghai.
- work with Public Security Bureau, Ministry of Public Security, State Administration for Industry, State Food & Drug Administration identify & raid counterfeiters.
- cooperation has increased number and quality of enforcement actions.
- of the 8.9 million counterfeit Pfizer tablets seized globally in 2006, 48% seized in China.

## RESULTS OF PFIZER-CHINA COOPERATION

- based on Pfizer intel, authorities dismantled factory in Guangzhou capable of producing 5,000 kg of sildenafil citrate (key Viagra ingredient) a month.
- investigation referred by Pfizer to PSB in Guangdong resulted in seizure of 11 million counterfeit tablets.
- Pfizer concern: pirates can only be charged with counterfeiting under criminal law if illicit product is proven "harmful enough to endanger human health."
- Pfizer urges China strengthen regulation of bulk chemicals with medicinal uses.



## BOY SCOUT MERIT BADGE (HONG KONG)

- Boy Scouts earn merit badge for learning about IP.
- joint venture launched in 2005 by Motion Picture Association, HK Scout Association, and HK government.
- helps provide thousands of young people better understanding of value of IP and importance of protecting it.
- scouts, 11 to 16 years, get badge for participating in a series of seminars on IP

## HK BOY SCOUTS SCOUR INTERNET

- in 2006, 200,000 youth searched Internet sites for pirated songs & movies
- government urged them report violations to enforcement authorities.
- officials reported violations to trade associations who sent warning letters to Web masters, asking them delete offending posting.
- 700 youth participating in pilot project found 800 cases of copyrighted material provided by BitTorrent, popular file-sharing software.

## IFPI GLOBAL ACTIVITIES

- International Federation of the Phonographic Industry works closely with governments & enforcement officials around world.
- helps countries draft laws, train law enforcement officials, including judges & prosecutors – often cooperates with MPA, BSA.
- operates optical disk forensics lab in London.
- cooperates with Interpol.
- works to educate public about importance of IP.

## IFPI EXAMPLE ACTIVITIES

- in Thailand, exploring possibility helping establish optical disk forensic capability. Training IP officials and Thai police.
- Dec 2006, IFPI cooperated with Rome police to launch campaign, "A Fake Present is Not Real Christmas."
- resulted in 250 raids, leading to seizure of 170,000 CDs, 243 CD burners, prosecution of 183 pirate music dealers.

## U.S. CHAMBER IP COOPERATION WITH BRAZIL

- Chamber, cooperating with National Assoc for IPR Protection, conducted consumer product counterfeiting surveys in Brazil.
- 2005 study found that pirated clothing, footwear, toys cost government \$6 billion in revenue.
- results prompted Chamber, in cooperation with National Anti-Piracy Council, to launch IP workshops and e-learning to boost IP awareness among university students.
- 50,000 students reached in 2006.

## U.S. CHAMBER IP TRAINING IN BRAZIL

- Chamber cooperated with National Anti-Piracy Council last year to train customs officials at 12 major ports on how to detect pirated goods.
- Chamber worked with School of Magistrates to train judges on IP issues to showcase international judicial best practices.

## U.S. CHAMBER IP COOPERATION WITH CHINA

- nearly 2/3s of counterfeit goods seized at U.S. ports manufactured in China.
- Chamber partners with Chinese government to build capacity protect IP.
- in Jiangsu, the Chamber working with local government to train local officials on international best practices & enforcement.
- Chamber provides legal input on China's IP laws.

## U.S. CHAMBER IP COOPERATION IN CHINA

- last year Chamber organized a roundtable with National IP Strategy Office to discuss ways to bolster IP protection.
- in March, Chamber and China Council for the Promotion of International Trade hosted an IP & innovation conference in Beijing with participants from China, U.S., EU, Japan, Korea, India.

## CHAMBER COOPERATION WITH INDIA

- Chamber, in cooperation with Bollywood and Federation of Indian Chambers of Commerce, conducting survey this year to show magnitude of piracy in Indian entertainment industry.
- Chamber, partnering with Indian Confederation of Indian Industries, brought group of Indian judges & lawyers to U.S. this year for training in IP law.

## U.S. CHAMBER COOPERATION WITH U.S. LAW ENFORCEMENT

- law enforcement officials often lack resources, information, desire to fight piracy.
- Chamber cooperating with prosecutors, customs agents, FBI, Interpol to launch programs to combat piracy in NY and LA.
- hired private investigators assist enforcement officials detect fake products.
- working with Customs & Border Protection to train officials to identify high-risk cargo.

## S.A.F.E. D.R.U.G. (U.S.)

- "how-to" guide to help consumers identify & protect against counterfeit medicines.
- 8-step check helps consumers judge whether medicines safe.
- guide developed by a school of law and school of medicine in San Diego.
- if consumer finds problems with packaging, labeling or medicine, he/she encouraged to contact the U.S. Federal Drug Agency.

## S.A.F.E. D.R.U.G. STEPS

- request SAMPLE from doctor to compare appearance, taste, texture, physical reaction.
- compare APPEARANCE of prescription with sample.
- compare drug's FEEL & taste to sample.
- EVALUATE body's reaction to drug.
- contact DOCTOR if you feel anything unusual.
- REPORT concerns to the FDA.
- ensure that compromised drug is UNAVAILABLE to others.
- GATHER information, including where you purchased counterfeit.





Vietnam Standard and  
Consumers Association

## Public-private Cooperation in the Struggle against Counterfeiting – The Vietnam Experiences

By *Do Gia Phan*

VINASTAS Vice President and  
General Secretary

(Hanoi – May-June 2007)

Public-private cooperation

1

## Characteristics of Counterfeit Goods in Vietnam

- Counterfeit goods can be found everywhere, at any time and under various forms:
  - Using other's logo or/and trade mark.
  - Very low quality.
  - Same package and appearance.
  - False labeling to mislead consumers.
  - Anti-counterfeiting stamps even counterfeited.
- Consumers misled and get loss.
- One part of consumers still prefers fake goods with the argument: "Like money, like thing".

Public-private cooperation

2

## Why VINASTAS against counterfeiting?

- In general, counterfeit goods are of low quality, but sold at high price like genuine one.
- Lots of counterfeit goods are harmful to consumers like:
  - Fake foods (sodium glutamate, meat, chicken, spirit...)
  - Fake drugs (Vitamin, antibiotics, vaccine...)
  - Seeds (Give no crop)
  - Agricultural chemicals (pesticides, fertilizers...)
- Counterfeiting limits competition that bring benefit to consumers.
- Affects badly national economic development

Public-private cooperation

3

## How VINASTAS involves in anti-counterfeiting?

- Education and information given to consumers:
  - About their eight rights.
  - On consumers social responsibilities.
  - To heighten their skills to identify the difference between fake goods and genuine goods (By giving information , organizing fake and genuine goods exhibitions)
  - To motivate consumers in the battle for anti-counterfeiting.

Public-private cooperation

4

## How VINASTAS involves in anti-counterfeiting? (2)

- Gather information through consumers complaint settling.
- Share information on counterfeiting to relevant government bodies (Market Management Dept., Competition Administration Dept., Directorate of Standardization, Metrology and Quality, Sub-dept. in provinces...) and businesses.
- Coordinate businesses efforts by organizing Anti-counterfeiting Club (meet every 2 months to share information and experiences)

Public-private cooperation

5

For many years, VINASTAS has cooperated with government organizations and many businesses to deal successfully with many counterfeiting practices in the market for the interest of consumers and businesses and for the national economy development.

We consider the cooperation between government bodies, businesses and consumers will make anti-counterfeiting activities successful. Following are our suggestions on the role of each partner in the public-private cooperation struggle against counterfeiting.

Public-private cooperation

6

## Role of government bodies

- Issue appropriate legislation to deal with counterfeiting.
- In cooperation with consumers and businesses to uncover counterfeiting practices in the market.
- Apply due sanction against counterfeiting criminals.
- Guide and assist consumers and businesses in anti-counterfeiting activities.
- Coordinate different stakeholders for the common anti-counterfeiting activities.

Public-private cooperation

7

## Role of Businesses

- Ready to answer various demand of consumers.
- Produce and provide consumer with good quality products and with reasonable price.
- Be active in anti-counterfeiting activities, consider anti-counterfeiting the work to defend themselves.
- Keep close relation with government bodies and consumers associations.

Public-private cooperation

8

## Role of consumers

- Be aware of the rights and responsibilities of consumer, self-educate to improve consumption skill.
- Be clever and vigilant to identify genuine from fake goods.
- Refuse to buy counterfeit goods.
- Uncover counterfeiting practices and counterfeit goods in the market.
- Report timely to government officials and consumer associations.
- Cooperate with businesses and government organizations in anti-counterfeiting.

Public-private cooperation

9

## Consumer organizations

- Build and operate consumer complaint bureaus to help consumers in settling complaints, to gather information especially in counterfeit goods.
- Give consumer information and education to raise consumers awareness on their rights and responsibilities.
- Cooperate closely with businesses and government organizations to supervise and denounce counterfeit practices.

Public-private cooperation

10

## Consumer organizations (2)

- Timely inform government officials on counterfeiting practices in the market.
- Suggest consumers not to buy and use counterfeit goods and denounce all fraudulent schemes and activities.
- Promote and operate adequately consumer complaint bureaus in order to gather more information on counterfeiting through consumer's complaints.

Public-private cooperation

11

## How to improve the effectiveness of public-private cooperation ?

- Transform public-private cooperation into **Public-Private Partnership** (PPP) that makes the cooperation tighter and more secure.
- Consumer organizations and government bodies in charge of anti-counterfeiting control should enter into contractual agreements with clear agreement on shared objectives and mutual benefits.
- Public sector should provide consumer organizations with financial resources to fund the agreed activities like to run consumer complaint bureaus (as stipulated in the decision No 21/2003/QDTT of the Vietnam Prime Minister).

Public-private cooperation

12

### PPP with consumer organizations will:

- Provide consumer organization an opportunity to officially participate to anti-counterfeiting activities.
- Motivate “*Hundreds of ears and Thousands of eyes*” of consumers to supervise and denounce counterfeiting practices.
- Decrease the demand of consumers on low quality but cheap fake goods, in order to lessen the eagerness of counterfeiters and distributors of counterfeit goods.

Public-private cooperation

13

### Suggestions

- Government should make legal and popular the PPP between public and private sectors in anti-counterfeiting.
- Government bodies should enter in contract of PPP with consumer’s organizations to control counterfeiting.
- Consumer organizations, especially consumer complaint bureaus should be funded by the government budget, basing on the decision No 21/2003/QDTG of the Vietnam Prime Minister.
- Businesses and government officials should consider the cooperation with consumer organizations an effective measure to control counterfeiting.

Public-private cooperation

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### The End

Thank you for listening!  
*Questions and Comments?*

Public-private cooperation

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## Public Education Program

*Working hand-in-hand with the private sector*

Jennifer Chen  
Deputy Director  
Customer & Corporate Communications Dept  
Intellectual Property Office of Singapore

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## Overview

- Introducing IPOS
- How it all began
- Private – Public Partnership
- Communicating with Consumers
- Communicating with Businesses
- Going forward

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## About IPOS



- The Intellectual Property Office of Singapore (IPOS) was formed on 1 April 2001.
- Led by Director-General, Ms Liew Woon Yin
- IPOS is a statutory board under the Ministry of Law

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## Vision

To foster a creative Singapore where ideas and intellectual efforts are valued, developed and exploited.

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## Mission

To provide the infrastructure, platform and environment for the greater creation, protection and exploitation of intellectual property.

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## How It All Began – the Public Education Experience

- 2001 – Study on awareness, perception of and attitude towards IP rights
  - Objectives:
    - Determine the level of awareness towards the illegal nature of pirated materials;
    - Understand driving factors behind consumers' buying behaviour of pirated goods; and
    - Develop possible action lines.

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## Consumer Study

- **Methodology**
  - Face-to-face interviews with Singapore's students and working population aged 15 to 55 years old.
  - 7 types of consumer goods tested:
    - Branded watches
    - Branded fashion clothing
    - Music CDs
    - OS software
    - Application software
    - PC games
    - VCDs

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## Consumer Study

- **Findings:**
  - Low awareness level of 'IPR'
  - There was widespread agreement that people deserve to have their creations protected by IPR.
  - Although over half acknowledged that selling pirated goods was unethical and buying pirated goods were wrong, few felt guilty for buying pirated goods.
  - Some acceptance of the impact of piracy on economy.


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## Follow-up action to findings

- Based on findings from the IPR study, the immediate task was to raise IP awareness among the general public and to encourage respect for IP.



**Private – Public Partnership**

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## Two Prong Strategy

- Adopt a two prong strategy for two distinct groups of Target Audiences
  - Business vs General Public
- Birth of the HIP Alliance to communicate with the general consumers
- Direct communication with the businesses in partnership with the BSA

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## Advantages of Private – Public Partnership

- Common interest and needs to fight piracy
- **Benefits:**
  - Pooling of resources
  - Cut the advertising clutter
  - Multiplying effect

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## Consumer Communications – HIP Alliance

- The information stated

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## What is HIP?

- HIP = Human + IP
- Established in 2002 as a government-industry collaborative platform
- Make up of government agencies, private organisations and industry associations to promote IP
- Champions IPOS' public education initiatives and programmes on 'Respect for IP'
- Key Message: Live For REAL!
- Activities: Annual high profile public roadshows to promote IP awareness and respect




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## Early Days HIP Activities



HIP Rally down Orchard Road



Director-General of IPOS, Ms Liew flagging off the HIP Rally


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## HIP Alliance 2003 Campaign

- 2003
  - HIP started to use mass media to promote its anti-piracy messages. Television commercials and posters were developed.
  - Key message: "The Real Thing is the Right Thing"
  - Signed on local celebrity, Adrian Pang, as the ambassador for the movement
  - Selected for his character as a pirated VCD vendor-turned-good in a popular local sitcom.




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## HIP Revolution



- In 2004, HIP underwent a re-branding and repositioning exercise
- Focus of initiative = consumer awareness.
- As the target audiences are mass consumers aged 14-35, the HIP logo was revamped to project a cool and funky look to appeal to the group.
- HIP = Honour IP

*Be Creative  
Be Original  
Be HIP*

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## HIP Revolution

- From a roadshow a year, HIP shifted focus to leverage on mass media and embarked on an advertising and promotion (A&P) approach for greater target audience reach.
- We began to work closer with private sector partners in many these A&P efforts



→ Zo card



→ Carrier bag



→ The Straits Times ad

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## HIP Collaborations

### With IP Owners (2004 – ongoing)

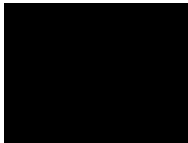
- HIP stickers have been distributed to major record labels, movie distributors, gaming and software distributors since 2004.
- Latest album to adopt the stickers – Universal artiste Timbaland "Shock Value"
- HIP messages are inserted into the promotional material (such as TVC/posters/CD inserts) of the latest music albums by various recording labels.



Singer-songwriter Joss Stone latest album



HIP sticker



1<sup>st</sup> album to adopt the re-vamped HIP – pop rock star Timbaland's album

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## HIP Collaborations

**With Major Movie Studios (Sep 04 – ongoing)**


- Offered HIP Movie-of-the-Month to reward HIPFriends who have pledged to 'Live For Real'
- Recent – Mar (Shooter), Jan (The Fountain)
- Organised targeted school outreach programme with MPA to further spread the anti-movie piracy messages



**HIP Movie-of-the-Month**



**MPA-HIP School Outreach Programme**



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## Main stream HIP Publicity

**Print**

- The Straits Times, The New Paper & Today advertisements, Seventeen and Teenage magazines
- Software, music, movie advertorials



**Print advertisements**



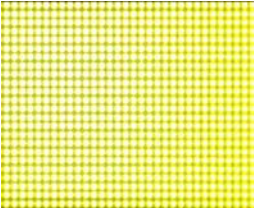
**IN mag advertorials**

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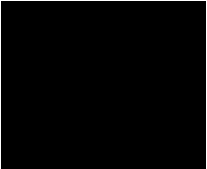
## Main stream HIP Publicity




**Piracy Kills Creativity**



**Radio trailer**



**Change is good**



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## HIP Website



- [www.hipfriends.org.sg](http://www.hipfriends.org.sg)
- Launched on 19 Sep 05
- Multi-purpose lifestyle portal
- Encourage interaction with HIPFriends

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## HIP Activities in 2007




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## HIP Celebration for IP Month

**4 April 2007**

**HIP Alliance supports MPA-developed brochure**

- MPA launched an educational booklet in Singapore
- Targeted at secondary school and junior college students (age 13 – 18 yrs old)
- Booklet seeks to educate target audience on the risks of illegal file-sharing as well as the possibility of committing copyright infringement
- The HIP Alliance supported the initiative and the launch and helped with the distribution of the brochures. Close to 200,000 copies were given out
- Singapore is the first in Asia-Pacific to see the brochure.

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## HIP Celebration for IP Month

GOH, Ms Liew Woon Yin, DG of IPOS, addressing the school

The whole school awaits eagerly for the launch



Launch of the MPA brochure by GOH, Mike Ellis of MPA and Bro Anthony Tan, Principal of Maris Stella High



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## HIP Celebration for IP Month

### 21 April 2007

### World IP Day HIP Movie Marathon

- In celebration of World IP Day, the HIP Alliance organised a movie marathon, supported by local association Motion Picture Distributors Association Singapore (MPDAS), with special thanks to Buena Vista International, Warner Brothers and United International Pictures.
- It would be a fun but meaningful way to remind young people about how piracy can severely impact the future of the film industry.

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## World IP Day Movie Marathon



Standing banner



68s trailer




Straits Times ad, 20 April insertion

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## World IP Day Movie Marathon




Power 98FM website

CELEBRATE WORLD IP DAY WITH HIP!

This World IP Day, recognize the importance of creativity, innovation and intellectual property by treating yourself to 3 of the latest movies that has not even opened in theatres yet!

You get to watch these because each time you buy original and say NO! to piracy, you keep the movie industry going!

And because of that, you deserve to be rewarded!




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## World IP Day Movie Marathon



HIP Friends website

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## New Mainstream Campaign

### A recent perception survey conducted revealed that

- 8 in 10 think that IP protection is important
- at least three in 10 think of the consequences of buying copies of pirated CDs/VCDs/DVDs or counterfeit products
- 6 out of 10 feel that legal consequences will stop them from downloading unauthorised material and this is especially so amongst the educated adults
- youth commonly engage in online downloading of music, television series, movies and game
- more than half of respondents say usage of the Internet should not cost anything and believe that content there is in the public domain.

### Focus of the new mainstream campaign is Online piracy

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## New Mainstream Campaign

- **Visual of new campaign (Ad)**

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## Communications for Businesses

- The information stated

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## Combating Software Piracy

- Key Message – Manage your software assets and comply with the copyright law.
- Collaborated with BSA to organise a series of Software Asset Management Seminars since 2003
- Participation rate soars from more than a few 100s to more than 1000 over a 2-year period.
- The seminar features a speaker from IPOS to elaborate on Copyright law
- A senior consultant from Deloitte & Touche to go through a step by step guide on Software Asset Management Procedure.

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## Combating Software Piracy

- SAM Advantage Programme launch jointly on 4 April 2007
- Endorsed and supported by 7 Industry Associations
- A self-audit initiative aimed at helping all businesses ensure that their use of BSA member company software is legal and protected from risk of inadvertent software infringement.

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## HIP Achievements

- **Successfully recruited 25 public and private sector members who actively engage HIP Friends with sub-campaigns:**
  - Singapore Police Force
  - Ministry of Education (Curriculum Planning & Development Div)
  - Business Software Alliance (BSA)
  - Recording Industry Association (Singapore)
  - Motion Picture Association (MPA)
  - Business Software Alliance
  - Microsoft Singapore Pte Ltd
  - Hewlett-Packard Far East Pte Ltd
  - LEVIS Strauss
  - Electronic Arts
- **There are about 7,000 HIP Friends to date.**

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## Looking Ahead

- IPOS has plans to embark on more engagement with private sector players using the 2 prong strategy
- HIP Alliance is contemplating a revamp, looking at ways to better engage private sector key players. It is hoped that the new structure will create greater resonance with the target audience
- Aside growing the numbers and reach, HIP is also looking at ways to effect a change in behaviour and to measure the impact.
- Engage regional and international public and private sectors to share experiences on making HIP Alliance a more widely accepted initiative for public awareness education

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**Thank you**

*[www.ipos.gov.sg](http://www.ipos.gov.sg)*

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## Piracy and Counterfeiting Report 2007- CHILE

1-. Through the last four years, Chile has done legal and institutional modifications to the IP system. One of the main purposes behind these amendments to the IP system has been to implement international agreed standards. As a result Chile has one of the highest standards on IP in the South American region.

2-. Related to attack piracy and counterfeiting 3 laws has been enacted:

- Act 19912 (11-04-2003). It establishes border measures not only for importation but for exportation and transit of piracy or counterfeited goods. Ex-officio actions are limited to cases of counterfeited trademarks and copyright piracy.

- Act 19914 (11-19-2003). This act modified the Copyright Act extending the protection period to 70 years, recognizing expressly distribution right and disposition right, establishing penalties for those who remove or alter any management right information and recognizing for its first time textile design as works eligible for copyright protection.

- Act 19996 (12-01-2005). It constitutes the mayor Industrial Property Act modification to implement the Chilean national law to the TRIPS standards. It establishes for the first time a registry for geographical indications and for appellation of origin, for layout designs. It also regulates the protection for undisclosed information related to new chemical entities that must provide their data to obtain a sanitary approval. In relation with enforcement it increases penalties for infringements and contemplates pre-establish damages to be sued by claimants.

3-. To facilitate the Customs authorities and general prosecution action, in 2005 those institutions sign agreements with the Industrial Property Registry to access the National Data base of trademarks. This measure allows to know what are the protected signs and who are their right holders.

4-. Currently a new bill is in the Parliament. This bill seeks for significant Copyright Act amendments to improve the enforcement provisions and at the same time contemplates new exceptions and limitations, and improves the mechanisms for the fixation of collective society's tariffs, in order to guarantee a balanced copyright system. The main enforcement modifications contained in the mentioned draft are the following:

<b>Bill Summary</b>
1.- Increasing penalties. Fines and prison
2.- New types of IP Crimes
3.- New civil actions
4.- Pre-established damages
5.- Destruction of counterfeited goods
6.- New precautionary measures
7.- In judicial proceedings, each party provide that the judicial authorities shall have the authority to order the infringer to provide any information the infringer may have regarding persons involved in the infringement

5- Additionally the criminal legal procedure was modified in 2005, setting up an oral system, with specialized prosecutors for economic crimes (IP is included in this category) and with no cost for plaintiffs. The result is that criminal procedures are faster than before and that accurate judicial solutions are reached in time.

6-. As a natural consequence of all these enforcement measures, the amount of intellectual property judgements has dramatically increased. In the box below is possible to see Chilean national statistics on intellectual property prosecutions initiated in the last 5 years.

#### Copyright prosecutions

Region	2001	2002	2003	2004	2005	2006	TOTAL
I	0	0	48	81	199	326	654
II	0	57	97	150	136	107	507
III	0	18	4	29	29	23	103
IV	6	1	6	20	21	102	156
V	0	0	2	170	257	448	877
VI	0	0	0	38	123	215	376
VII	0	13	27	38	82	166	326
VII	0	0	3	93	168	245	509
IX	1	6	13	9	35	85	149
X	0	0	1	45	88	259	393
XI	0	0	0	2	2	10	14
XII	0	0	0	2	9	6	17
XIII	0	0	0	0	624	2074	2698

#### Industrial property prosecutions

Region	2001	2002	2003	2004	2005	2006	TOTAL
I	0	0	4	13	0	12	29
II	0	0	2	5	3	8	18
III	0	0	0	1	0	2	3
IV	0	0	0	2	3	6	11
V	0	0	0	5	16	15	36
VI	0	0	0	1	3	7	11
VII	0	0	0	1	6	7	14
VII	0	0	1	0	2	6	9
IX	0	0	2	1	2	4	9
X	0	0	0	0	9	6	15
XI	0	0	0	0	0	2	2
XII	0	0	0	1	0	2	3
XIII	0	0	1	0	27	73	100

Criminal cases for IP violations in cases of copyright are increased from 1 in 2001 to 4.065 in 2006 and for industrial property rights are increased from 0 in 2001 to 150 in 2006. In 2006, 6.173 persons were convicted for IP infractions , which means that 30 % of accused persons are convicted.

## **Trademark Administrative Enforcement**

The State Administration for Industry and Commerce , P.R.C

### **I.Special Campaign on Protection of the Exclusive Right to Use a Registered Trademark Concluded Successfully**

In order to effectively combat against infringement to trademark right, copyright and patent right, increase social awareness of protection on IPR, give rise to innovation in science and technology, create and develop a sound environment in high-tech industry, fulfill the promise made when China entered WTO, standardize market economic order, Since 2001 when the State Council determined to carry out the action of straightening out and standardizing the market economic order, the State Administration for Industry and Commerce has strictly carried through the requests from the State Council and listed straightening-out campaigns of trademark as yearly key task and emphasis for AIC units at various levels all over China each year. In August 2004, the State Council decided to “undertake a special campaign on IPR protection throughout the country for about a year”. On March 30, 2005, the State Council decided to “carried on the special campaign until the end of the year”. In August 2004 and March 2005, Vice Premier Wu Yi held two videophone conferences, making specific arrangements for IPR protection work. According to the decision of State

Council, all departments concerned carried out the special campaign on the basis of their functions.

As far as protection on the exclusive right to use a registered trademark is concerned, in June 2004, the State Administration for Industry and Commerce (SAIC) formulated the Working Plan on the Protection of the Exclusive Right to Use a Registered Trademark according to the working priorities drafted by National Office of Rectification and Standardization of Market Economic Order. In the special campaign lasting for one and a half years, AICs throughout the country carried out seven concentrated rectification actions, among which three were undertaken in 2004 (namely, dealing with cases concerning trademarks used on food, medicine and foreign trademarks, dealing with cases concerning violating the exclusive right of well-known trademarks, certification marks, and collective marks, dealing with illegal printing and use of fake packages, fake signs and fake trademarks) and four in 2005 (namely, dealing with cases concerning infringement of trademarks used on food and medicine, dealing with cases concerning agriculture-related trademarks, dealing with cases in which well-known trademarks were infringed by enterprises' names, and dealing with cases concerning trademarks used on farm produce and geographical indications).

According to statistics, from July 2004 to December 2005, AICs at all levels throughout the country sent out enforcement staff 3,037,845 person-times in total, checked 7,660,747 operating business, inspected 319,504 commodity markets, and cracked down on 6,746 haunts of producing and selling fake products. 87,352 trademark illegal cases were dealt with, among which, 68,764 were trademark

infringement and counterfeiting cases, and 18,588 were general trademark offenses. 10,584 foreign-related trademark illegal cases were dealt with, and among them, 10,361 were trademark counterfeiting and infringement cases and 223 were general trademark offenses. 77,509,600 items/sets trademark signs were confiscated and destroyed, 2,823,000 items/sets of models as well as printing tools specially used for trademark infringement were confiscated, 10,242.37 tons of infringing products were seized and confiscated, and 512 million RMB fines were collected, 309 cases suspected to be criminal cases were transferred to judicial department in which 273 suspects were involved.

The remarkable achievements in protection on the exclusive right to use a registered trademark effectively protected the exclusive right, safeguarded rights and interests of Chinese and foreign trademark owners and consumers, alarmed law - breakers, rectified and standardized market economic order, further improved China's investment environment and showed the significant role of administrative enforcement by AIC in protecting the exclusive right to use a registered trademark.

**II.in** 2006, AIC at all levels seriously carried out the arrangement of State Council and SAIC, fully performed the administrative function for AIC, reviewed the experience of trademark administrative protection in recent two years, appealed to the problems and weak links, continuously improved the supervision and enforcement, highlighted the main priority, working energetically, attached equal importance to rectification and standardization, paid equal attention to cracking down and construction, kept and intensified the efforts on cracking down



trademark infringement, took strict, stern and prompt measures to handle a series of atrocious, serious and influential major cases, which not only protected the legitimate rights and interests of trademark registrants and consumers, but also contributed greatly to the rectification and standardization of the market economic order. Statistics showed that in 2006, 50,534 law-breaking cases of various kinds were handled, increased by 2.27% compared with that (49,412) of 2005, among which 9,562 were foreign related cases, increased by 41.24% compared with that (6,770) of 2005. Among the 50,534 law-breaking cases, cases of general offences accounted for 9320, trademark infringement and counterfeiting cases 41,214. 30,360,000 sets of illegal trademark signs were seized and confiscated, and the fine amounted to RMB 398 million,

### **1. Strengthening the Administration to the Central Wholesale and Retail Market**

In 2006, AIC at all levels carried out the managements to public concerned wholesale and retail markets on basis of the achievements from special campaign on registered trademark protection. On February 17, SAIC issued the Notice on Carrying over Managements to the Central Wholesale and Retail Market, claiming on enhancing the supervision to Silk Market and Sandiansan Market in Beijing, Xiangyang Market in Shanghai, Luohu Market in Shenzhen and so on. On April 10, SAIC issued Urgent Notice on prompt Management to Wholesale and Retail Market in Guangzhou and Shenzhen, claiming on taking prompt measures to renovate the over 20 markets pointed out in related material. From the end of March to the beginning of April, SAIC sent out working group to supervise the rectification to

the above markets. And the supervision proved that this four provinces and cities had completely fulfilled the arrangements and claim with firm attitude and powerful measures. Authority of Shanghai closed the Xiangyang Market on June 30, and authorities in Beijing, Guangdong and Zhejiang rectified a large number of illegal business units. Long-term mechanism was explored in all parts of the country, the system of trademark authorization management was introduced to 164 markets in Beijing, and Luohu commercial town in Shenzhen perfected its system of washing out for one time, the small commodity town of China in Yiwu created the system of trademark comparison.

## **2. Strengthening the Transferal of Suspected Trademark Criminal Cases**

In 2006, AIC at all levels continued to strengthen the protection for exclusive rights of trademarks with effective measures, enhancing the transferal of suspected trademark criminal cases. First, they took the transferal of suspected trademark criminal cases as a significant action to improve the effect of enforcement, stick to abiding by the law and enforcing strictly, resolutely transferred the suspected trademark criminal cases to judicial organs, and investigated and dealt with their criminal responsibility, fine could not instead the criminal responsibility. The second was to further improve the cooperation with public security organs. On January 13, 2006, SAIC and MPS jointly issued the provisional rule of strengthening the coordination in cracking down the criminal infringement to the exclusive right of trademark. AIC at all levels seriously carried out the rule, strengthened the coordination in cracking down the criminal infringement to the exclusive right of trademark, constantly intensified the efforts on cracking down

trademark crime. Statistics showed AIC at all levels transferred 252 suspected trademark criminal cases and 263 suspects to public organs, increased by 6.78% and 22.33% than that of 2005.

### **3. Stronger Protection on Foreign-related Trademarks**

AIC at all levels thoroughly realized the importance and urgency to protect foreign-related trademarks, took effective measures to severely cracking down foreign-related trademark cases in consideration of international responsibility, national image and self-renovation, effectively protect the legitimate rights and interest of foreign right holders, established the nice international image to protect trademark exclusive rights, made great contribution to safeguarding China's outstanding investing environment. According to statistics in 2006, AIC at all levels dealt with 9,562 foreign-related trademark cases, which was 41.24% more than that of 2004 (6,770). In addition, AIC at all levels constantly enhanced the dialogue, exchange and cooperation with some nations, international organizations and foreign enterprises in the field of trademark, periodically consulted and communicated with the institutions such as committee of protecting famous-brand under the association of foreign enterprises, China branch of American chamber of commerce, Shanghai branch of American chamber of commerce , EU chamber of commerce, JETRO and so on, hearing their opinion and advice in protecting trademarks.

## Economy Report

Economy : INDONESIA  
ISSUES : ANTICOUNTERFEITING & PIRACY INITIATIVES AND  
ITS MODEL GUIDELINES  
Participants : 1. Rita Putri Salma Algamar  
2. Handi Nugraha

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### Background

*APEC economies are committed to reducing trade in counterfeit and pirated goods and to combating transnational networks that produce and distribute such goods through strong and effective border enforcement.*

1. In 2004, following the initiatives of Comprehensive Strategy on Intellectual Property Right (IPR) in APEC, United States, Japan and Korea initiated an APEC Anti-counterfeiting & Piracy Initiative (AAPI). In the APEC-Committee on Trade and Investment (CTI), this issue was concluded under the issue of "Digital Economy & Strengthening IPR". The AAPI consist of among others:
  - Reduce Trade in Counterfeit and Pirated Goods;
  - Reduce Online Piracy;
  - Increase Cooperation to Stop Piracy and Counterfeiting; dan
  - Increase Capacity Building to Strengthen Anti-Counterfeit and Piracy Enforcement.
2. At the early stage, the AAPI covered 3 (three) model guidelines:
  - APEC model guidelines for members' competent authorities to inspect, suspend, seize and destroy goods and equipment used in cases of import, export and transshipment of counterfeit and pirated goods;
  - APEC model guidelines to protect against unauthorized copies (in any manner or form, including digital form, in line with the Berne

Convention, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty);

- APEC model guidelines to prevent the sale of counterfeit goods over the Internet.

The AAPI with the 3 (three) model guidelines have been endorsed by APEC in 2005.

3. In the next steps, it covered 2 (two) more guidelines:
  - APEC Model Guideline on Secure Supply Chains Against Counterfeit and Pirated Goods; and
  - APEC Model Guidelines for effective IPR public awareness campaigns.
4. In order to support those model guidelines, some templates are also introduced:
  - APEC Anti-Counterfeiting and Piracy Points of Contact;
  - Implementation of the APEC Model Guidelines to Reduce Trade in Counterfeit and Pirated Goods.

### **Indonesia Position on APEC Anti-counterfeiting & Piracy Initiative**

5. Generally, Indonesia has expressed its support for the Guidelines that had been endorsed by APEC. It noted that these Guidelines reflected the ideal condition that economies wanted to achieve or best practices that economies could adopt. However, this did not mean that an economy was expected to follow the Guidelines exactly. The Guidelines were not compulsory for all and the extent to which they were implemented or complied with depended on each economy. These Guidelines provided learning opportunities for all economies. However, economies should not be compelled to comply with the Guidelines given that they were non-binding. This position was expressed by Indonesian delegates in the last APEC-IPEG XXIV Meeting.



6. Beside that, this position was also taken because in the last few years the strengthening of the IPR system in Indonesia has become an important one among the priorities set by the Government of Indonesia (GOI). The GOI has undertaken some necessary steps to implement a proper IPR system, which include actions in combating the serious problem of IPR piracy in Indonesia. It is believed that an effective protection system for intellectual property will advance the national interest of promoting creative and innovative activities in the country as well as improving its conditions for investment, trade and technological development.
7. In line of that, a number of significant efforts have also been made by the GOI in order to develop a strong IPR system in the country. Those include the fulfillment of obligation under the TRIPS Agreement, the improvement of the IPR system, the improvement of public awareness on the importance of IPR, the strong commitment in combating IPR infringements, the fostering of closer and more productive cooperation with all related institutions and stakeholders including law enforcement agencies, and human capacity building.

### **Current IPR Laws and Regulations**

8. As understood, in the field of legislation, currently, Indonesia has already seven IPR laws. Six of them are administered by Directorate General of Intellectual Property Rights (DGIPR), Ministry of Law and Human Rights, namely:
  - Law No. 30 of 2000 regarding Trade Secret;
  - Law No. 31 of 2000 regarding Industrial Design;
  - Law No. 32 of 2000 regarding Lay-out Design of Integrated Circuit;
  - Law No. 14 of 2001 regarding Patents;
  - Law No. 15 of 2001 regarding Marks;

- Law No. 19 of 2002 regarding Copyrights;

while another law is administered by Ministry of Agriculture, that is law No. 29 of 2000 regarding Plant Variety Protection.

9. However, there are also some IPR provisions regulated in other laws namely:

- Law no. 18 of 2002 regarding the National System of Research Development and Application of Science and Technology. (Art. 13 (2, 3, and 4); Art. 16 (1), Art. 23 (1 and 2), and Art. 24 (3 and 4). This law is administered by The Office of State Minister for Research and Technology; and
- Law No. 17 of 2006 regarding Amendment of Law No. 10 of 1995 regarding Customs. This law is the legal basis for border control enforcement and administered by Directorate General of Customs and Excise, Ministry of Finance.

10. In international framework, Indonesia is a signatory and participates in a number of international conventions/agreements on IPR, as follows:

- Paris Convention for the Protection of Industrial Property, and the Agreement Establishing the World Intellectual Property Organization (1883-last amended 1979), ratified by Presidential Decree No. 15 of 1997;
- Patent Cooperation Treaty (PCT) and Regulation under the PCT 1970, ratified by Presidential Decree No. 16 of 1997;
- Trademark Law Treaty 1994 (TLT), ratified by Presidential Decree No. 17 of 1997;
- Berne Convention for the Protection of Literary and Artistic Works (1886-Last amended 1979), ratified by Presidential Decree No. 18 of 1997;

- WIPO Copyright Treaty 1996 (WCT), ratified by Presidential Decree No. 19 of 1997; and
- WIPO Performances and Phonograms Treaty 1996 (WPPT), ratified by the Presidential Decree No. 74 of 2004.

11. In the last three years, the GOI has also stipulate some implementing regulation among others:

- Government Regulation No. 29 of 2004 (5 October 2004) regarding High Technology Production Facilities for Optical Discs.
- Government Regulation No. 1 of 2005 (4 January 2005) regarding the Procedure of Application of Industrial Designs.
- Government Regulation No. 2 of 2005 (4 January 2005) regarding Consultant of Intellectual Property Rights.
- Government Regulation No. 19 of 2007 Regarding the Amendment of Government Regulation No. 75 of 2005 Regarding Types and Tariffs on Non-Tax State Revenues in the Ministry of Law and Human Rights.
- Presidential Regulation No. 20 of 2005, regarding Filing, Examination, and Settlement Disputes of Trademark Appeal Procedures.
- Regulation of the Minister of Industry No. 11/M-IND/PER/7/2005 regarding Technical Provision on Machines, Machinery Equipments, Raw Material and Optical Discs.
- Regulation of the Minister of Trade 05/M-DAG/PER/4/2005 (15 April 2005) regarding the Provisions on Importation of Machines, Machinery Equipments, Raw Material and Optical Discs .
- Decree of the Minister of Trade and Industry No. 648/MPP/Kep/10/2004 (18 October 2004) regarding the Report and Supervision of Companies of Optical Discs Industries.

- Decree of Head of the National Agency of Drug and Food Control No. HK.00.05.3.1950 (14 May 2003) regarding the Criteria and Procedure of Drug Registration, which provides that the registration data related to evaluation and analysis of drug is protected by the Agency. The implementation of this regulation is in line with Article 39.3 of the TRIPS Agreement.

12. Relating to internet and/or e-commerce, currently there is no specific law. The draft law on Internet and Electronic Transactions has never been passed or stipulated.

### **Government Policies on Combating Counterfeited Products**

13. In the field of law enforcement, significant number of raids and inspections had been undertaken by the Police in coordination with other related institutions. So far, hundreds of raids and inspections to factories and vendors (retailers) had been undertaken throughout Indonesia, including those undertaken to the three big factories (located in Jakarta, Serang, and Tangerang), as well as to big retailers/vendors among others including the Mangga Dua Mall, Ambassador Mall, Glodok Mall, Kelapa Gading Mall, and Ratu Plaza.

14. On March 27, 2006, the GOI has set up a National Task Force on Tackling IPR Infringement by issuing the Presidential Decree No. 4 of 2006. This decree was issued in order to strengthen and enhance the coordination and cooperation among the government institutions in national level. The duties of the National Task Force are:

- Formulating national policies on tackling IPR infringements;
- Setting up national necessary steps on tackling IPR infringements;
- Determining and evaluating disputes resolution steps, and strategic issues to tackle IPR infringement, including the prevention and the law

enforcement activities to be undertaken, in line with the respective function and duties of the related institutions.

- Guiding the direction and priorities of IPR socialization and education to the related institution and organization, as well as to the public through various activities in order to eliminate IPR infringement.
- To perform and enhance bilateral, regional, and multilateral co-operations in order to combat IPR infringement.

15. The Coordinator Minister of Political and Security has been assigned as the leader of the Task Force in implementing the above duties. As his deputy, he is assisted by the Coordinator Minister of Economic. To ensure a proper implementation/ operational measures, Minister of Law and Human Rights has been assigned as the Executive Chief of the Task Force with the assistance of Minister of Trade. Member of the Task Force comes from various government institutions, including the Head of the National Police and the Attorney General. Operationally, the head of each law enforcement institutions and related institutions will be responsible in ensuring the effective implementation of the policy set up and will prepare its progress report to Minister of Law and Human Rights and Minister of Trade who will then coordinate and compile them to be further evaluated and assessed by the Task Force.

## **Conclusion**

16. Those efforts mentioned above showed that the GOI has taken very seriously on combating the IPR infringements including the counterfeiting products. But if referring to the APEC Anti-counterfeiting & Piracy Initiatives and with all the model guidelines, it was clearly that for the moment, Indonesia will not be able to comply entirely with guidelines. The main reason is that some part of those does not have any legal basis in Indonesia, especially relating to internet and/or e-commerce. In



another hand, it is not easy to create a new law in Indonesia. So that is also why the Guidelines should not compulsory for all and the extent to which they were implemented or complied with depended on each economy. In this regard, each economy was not expected to follow the Guidelines exactly, even though the guidelines reflected the ideal condition that economies wanted to achieve or best practices that economies could adopt.

## ECONOMY REPORT ON ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS.

APEC Training Program on the Enforcement of Intellectual Property Rights, Hanoi, Vietnam, May 31 – June 1<sup>ST</sup> .

*Member Economy: México.*

*Participants: Roman IGLESIAS and Marcela OROZCO*

*Organization: Mexican Institute of Industrial Property (IMPI).*

### **I. Legal Framework.**

#### 1.1 Multilateral Agreements.

Mexico is part to several Intellectual Property Rights (IPR) Treaties. Among the most important are:

- Paris Convention for the Protection of Industrial Property Rights. (1903).
- Berne Convention for the Protection of literary and Artistic Works. (1967).
- Patent Cooperation Treaty (PCT) (1995).
- Agreement on Trade-Related Aspects of Intellectual Property Rights (1995).
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks. (2001)
- Budapest Treaty on the international recognition of the Deposit of Microorganism for the Purpose of Patent Procedure. (2001)
- Locarno Agreement Establishing an international Classification fo Industrial Designs. ( 2001)
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. (2001)
- Strasbourg Agreement Concerning the International Patent Classification. (2001)
- WIPO Copyright Treaty (2002).
- WIPO Performance and Phonograms Treaty (2002).

#### 1.2 Free Trade Agreements (FTA)

At the beginning of 1990, Mexico begins to open the internal market in order to encourage competitiveness and promoting Mexican goods and

services exportation. According to such policy, Mexican Government signed Free Trade Agreements with his major economy partners. Each treaty has a chapter to deal exclusively with IPRs protection.

The first Agreement was the North American Free Trade Agreement NAFTA (USA, Canada and Mexico) in 1991. NAFTA includes provisions that are very similar to TRIPS Agreement. Afterward, FTAs were negotiated with :

- Costa Rica 1995
- G3, Mexico, Colombia and Venezuela 1995.
- Bolivia 1995.
- Nicaragua 1998.
- Chile 1999.
- Israel 2000.
- The European Union 2000.
- The European Free Trade Area 2001.
- Honduras, El Salvador and Guatemala 2001.
- Uruguay 2004.

### 1.3 Domestic Law.

Mexico is a Civil Law country; laws can only be enacted by the Federal or the State Congress. In regard to international treaties, they become national law when they are ratified by the Federal Congress and published.

Another important characteristic is that there are strict rules to set precedents by a court decision. So it is not enough with one case to set precedents.

In Mexico, Intellectual Property protection is offer by two laws:  
Federal Copyright Law (FCL);  
Industrial Property Law (IPL);  
Regulations under the Law of Industrial Property.

## **II. Overview on Copyright Protection.**

Pursuant the article 13 of the FLC protection is provided to the following works:

literary works;  
musical works with or without words;  
dramatic works;  
dances;  
pictorial works or works of drawing;

sculptures and works of three-dimensional art;  
works of caricature and short stories;  
architectural works;  
cinematographic and other audiovisual works;  
radio and television programs;  
computer programs;  
photographic works;  
works of applied art, including works of graphic or textile design;  
works of compilation, consisting of collections of works such as encyclopedias, anthologies and works or other elements like databases, provided that the said collections constitute intellectual creations by reason of the selection or arrangement of their contents or subject matter;

Likewise are protected any other works which may by analogy be considered literary or artistic works shall be included in the category that most closely corresponds to their nature.

The National Copyright Institute (INDA), is the administrative authority in matters of copyright and neighboring rights, is a decentralized body of the Secretariat of Public Education. His main functions are to keep the Copyright Register, to conduct investigations of suspected administrative offenses, to request the competent authorities, to conduct inspection tours and order and implement provisional acts and to prevent or put an end to the violation of copyright and neighboring rights.

### **III. Industrial Property Protection.**

The industrial property system modernization was started with the entry into force of the Law on Promotion and Protection of Industrial Property in June, 1991. This Law highly increased the legal protection of this subject-matter. Also the administrative procedures (for filing and granting) were improved and simplified as well as, enforcement provisions of these rights were strengthen.

A very important provision of that Law was the Mexican Government decision to create a specialized agency to manage the industrial property system that was handled, at that time by the Ministry of Trade and Industrial Development (SECOFI). This provision was further consolidated through the creation of the Mexican Institute of Industrial Property (IMPI).

Moreover, as a part of the modernization process of the Mexican industrial property system, the Law on Promotion and Protection of Industrial Property was modified, thus, on August 2nd, 1994, the amendments of the Law on Promotion and Protection of Industrial

Property, today known as the Industrial Property Law were published in the Official Journal.

This reform had two proposes:

- a) to harmonize the Mexican Law in accordance with the provisions established under the NAFTA and after under the (TRIPS) of the World Trade Organization (WTO).
- b) to consolidate the IMPI as the administrative authority to process and grant industrial property rights and to sanction infringements as administrative enforcement authority.

Nowadays, the protection granted by the Law to the industrial property rights covers the following:

#### Patents.

*Protection granted to:* inventions that are new, result of an inventive step and susceptible of an industrial application that do not contravene the exceptions set out in articles 16 and 19 of the Industrial Property Law.

*Validity:* the patent shall have a term of 20 years, which shall not be renewable and shall be counted from the filing date of the application.

#### Utility Models.

*Protection Granted to:* objects, utensils, appliances or tools which, as a result of a modification in their arrangement, configuration, structure or form, offer a different function with respect to their original use.

*Validity:* 10 years not renewable, counted from the filing date of the application.

#### Industrial Designs.

*Protection Granted to:* new and susceptible of industrial application designs that are created independently of known designs or combinations of known features of designs, and differ significantly therefrom.

*Validity:* the registration of industrial designs shall have a term of 15 years, which shall be non renewable and taken from the filing date of the application.

#### Trade Secrets.

*Protection Granted to:* any information susceptible of industrial application that a individual person or legal entity keeps with a confidential character and is associated with securing or retaining a competitive or economic advantage over third parties in the

conduction of economic activities. This person or entity must have adopted sufficient means or systems for preserving confidentiality and restricted access to it. The information shall consist of documents, electronic or magnetic media, optical discs, microfilm, film or other similar media. Protection lasts for as long as the secret is kept as such.

#### Integrated Circuits Layout Designs.

*Protection granted to:* the original layout designs, incorporated or not, to an integrated circuit that have not been commercially exploited anywhere in the world. The integrated circuit layout design will be subject to registration, when the application is presented at the Institute within the two following years from the date when the applicant first commercially exploited it in an ordinary manner in Mexico or abroad.

*Validity:* 10 years not renewable, counted from the filing date of the application.

#### Trademarks.

*Protection Granted to:* any visible sign that distinguishes products or services from others of the same type or category on the market.

*Validity:* the registration of a trademark shall have a term of 10 years from the filing date of the application, which may be renewed for periods of the same duration.

#### Trade Names.

*Protection granted to:* the trade name of an industrial, commercial or service firm or establishment and the right to its exclusive use shall be protected without the necessity of registration. Any person using a trade name may apply to the Institute for its publication in the Gazette and such publication shall produce the effect of establishing a presumption of good faith in the adoption and use of the trade name.

*Validity:* the effects of publication of the trade name shall last for 10 years counted from the filing date of application, and may be renewed for periods of the same duration.

#### Advertising Slogans.

*Protection Granted to:* sentences or statements which purpose is to make commercial, industrial or service establishments or businesses, products or services known to the public so that they may be distinguished from others of the same kind.

*Validity:* The registration of an advertising slogan shall have a term of 10 years from the filing date of the application, which may be renewed for periods of the same duration.



### Collective Trademarks

*Protection Granted to:* associations or groups of producers, manufacturers, traders or providers of services to distinguish the products or services of their members on the market.

*Validity:* The registration of any collective trademark shall have a term of 10 years, which may be renewed for periods of the same duration.

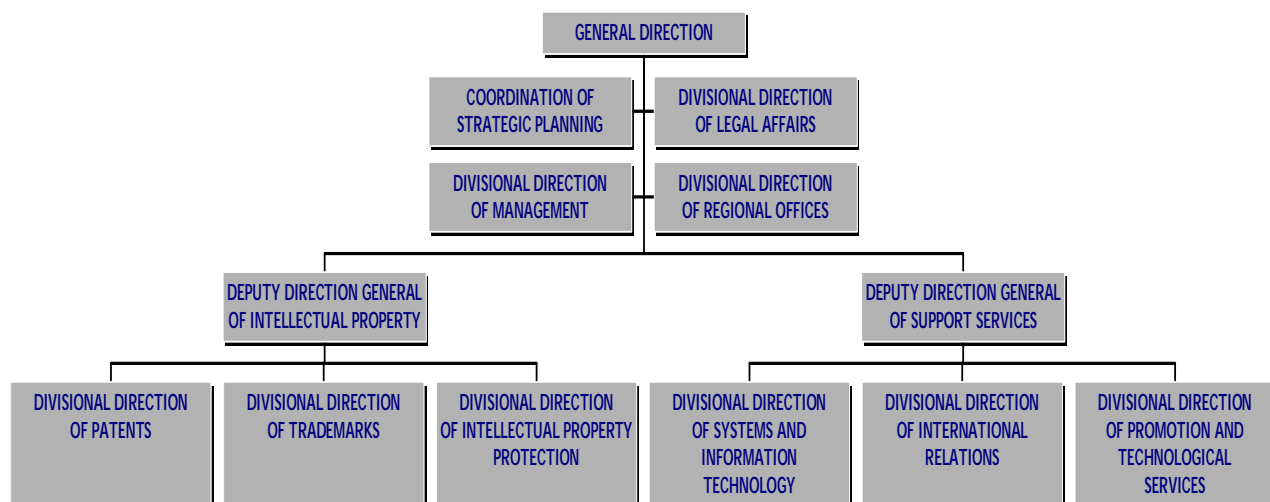
### Appellations of Origin

*Protection granted to:* the name of a geographical region of the country that is used to designate a product originating therein whose quality or characteristics are due exclusively to the geographical environment, including both natural and human factors. The protection begins with a declaration issued to that effect by the Institute.

*Validity:* the duration of the declaration of protection of an appellation of origin shall be determined by the subsistence of the grounds on which it was made, and it shall cease to be effective only by virtue of another declaration of the Institute. The Mexican State shall be the owner of the appellation of origin.

## **IV. The Mexican Institute of Industrial Property (IMPI).**

The IMPI as the administrative authority in industrial property matters, has the power to process applications for, where appropriate to grant, patents and registrations of utility models, industrial designs, trademarks and advertising slogans, to issue declarations of protection of appellations of origin, to authorize the use thereof, to publish trade names and also to record and renewal thereof and the transfer or licensing of their use and exploitation and to substantiate proceedings for the invalidation, lapse and cancellation of industrial property rights.

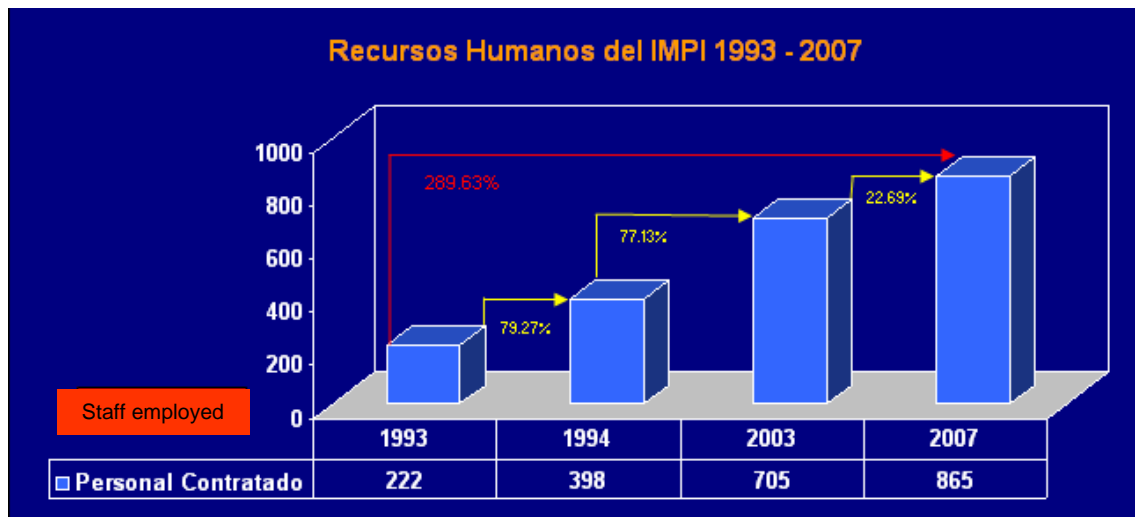


The Law of Industrial Property establishes the administrative procedures to file any application or submission with the Institute that rely on the industrial property rights stated above, as well as to request an administrative declaration of invalidity, lapse or cancellation of the same.

The Institute has federal jurisdiction (its sphere of action is extended to the whole country) and its activity is of an administrative nature. Moreover, the Institute can act as a mediator in the dispute settlement of cases related to the payment of damages derived from the violation of any intellectual property right. The case may be given when the parties involved in such dispute designate the Institute as a mediator and proceed in accordance with the provisions contained in Title IV of Part V of the Commerce Code.

Currently, the Institute employs more than 865 technical and professional employees specialized in different areas, such as engineering, chemistry, biology, law, computer science, economics, communications, international relations, business administration and accounting. The experts are distributed throughout the Directions that compose its structural organization according to the specific functions of each one.

#### Human Resources



#### V. The IMPI as Administrative Enforcement Authority.

Besides being the authority dedicated to granting patents, registration of trademarks, commercial names, business advertisements, utility models and industrial designs, the IMPI is also entitled to sanction the unlawful

use of intellectual property rights and to declare the annulment, cancellation or expiration.

It is important to mention that the Federal Law on Copyrights of 1996 empowers the IMPI to sanction commerce infringements regarding copyrights, and therefore, a new specialized division was created in 1999 within the Direction of Intellectual Property Protection: the Under direction of Trade-Related Infringement. (We can appreciate in Annex 1 which acts constitute trade-related infringements).

These actions are ruled by the “administrative declaration procedure”. The Institute may initiate the administrative declaration procedure ex officio or at the request of any person who has a legal interest therein and provides grounds for his claim.

The Direction of Intellectual Property Right Protection is charged of receipt the application or motions regarding the said actions. Such Direction has the following organization:

<b>Under direction</b>	<b>Head of Department</b>
Unfair Competition Prevention	Infringements and Criminal Acts Inspection and Enforcement's
Industrial Property Procedures	Nullity Cancellation and Caducity
Infringements in Trade Matters	Inspection of Infringements in Trade Matters
Well-know Trademarks, Investigation, and File's Control.	Well-know Trademarks Intelligence and Link with Federal, State and Municipal Authorities.

### 5.1 The Administrative Declaration Procedure

Any request for an administrative declaration has to be in Spanish and contain the following:

- 1) name of the requester and of his representative if any;
- 2) address for the service and receipt of notifications;
- 3) name and address of the other party or of his representative;
- 4) the subject of the request, expressed in clear and precise terms;
- 5) an account of the facts;
- 6) the underlying legal grounds.

On accepting the request for an administrative declaration of invalidity, lapse and cancellation, the Institute notifies the owner concerned

accordingly, allowing him a period of one month within which to make, in writing, whatever statement best serves his interests (in the case of infringements the period given to the alleged infringer is of 10 days).

When the Institute initiates the administrative declaration ex officio, notice is served on the owner concerned, or where applicable on the alleged infringer.

The document in which the owner concerned, or where applicable the alleged infringer, makes his statements must contain:

- 1) the name of the owner concerned or alleged infringer and that of his representative if any;
- 2) the address for the service of notifications;
- 3) exceptions and defenses;
- 4) statements on or rebuttals of each of the points in the request for an administrative declaration;
- 5) legal grounds.

Once the period for the affected owner, or where applicable the alleged infringer, to make his statements, has expired, following a study of applicable precedents and the consideration of all the evidence, the appropriate administrative ruling is handed down and the parties concerned are notified.

In the case of procedures for the administrative declaration of infringement, the same ruling likewise imposes the sanction where one is appropriate.

## 5.2 Provisional Measures (Introduction)

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) establishes international minimum standards for intellectual property protection both in its substantive and enforcement provisions. The enforcement provisions of the TRIPS Agreement (Articles 41-61) provide the basis for determining whether individual countries are adequately able to fight copyright piracy within and their borders.

The provisions oblige Member countries to provide enforcement procedures, including civil or administrative remedies, as well as criminal penalties, that permit effective action against any act of infringement the intellectual property.

The enforcement obligations in the TRIPS Agreement provide a comprehensive foundation for the development of civil, administrative and criminal procedures and remedies necessary for effective enforcement against traditional forms of copyright piracy. It is up to

each government to arrange and coordinate efforts with its police, prosecutors, judges, customs officers, tax authorities, administrative agencies and other authorities to ensure that its enforcement system complies with TRIPS.

The TRIPS enforcement standards require a regime that provides:

- 1.- Effective action against infringements, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.
- 2.- Procedures that are fair and equitable, are not unnecessarily complicated or costly, and do not entail any unreasonable time limits or unwarranted delays.
- 3.- Transparency in the form of written decisions on the merits, made available to the parties to a proceeding without undue delay.
- 4.- Adequate civil or administrative procedures and remedies, including the availability of civil injunctions; the disposal or destruction of pirate goods; and the disposal or destruction of materials and implements the predominant use of which has been in the creation of the infringing goods.
- 5.- Provisional measures, including the availability of *ex parte* civil search orders.
- 6.- Adequate border measures, such as applications to suspend the release of infringing goods at the border, and the disposal or destruction of infringing goods.
- 7.- Adequate criminal procedures, including deterrent penalties; the availability of seizure, forfeiture and destruction of infringing goods; and seizure, forfeiture and destruction of materials and implements the predominant use of which has been in the commission of the offense.

### 5.3 Provisional Measures (Mexican Industrial Property Law)

In administrative declaration procedures relating to the violation of any of the rights protected by the IPL, the Institute may adopt the following provisional measures:

- 1) order the withdrawal from circulation or ban the distribution of merchandise that infringes such rights;
- 2) order the withdrawal from circulation of:
  - a) objects manufactured or used illegally,
  - b) objects, wrappers, containers, packaging, paperwork, advertising material and similar articles that infringe any of the rights;
  - c) signs, labels, tags, paperwork and similar;
  - d) implements or instruments intended or used for the manufacture, or production of any of the articles specified in items (a), (b) and (c), above;

- 3) prohibit, with immediate effect, the marketing or use of the goods by which one of the rights protected by the Law is violated;
- 4) order the seizure of goods;
- 5) order the alleged infringer or third parties to suspend or discontinue acts constituting a violation of the provisions of the Law;
- 6) order the suspension of the rendering of the service or the closing of the establishment where the measures provided for in the foregoing subparagraphs are not sufficient to prevent or avoid the violation of the rights protected.

If the product or service is on the market, the traders or the providers of the service are under the obligation to abstain from disposing of the product or rendering the service as from the date on which the ruling is notified to them.

Producers, manufacturers and importers are under the same obligation, as shall their distributors, who are responsible for immediately recovering any goods that are already on the market.

Before ordering the implementation of the measures referred, the Institute requests the petitioner to:

- 1) prove his ownership of the rights and any of the following circumstances:
  - a) the existence of a violation of his rights,
  - b) the imminence of the violation of his rights,
  - c) the existence of the possibility of irreparable damage being sustained,
  - d) the existence of a justified fear that evidence might be destroyed, concealed, lost or altered;
- 2) provide sufficient security to cover any damages that might be caused to the person against whom the measure is sought;
- 3) provide the necessary information for the identification of the goods, services or establishments with which or in which the violation of industrial property rights has been committed.

A person against whom the measure has been granted may provide counter-security to cover any damages that might be caused to the party seeking it, with a view to having it lifted.

The Institute have to take due account of the seriousness of the infringement and the nature of the measure sought when deciding to implement it and determine the amount of the security and counter-security.



Likewise the IMPI, in the final ruling on the administrative declaration of infringement, decides on the lifting or confirmation of the measures adopted.

#### 5.4 Inspection visits

IMPI, in compliance with industrial Property and Federal Copyright Laws, carries out inspection visit aimed to protect intellectual property rights and repress unfair competition.

Inspection tours are those conducted at locations where products are manufactured, stored, shipped, delivered or marketed, or where services are rendered, for the purpose of examination of the products or the conditions under which the services are rendered, and the documents relating to the activity in question.

Every inspection tour gives rise to the production of a detailed record in the presence of two witnesses proposed by the person with whom the inspection has been arranged, or by the inspector who carried it out if the latter has refused to propose such witnesses.

If in the course of the visit irrefutable proof is provided of any infraction or offence, the inspector can, as a precautionary measure, confiscate the products with which such infringement or offenses were presumably committed, and makes an inventory of the goods confiscated, which are mentioned in the record of the inspection, the person in charge or the proprietor of the establishment in which they were found being designated as depositary if the said establishment has fixed premises, failing which the products are consigned to the IMPI.

If acts are involved that could possibly constitute criminal acts, the Institute states that facts in the ruling that it issues on the subject.

#### 5.5 Infringements

The acts that constitute administrative infringement are listed in the Article 213 of the IPL.

Such list is not restricted; however shows the most important acts in regard to unfair competition and violation of IPRs. (Annex 1)

#### 5.6 Sanctions

Administrative infringements are punished as follows:

- 1) a fine of up to 20,000 days of the general minimum salary payable in Mexico City;
- 2) an additional fine of up to the amount of 500 days of the general minimum salary payable in Mexico City for each day that the infringement persists;
- 3) temporary closure for up to 90 days;
- 4) permanent closure;
- 5) administrative detention for up to 36 hours.

In the event of a second or subsequent offense the fines previously imposed is doubled, but the amount thereof does not exceed three times the applicable maximum.

### 5.7 Felonies

Pursuant the article 223 of IPL the following constitute felonies:

- 1) repeating the conduct provided for in Article 213, subparagraphs II to XXII, once the first administrative sanction imposed on that account has been enforced;
- 2) counterfeiting marks on a commercial scale with ill intent;
- 3) produce, store, transport, introduce to a country, distribute or sell, with ill intent and with commercial speculation purpose, objects that show counterfeit of protected trademarks, and so as contribute or provide in any form, mainly, natural resources aimed to the production of objects that show counterfeit of trademarks protected.
- 4) revealing to a third party a trade secret that was known due to labor activities, position, responsibility, the practice of a profession or business relations, or as a result of the grant of a license for its use, without the consent of the person keeping the trade secret, having been advised of its confidentiality, for the purpose of procuring an economic benefit for oneself or for the said third party, or for the purpose of doing harm to the person keeping the secret;
- 5) appropriating a trade secret without the right to do so and without the consent of the person who keeps it or its authorized user, in order to use it or reveal it to a third party for the purpose of procuring an economic benefit for oneself or for the said third party, or for the purpose of doing harm to the person keeping the trade secret or to the authorized user thereof;
- 6) using information constituting a trade secret that is known due to labor activities, position, responsibility, the practice of a profession or business relations, without the consent of the person keeping it or the authorized user thereof, or that has been revealed to one by a third party, in the knowledge that the said third party was so acting without the consent of the person keeping the trade secret or the authorized user thereof, for the purpose of procuring an economic benefit or doing

harm to the person keeping the trade secret or the authorized user thereof.

### 5.8 Technical Opinions.

The Federal Public Prosecutor could request to the IMPI a technical opinion when violation of IPRs are involved in a trial. The technical ruling can be added to the corresponding investigation and, in due case, will serve as an element for criminal enforcement.

## **VI. Improvement of IP Protection Systems and their Operation**

As part of the activities to promote the protection of the intellectual property rights, Mexico counts with anti-piracy campaigns, but before talking about Mexico's anti-piracy campaigns, the Mexican IP enforcement System will be briefly explain.

In this point, there are several reasons for a country to take efficient measures against piracy activities. The first and perhaps most important reason is that the rights under intellectual property law are been infringed, which means that the authors, performers, phonogram, video gram producers, among others producers, suffer a considerable economic damage. This is detrimental not only to the personal economic interests of the beneficiaries but also to the society as a whole because it hampers the creativity and is contrary to the interest which the intellectual property law is there to serve, including that of establishing domestic cultural industries.

It should be noted that piracy generally hurts the most, those goods and works which are successful; the only ones which are of interest for pirates, causing a detriment to the consumers' interests and to the society as a whole.

The IP protection system in Mexico is based on the Industrial Property Law (IPL) and the Federal Copyright Law (FCL). On the one hand, article 1 of the IPL sets out that provisions of such law are a matter of public policy and applicable throughout the Mexican Republic and IMPI is the authority in charge of its administrative enforcement. Thus, IMPI is not only the administrative authority to handle the domestic IP system, but also to prevent and sanction IP infringement. IP administrative infringements are included in Article 213 of the IPL.

On the other hand, article 2 of the FCL also establishes that its provisions are a matter of public policy and applicable nation wide and additionally points out that its provisions are of social interest and empowers IMPI to enforce the law in certain cases (administrative

infringements on copyrights in the field of commerce). Specifically the Institute, according to Article 234 of the FCL, is in charge of sanctioning the copyrights infringements in the field of commerce in conformity with the procedures and proceedings stipulated in the IPL for industrial property rights, such infringements are established in Article 231 of the FCL.

In Mexico the Administrative Authorities involved on IPR Enforcement are:

- Mexican Institute of Industrial Property (IMPI)
- Customs Administration (Secretariat of the Treasury)

In support of administrative authorities could be found the Attorney's General Office and the Intersecretarial Commission for the Protection, Vigilance and Safeguard of IPR.

Mexico's Judicial Authorities (Civil and Criminal) involved on IPR Enforcement:

- Trial District Court
- Circuit College Court

Within Mexico's legislation, IPR infringement is divided into the following branches:

- Administrative infringements on industrial property, which are foreseen and regulated by the Industrial Property Law (IPL).
- Administrative infringements on copyrights in the field of commerce, which are foreseen by the Federal Copyright Law (FCL), however its procedure is regulated by the IPL and executed by IMPI.

Within Mexico's legislation, IPR criminal offenses are divided into the following branches:

- Criminal acts on industrial property, which are foreseen and regulated by the Industrial Property Law (IPL), and executed by a criminal judicial authority.
- Criminal acts on copyrights, which are foreseen and regulated by the Criminal Code and executed by a criminal judiciary authority.

Additionally, there are provisional measures consisting on, inspection visits to establishments and seizure of goods. Likewise, IMPI carries out ex-officio inspection visits.

IMPI is the administrative authority to whom requests for the administrative declarations such as nullity, caducity, cancellation and infringements shall be filed by the request of the interested party, however IMPI can act ex-officio.

Pursuant Articles 199Bis through 199Bis 3 of the IPL indicate that the provisional measures can be ordered to prevent infringements. Among the provisional measures the Institute may issue orders to withdraw from circulation merchandise infringing IPR or to prohibit its use, as well as ordering the suspension of acts that constitute violations to the provisions of the law. Thus, the moving party shall be required to prove to be the owner of the IPR and that such right is being infringe or is likely to be irreparably infringe if action is not taken immediately, likewise the right holder has to provide assurance sufficient to protect the defendant and to prevent abuse. Once the corresponding procedure is concluded according to the IPL and evidence is presented, IMPI issues the resolution.

According to the IPL sanctions for administrative infringements may include fines up to 20,000 days of the general minimum wage payable in the Federal

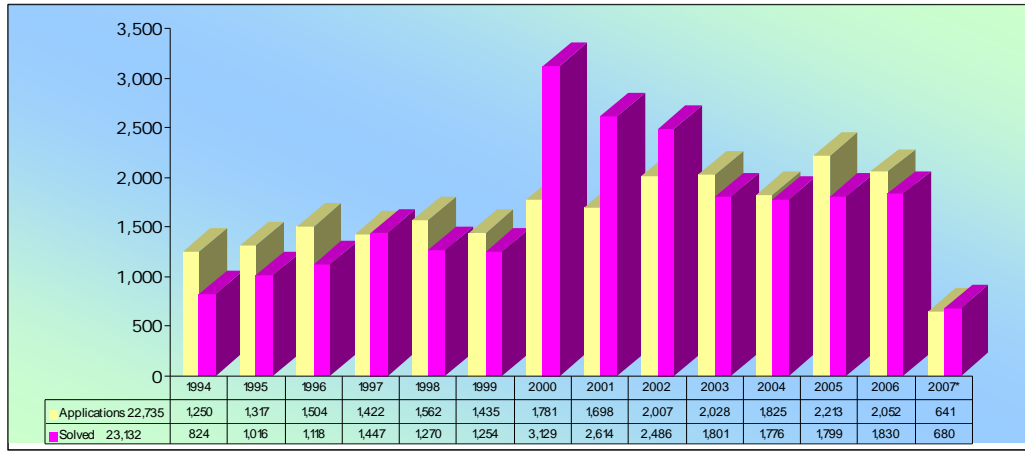
District and for copyrights infringements in the field of commerce fines may go from 1,000 to 10,000 days of the general minimum wage payable in the Federal District according to the FCL.

Where a definitive resolution on the merits of the case declares that an administrative infringement has been committed, IMPI will decide, with hearing of the parties, on the destiny of the seized merchandise that was suspended from free circulation.

In regard to the improvement of the intellectual property (IP) system attached you will find the statistics prepared by the Divisional Direction of Intellectual Property Protection of the Mexican Institute of Industrial Property (IMPI), corresponding to the actions carried out from January to December 2003. Particularly the statistics show the IPR infringement and administrative infringements on copyrights in the field of commerce, inspection visits, seized items, administrative resolutions and sanctions (fines) imposed.

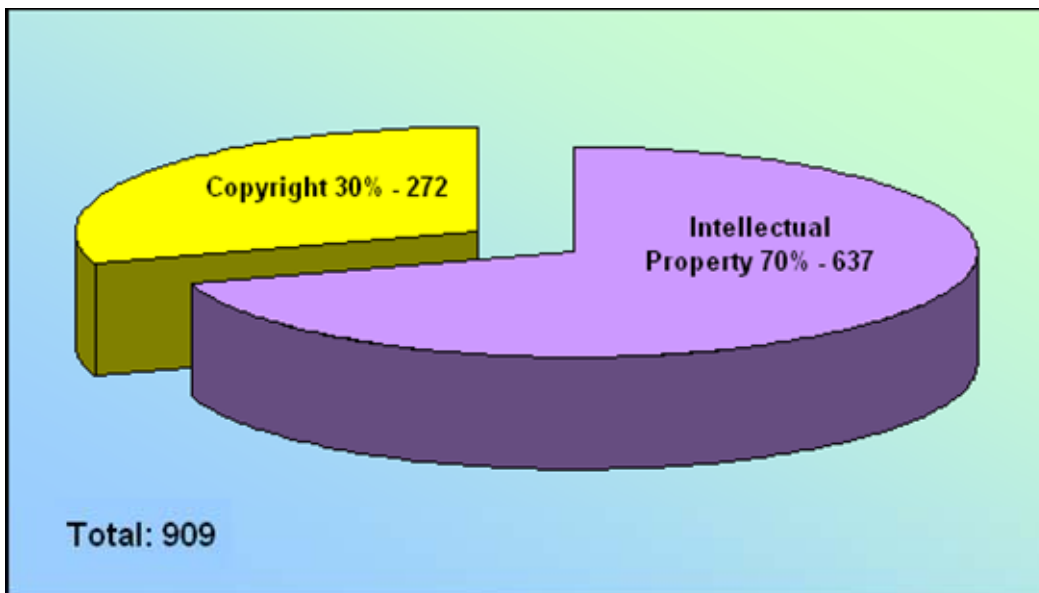
## ENFORCEMENT ACTIONS 1994-2007

### TOTAL OF APPLICATION AND RESOLUTION



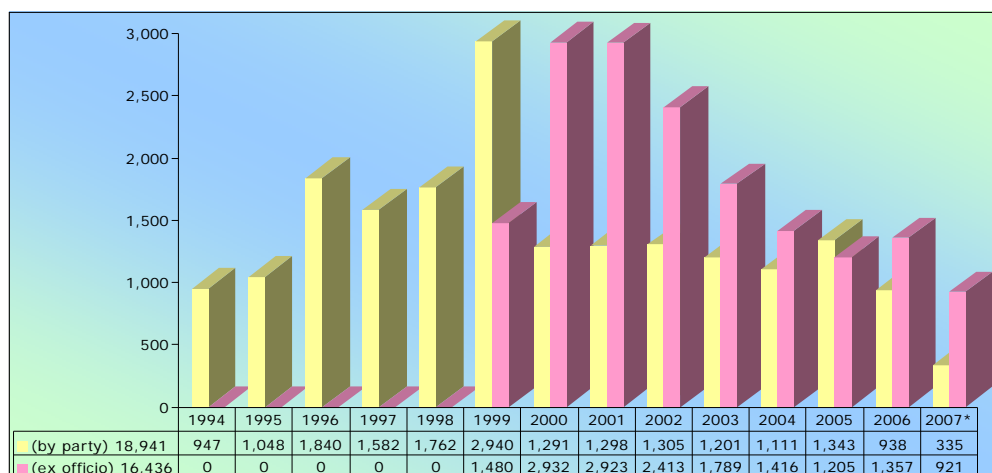
\* April 2007

### TOTAL OF INFRINGEMENTS





## INSPECTION VISITS



\* April 2007

## VII. Policy measures conducive to ensuring adequate enforcement of IP rights.

One of the objectives of the Mexican government is striving to ensure adequate and effective protection of intellectual property rights and reach this, there has been great progress with legislation, administration and enforcement of intellectual property rights according to the standard established by International Treaties signed by Mexico.

Intellectual Property Mexican's legislation is consistent with the enforcement provisions set out by the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). IMPI has played a very important role for the protection and enforcement of intellectual property rights at national level.

For example, as a part of the enforcement actions of the intellectual property rights, IMPI has been carrying out ex-officio inspection visits in those establishments where copyrights and/or neighboring rights are used, with the purpose of verifying the product and the general conditions to render services and all the information and data related to the relevant activity of each establishment. The ex-officio inspection visits are based on Articles 203, 206 and 207 of the IPL and Article 234 of FCL.

(Statistics prepared by the Divisional Direction of Intellectual Property Protection of the Mexican Institute of Industrial Property (IMPI),

corresponding to the ex-officio inspections carried out from January to April 2007 are included in the main visits statistic).

### 7.1 "National Campaign Against Counterfeiting"

Regarding the trends on IP enforcement, it could be stressed, that Mexico has carried out since 1998 a National Campaign against Counterfeiting aiming to enhance and take stronger and coordinated actions against the import, production, distribution, storage and trade of counterfeited goods and unfair competition. This campaign involved Government Agencies and Industry Sectors concerned.

Likewise, such Campaign included the following measures: dissemination of advertisements in mass media against counterfeiting; joint inspection visits (coordinated with the judicial authority); seizure of counterfeited goods; and industry sectors collaboration with corresponding authorities.

The Mexican authorities initiated the intellectual property anti-piracy campaign, which comprises the following three core elements:

1. Amendments to IP legislation, which are in force since May 18, 1999:
  - Industrial Property Law
  - Criminal Code
  - Criminal Procedures Code

The main purposes of the amendments were:

- To classify intellectual property crimes as serious crimes, resulting in:
    - faster procedures for obtaining search and arrest warrants, and
    - denial of bail
  - To increase economic sanctions and terms of imprisonment
2. To increase the number of closings and to provide additional resources for enforcement agencies.
  3. To implement educational programs, regarding intellectual property issues aimed for judges, prosecutors and the general public.

### 7.2 "PIENSALO BIEN" (THINK ABOUT IT)

On the other hand, regarding software issues, the Business Software Alliance (BSA), which is an international organization representing leading software and e-commerce developers in 65 countries around the world, established in 1988, helps governments and consumers understand how software strengthens the economy, worker productivity

and global development; and how its further expansion hinges on the successful fight against software piracy and internet theft.

BSA's efforts include educating computer users about software copyrights; advocating public policy that fosters innovation and expands trade opportunities; and fighting software piracy.

The BSA is composed by worldwide member companies and in Mexico its most active members are: Adobe Systems Incorporated, Autodesk, Inc., Macromedia Inc., Microsoft Corporation, and Symantec Corporation.

On April 16, 2002 was celebrated the Agreement of Co-ordination and Co-operation between the Mexican Institute of Industrial Property (IMPI) and the Software Business Association (BSA).

This agreement was developed with the desire of continue with action against the illegal use and exploitation of the IPR, in the framework of the campaign named "Piensalo Bien" which include:

- Combat against the use, reproduction and installation of software in an illegal way.
- It was developed a public relationships program and mass media campaign, between the months of June 2005 and December 2006, where appeared the logos of both parties.
- Business Software Association prepared and coordinated an awareness campaign, about the damages that produce the IPR infringements, in this campaign IMPI was participating.
- It was established a phone number, which provide information about the intellectual property rights and copyrights and also about the campaign "Piensalo Bien".
- IMPI realize inspection visits to avoid and prevent the illegal use of software.

### 7.3 ASOCIACIÓN MEXICANA DE PRODUCTORES DE FONOGRAMAS Y VIDEOGRAMAS, A.C. (AMPROFON)

The phonografic companies that take part of this Association represent more than 70% of the audio an visual sector in Mexico. AMPROFON is an organization without profits aim, established on April 3, 1963.

Associated member of the International Federation of the Phonographic Industry (IFPI), this latter, is an organization that promote the international record company industry in whole world. Their members include more than 1.400 independent companies and more than 70 countries.

It also has as affiliated member at the industry sector in 48 countries. The mission of this organization (IFPI) is to fight against the piracy; promote fair markets and copyright laws, develop legal and technological conditions to make the recording industry thrive in the digital age and promote the value and importance of the music.

In May 25, 2007 Mexican Institute of Industrial Property ( IMPI) and AMPROFON signed an agreement where both parts have the interest to preserve, make respect and make fulfill the phonograms producer's rights.

In the face of the problem that represent the piracy in software sector, parties have considered opportune and appropriate the legal frame work to develop concretes actions that assist the National Musical Industry, also protect the business initiatives that had been emerged in Mexico in the digital distribution of music over the Internet sector.

Parties agreed develop a campaign against the IPR infringers, committed by using services or programs names "P2P", which allow the distribution, digital reproduction and make available to public of phonograms works as well as downloads and copied without authorization, through Internet.

Mexican Institute of Industrial Property will carry out ex-officio and by party inspection visits to avoid to infringe use of software in established commerce, companies, among others. Also we are going to create a program of awareness and public education, to instill into the population the importance of the IPR and the types of infringements.

By part of AMPROFON, they are going to include the Mexican Institute in theirs advertising campaigns to well known of the functions of IMPI.

#### 7.4 DIGITAL ANIMATION CONTEST

**" El cambio comienza con una idea... y puede ser la tuya"**

Mexican Institute of Industrial Property (IMPI), National Institute of Copyright (INADAUTOR), National Polytechnic Institute (IPN), PROSOFT, Business Software Association Alliance (BSA), and Mexican Center to Protect and Promote Copyrights ( CEMPRO).

Announce all Mexican youngsters to develop digital animation works directed to kids with the objective to promote the legal use of tools of information and recognize the value of the creativity, innovation and software's IPR.

### Categories of the Contest:

- a) Digital Animation: Independent imagines sequence that generate an illusion of movement or life when they are reproduce and which creation o modification involve a software.
- b) Digital Video: Every original story, with characteristics of a report, dramatization, which must include credits of the screenplay authors, direction, music, photo, cartoons.
- c) Educative On-Line Videogame: It is an application of independent software, which only need a Web navigator and a plug-in appropriate for the user's machine.

## **VIII. PUBLIC AWARENESS ACTIVITIES OF THE IMPORTANCE OF IP PROTECTION AND THE FUNCTION OF IP PROTECTION SYSTEMS TO THEIR RESPECTIVE NATIONALS**

Since its creation in 1994, the Mexican Institute of Industrial Property has carried out an intensive program for promoting and disseminating the industrial property system among the different sectors. The main objective is to develop an industrial property culture within enterprises, universities, research centers, independent inventors and the general public.

### 8.1 PROMOTION AND TRAINING

This program takes into consideration several actions, like the participation in conferences, seminars, commercial and technological fairs and expositions, as well as consulting activities, aimed at disseminating industrial property. Among the activities carried out, the following stand out:

Another objective of the promotion activities is to disseminate technological information, which is vital for research and development tasks. IMPI also renders technological information search services by consulting a collection of documents made up of documents that come from several industrial property offices from abroad, like the USPTO, the Spanish Patent and Trademark Office, the EPO, the JPO, among others.

## IMPI's Promotion and Technological Information Services Division...



### Attributes:

- Coordinate and participate in promotion and dissemination activities, such as courses, workshops, tradeshows and technological fairs, in order to promote the industrial property system.
- Promote and disseminate technological information services among enterprises, universities, research centers and independent inventors.

PROMOTION AND TECHNOLOGICAL INFORMATION SERVICE ACTIVITIES 1997-2003								
YEAR	1997	1998	1999	2000	2001	2002	2003	TOTAL 1997-2002
PROMOTION ACTIVITIES	97	124	142	201	265	400 <sup>1</sup>	623	1,852
TECHNICAL SEARCHES	1,299	1,291	1,276	1,332	1,617	1,594	1,357	9,766
DOCUMENTAL RESERVES <sup>2</sup>	7,970,845	8,210,248	16,339,931	17,889,261	20,038,588	23,799,261	26,261,925	26,261,925

<sup>1</sup> The growth is due to the opening of IMPI's Regional Offices, that also take part in promotion activities within their territory.

<sup>2</sup> Documental reserves relate to the amount of complete patent documents or bibliographical references that are stored and managed at IMPI's Technological Information Center.

## 8.2 DECENTRALIZATION OF SERVICES

In order to make IMPI services available to all the users in our country, IMPI set up a decentralization policy by creating 4 Regional Offices that are located in Mexico's main cities. The first Regional Office, the "Western" Regional Office, began operating in 2000; meanwhile the fourth Regional Office, the "Southeast" Regional Office, began operating in 2002, and in the near future will open de "Center" Regional Office.





The purpose of these offices is to act as receiving offices for distinctive sign applications, invention applications, phonetic and figurative search applications, as well as technological information search applications. At the same time, IMPI's Regional Offices provide consulting to the users and carry out promotion and dissemination programs in their region.

### 8.3 LINKING OF SUPPLIERS AND USERS OF TECHNOLOGY, IN ORDER TO SUPPORT MEXICAN INVENTORS

In order to encourage inventiveness among Mexico inventors, IMPI permanently takes part in Technological Forums. The purpose of these forums is to bridge the gap between technology developing inventors or enterprises and the enterprises that require the use of that particularly technology.

This has allowed independent inventors that already have a patent or a patent application to promote their innovations and prototypes. In some cases, the inventors might get economic and logistic support from enterprise for the promotion or commercialization of their inventions.

These activities have been very successful, since they have allowed the identification of technological partners for the development of technologies created by Mexican inventors and researches.

<b>IMPI's participation in Technological Forums</b>			
<b>Concept</b>	<b>Tecnological Forums</b>		<b>Variation</b>
	<b>XIII Edition</b>	<b>XV Edition</b>	
36 m2 stands	2	4	100%
Prototypes displayed	20	47	135%
Visitors	3450	11750	240%
Cosulting of IMPI services	243	482	98%
Consulting of inventors	689	597	-13.35%

The inventors that took part in either edition of the Technological Forum, managed to establish links with enterprises from different sectors, such as: concrete and construction industry, home appliances industry, food industry, tourist services industry, among others.

### 8.4 Industrial Property Dissemination Program among Children and Youngsters.

This program is still on an early stage and I aimed at promoting industrial property among children and youngsters. At the same time, the program

will try to stimulate their creativity and generate a culture of respect of industrial property rights. We have plans to set up intellectual property pavilions at the "Papalote Museo del Niño" where attendants will have the opportunity to learn how to develop their creativity as inventors with a series of games.

At the same time, IMPI is trying to incorporate industrial property as a topic in elementary schools. This topics might be taught through children literature such as story tales and short stories, among others.

## **IX. Criminal Enforcement**

For the exercise of criminal actions arising from the violation of industrial property rights, the plaintiff has to file a petition before the Federal Attorney General's Office; the said petition is handed over to the Public Prosecutor who is the District Attorney for Special Crimes.

Afterward the Public Prosecutor applies the IMPI for a technical opinion of the case as was mentioned above. Once the Public Prosecutor has determined that there is enough evidence sends the case before the Federal Criminal Court that is charged to give a decision.

## **MAIN ACTIONS CARRIED OUT BY MEXICAN INSTITUTE OF INDUSTRIAL PROPERTY (IMPI) ABOUT INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT IN MEXICO.**

### Background

IMPI, since his creation in 1993, has carried out an important campaign against the piracy and the counterfeiting through series of actions directed to the IPR enforcement.

With the passage of the time, IMPI has occurred to the task to enforce his physic and human infrastructure with the aim of combat these kind of illicit practices, as well as a periodically review to the legal framework.

Derivate of the Institute's participation in the Security and Prosperity Partnership with North America (SPP), which arise of the obligations exposed in the XVII chapter of the North America Free Trade Agreement (NAFTA) and the signed of the National Agreement against the Piracy, with others dependencies, it is fortified the IMPI's actions to combat piracy and counterfeiting by the creation of the Under Direction of Well Known Trademarks, Investigation, Control and Documents Process.

### Functions:

### 1) Detect and Deter in pirated and counterfeit goods.

Investigate where and how the illegal merchandise enters, as well as who introduce those goods, also where and who produce and commercialize in order to be able to share information with the rightholders and others competent authorities, to be able to seize and destroy those infringement goods.

To fulfill the aim will be realize:

- Ex-officio inspection visits ( Report Mailbox; requested by Federal, State and Municipal Authorities and by Agreements with the private sector)

### 2) Public Awareness

It is focus to educate the population about the problem that represent the piracy and make conscience of the IPR enforcement in our country.

To fulfill this aim it is contemplated.

- Realize surveys to the consumers and sellers to obtain information and spread the value of creativity.
- Start an advertising campaign, with national cover, coordinated with the public and private sector.
- Realize a contest, to encourage kids and young people to respect the Intellectual Property Rights.

### 3) Statistic and Measurement of the piracy

The Institute will have it's own measures of the piracy. Since January of the current year has been applied surveys and has been realized studies in this matter. This will allow determine the proportions of the magnitude and scope of the problem and take respective actions.

To fulfill the aim it is contemplated:

- Create a new own model based in official numbers and international recommendations.
- Elaborate statistic informs to know the magnitude of the problem and determinate the follow actions.

**MEXICAN INSTITUTE OF INDUSTRIAL PROPERTY TAKEN ACTIONS TO FULFILL AND ADVANCE TO THE SPP.**

- The Mailbox to Report Piracy is sited in the IMPI's web page (www.impi.gob.mx). It is directed to general public. By these means everybody could report any IPR Infringement in Mexico and the IMPI's Department of Intelligence and Link with Federal, State and Municipal Authorities carries out and ex-officio visit to obtain the information about the case. This information is share with the right holder and with other Mexican competent Authorities, so they can file a claim or carry out other actions.
- We count with a campaign named "Piensalo Bien" which pretends to develop a culture of conscience about the importance of the IPR enforcement in all the country.
- It was developed a Digital Contest and the Piracy, in collaboration with other institutions (BSA, SE, INDAUTOR, among others).
- It was signed the National Agreement against the Piracy between the public and private sectors.
- Surveys are realized monthly to obtain different measurements related with this problem.

#### IMPI'S FURTHER ACTIONS

- Campaigns in schools to make the kids give their opinion, by means of drawings, about the piracy in Mexico.
- Establish dialogue with the private sector to develop another campaign with different spots against the piracy.
- Increase the Inspection visits.
- Sign agreements with States and Municipies, to combat the illegal trade.

#### IMPI'S MAIN PROJECTS

- Opening of Regional Office in Puebla, Puebla.
- IMPI's Academy
- Electronics payments
- Patents technologies to small and medium companies (PYMETEC)
- Technological Information Center, construction and equipment.

## ANNEX 1

### Administrative Infringements (Mexican Industrial Property Law)

*Art. 213.* The following shall constitute administrative infringements:

I. engaging in acts contrary to proper practice and custom in industry, commerce and services which amount to unfair competition and which relate to the subject matter regulated by this Law;

II. causing to appear as patented products goods that are not. If the patent has lapsed or been declared invalid there shall be infringement after one year following the date of lapse or, where applicable, the date on which the declaration of invalidity became effective;

III. placing products on sale or in circulation or offering services with the indication that they are protected by a trademark when they are not; if the registration of the mark has expired or been declared invalid or cancelled, there shall be infringement after one year following the date of expiration or, where applicable, the date on which the relevant declaration became effective;

IV. using a mark confusingly similar to another, registered mark to protect products or services identical or similar to those protected by the registered mark;

V. using a registered mark or one confusingly similar thereto without the consent of its owner as an element of a trade name or business name, or vice versa, provided that the said trade names or business names are related to establishments working with the products or services protected by the mark;

VI. using, within the geographical area of the effective clientele or in any part of the Republic in the case provided for in Article 105 of this Law, a trade name that is identical or confusingly similar to another already being used by a third party to protect an industrial, commercial or service establishment in the same or a similar field;

VII. using as marks the names, signs, symbols, abbreviations or emblems referred to in Articles 4 and 90, subparagraphs VII, VIII, IX, XII, XIII, XIV and XV, of this Law;

VIII. using a mark previously registered or confusingly similar thereto as a trade name or business name or part of such a name by a natural person or legal entity whose activity is the production, importation or marketing of goods or services identical or similar to those to which the registered mark is applied without the written consent of the owner of the registration or of the person empowered to give such consent;

IX. performing, in the course of industrial activities or trade, acts that confuse, mislead or deceive the public by causing it wrongly to believe or assume:

(a) that a relation or association exists between a given establishment and that of a third party,

(b) that products are manufactured according to specifications, licenses or authorizations from a third party,

(c) that services are rendered or products sold according to authorizations, licenses or specifications from a third party,

(d) that the product concerned comes from a territory, region or locality different from the true place of origin, in such a way as to mislead the public as to the geographical origin of the product;

X. pursuing or achieving the aim of denigrating the products or services, the industrial or commercial activity or the establishment of another party. This provision shall not apply to the comparison of products or services protected by the mark for the purpose of informing the public, provided that the comparison is not tendentious, false or exaggerated within the meaning of the Federal Consumer Protection Law;

XI. manufacturing or developing goods covered by a patent or by a utility model or industrial design registration without the consent of the owner thereof or without the appropriate license;

XII. offering for sale or bringing into circulation goods covered by a patent or by a utility model or industrial design registration in the knowledge that they have been manufactured or developed without the consent of the owner of the patent or registration or without the appropriate license;

XIII. using patented processes without the consent of the owner of the patent or without the appropriate license;

XIV. offering for sale or bringing into circulation goods that are the result of the use of patented processes in the knowledge that they have been used without the consent of the owner of the patent or of the person who holds an exploitation license;

XV. reproducing or imitating industrial designs protected by registration without the consent of the owner thereof or without the appropriate license;

XVI. using a registered trade announcement or one confusingly similar thereto without the consent of the owner thereof or without the appropriate license for the purpose of advertising goods, services or establishments identical or similar to those to which the announcement applies;

XVII. using a trade name or a name confusingly similar thereto without the consent of the owner thereof or without the appropriate license to distinguish an industrial, commercial or service establishment in the same or a similar branch;

XVIII. using a registered mark without the consent of the owner thereof or without the appropriate license on goods or services identical or similar to those to which the mark is applied;

XIX. offering for sale or bringing into circulation goods identical or similar to those to which a registered mark is applied in the knowledge that the said mark has been used on those goods without the consent of the owner thereof;

XX. offering for sale or bringing into circulation goods to which a registered mark is applied and which have been altered;



- XXI. offering for sale or bringing into circulation goods to which a registered mark is applied after having partially or totally altered, replaced or deleted the said mark;
- XXII. using an appellation of origin without the appropriate authorization or license;
- XXIII. reproducing a protected layout design without the authorization of the owner of the registration in its entirety, or any part that is considered original in itself, by incorporation in an integrated circuit or in another way;
- XXIV. importing, selling or distributing any of the following in violation of the provisions of this Law, without the authorization of the owner of the registration, in any form for commercial purposes:
- (a) a protected layout design;
  - (b) an integrated circuit incorporating a protected layout design; or
  - (c) a product incorporating an integrated circuit that itself incorporates an unlawfully reproduced protected layout design;
- XXV. All other violations of the provisions of this Law that do not constitute offenses.

## **Annex 2**

### Administrative Infringements in the field of Commerce (Mexican Federal Copyright Law)

Art. 231. The following practices constitute trade-related infringements when they are engaged in for direct or indirect profit-making purposes;

- (I) communication to the public or public use of a protected work by any means and in any form without the express prior authorization of the author, his lawful heirs or the owner of the author's economic rights;
- (II) use of the likeness of a person without his permission or that of his successors in title;
- (III) production, manufacture, stocking, distribution, transportation or marketing of unlawful copies of works protected by this Law;
- (IV) the fact of offering for sale, stocking, transporting or distributing works protected by this Law that have been distorted, altered or mutilated without the permission of the owner of the copyright;
- (V) importation, sale, rental or any act that affords possession of a device or system whose purpose is to deactivate electronic devices for the protection of a computer program;
- (VI) retransmission, fixation, reproduction and dissemination to the public, without due authorization, of the broadcasts of broadcasting organizations;
- (VII) use, reproduction or exploitation of a reserved rights notice or computer program without the consent of the owner;

- (VIII) use of exploitation of a name, title or denomination or physical or psychological characteristics or operational characteristics in such a way as to mislead or cause confusion with a preservation of rights that is protected;
- (IX) use of literary or artistic works protected;
- (X) other infringements of the provisions of the Law that involve action on a commercial or industrial scale in relation to works protected by this Law.

## **Seminar on Capacity Building for APEC Member Economies to implement APEC Anticounterfeiting and Piracy initiative.**

### **Peru Report**

#### **I. Precedents**

##### **1.1 National Legislation**

On November the 24<sup>th</sup> of 1992, a statute was enacted creating the National Institute of the Competition Defense and the Intellectual Property Protection (INDECOPI), in which is included the Copyright Office, entity in charge of protecting authors rights.

On December 21<sup>st</sup> of 1993, the Andean Decision N° 351 entered in force, approved by the Commission of the Agreement of Cartagena (Bolivia, Colombia, Ecuador and Peru are part of it), and this community norm is applicable as National Law.

Finally, on April 24<sup>th</sup> of 1996, was published the statute N° 822, Law of Copyright, establishing Copyright Office as the national authority with function is to protect authors and related right holders as in the administrative way.

##### **1.2 International Legislation**

The *Berne Convention* for the protection of literary and artistic works is administered by the World Organization of the Intellectual Property -WIPO-. This is today the most important International Agreement about Copyright, having more than 140 members around the world, and being Peru one of those members since August 20<sup>th</sup> of 1988.

The Agreement on the Aspects of the Laws of Intellectual Property related to the Trade -TRIPS-, is part of World Trade Organization -WTO- Agreement, the same one that came into force on January 01<sup>st</sup>, 1995. TRIPS is obligatory for all the countries that are members of the WTO, among others, Peru. TRIPS regulation is an effective application for Peru since January 01<sup>st</sup>, 2001.

## **II. Role of Copyright Office**

In Peru, like in other countries, the entities entitled to suppress the illicit conducts against intellectual property rights, that are established in the Penal Code, are Criminal Courts and prosecutors, in collaboration with the National Police. An effective eradication of such activities only can be made with arduous works of follow-up, investigation and intelligence that identify the offenders and places of manufacture and distribution of piracy.

Peruvian legislation, overcoming the minimal standard of international protection, has created an administrative authority that is in charge to sanction copyright infringements. It is autonomous and it settle administrative disputes initiated by denounce or ex-officio.

Role of the Copyright Office of INDECOPI includes: law enforcement, authorisation and supervision of collective management societies, management of National Copyright Registry, settlement dispute, and not less importantly, development of dissemination campaigns to create culture of respect to Intellectual Property.

INDECOPI is a unique institution because it gathers three Intellectual Property offices under the same roof. Those three Intellectual Property offices make up an Intellectual Property Area, including common customer services (orientation, information), common dissemination and educational programs, common information and documentation center, and common online services.

## **III. Piracy Current Situation**

In the report N° 301 of 2007, the International Intellectual Property Alliance - IIPA-, indicates that in Peru, persists, a serious problem of piracy, at the same time it recognizes the efforts realized until now in fighting this crime. In this way, IIPA indicates in his annual report a decrease in levels of piracy in two sectors of the industry (software and audio-visual productions) and the maintenance in the levels of other two sectors (phonographic and publishing).

In the case of the software industry, the IIPA indicates that levels of piracy had registered a decrease of 3% between 2005 and 2006 (from 73% to 70 %).

As an additional information, Peruvian Software Producers Association - APESOFT-, membered by most important companies of software producers from Peru (approximately 250), invoices more than 130 million dollars per year, generating more than 6 000 working places with a remunerative level that exceeds 1000 dollars per month. Nowadays, exports of software rise 20 million dollars.

The audio-visual industry, between 2004 and 2005, has registered a decrease of 12 % of piracy (from 75 % to 63 %), and the numbers corresponding to 2006 still being in preparation. As a result of it, businessmen are increasing interest about investment in Peru.

This situation is mirrored in numbers of cinema market, showing an increase of 10 % last year. A growth is being expected for this year, among 5% and 7% in number of spectators. Beneficiary is the consumer who has the cheapest ticket price of Latin America. Even in the DVD sector, even with the failure of Blockbuster Inc., sale of original DVD's has increased in 100% (according to the numbers of the Peruvian Distributors Chamber of Cinema and Video).

Recording and music industry is the most affected sector. High level of piracy (98% of the market) has destroyed the phonographic industry and removed the foreign investment. It's important to emphasize the effort of Peruvian companies that have achieved an increase on their sales of 20%. Also, losses were cut in comparison of the previous years, because, between other factors, the prices of the original compact disks are less expensive, being now, accessible for the Peruvian consumers.

<b>Estimated Trade Losses Due to Copyright Piracy</b> <i>(in millions of U.S. dollars)</i> <b>and Levels of Piracy: 2003-2006</b>								
INDUSTRY	2006		2005		2004		2003	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level
<b>Sound Recording &amp; Musical Compositions</b>	53.5	98%	66.0	98%	68.0	98%	87.0	98%
<b>Business Software</b>	27.0	70%	22.0	73%	22.0	73%	19.0	68%
<b>Motion Pictures</b>	NA	NA	12.0	63%	4.0	75%	4.0	45%
<b>Books</b>	NA	NA	9.0	NA	8.5	NA	8.5	NA
<b>Totals</b>	80.5		109.0		102.5		118.5	

www.ipa.com

#### **IV. EFFECTIVE MEASURES AND STRATEGY**

The Multi-Sectorial Commission against Contraband and Piracy that includes different entities as National Police, Public Prosecutor Department, Indecopi, etc, are implementing efforts to continue struggling against piracy and contraband and some actions for pursuit the laundering of money against the principal importers of optical discs, since this part of the ilegal business is basically the more porfitable.

Criminal Prosecution System has been extended in it's functions adding piracy crimes offenses to custom related criminal offenses in it's prosecution in charge of specialized prosecutors. Similary, specialized body in Criminal Courts has been created for Intellectual Property related crime offenses, and is currently being trained improve by national and foreign experts.

Copyright Office has been leading an important joint effort by public and private sector in order to fight against piracy activities. Audio- visual, phonographic and software industry are part of the "Anti Piracy Crusade". Private sector has been funding major raids and publicity campaigns in cinema screens, radio stations and press. Similar campaigns have been organised with book publishing industry, software industry, and authors society.

It's necessary to emphasize that in actions organized by Copyright Office, during the year 2006, where seized pirate products for more than two million dollars.

**Jorge Córdova**

**Pamela Ugaz**



## **ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS (IPR)**

### **1. IPR ENFORCEMENT IN THE PHILIPPINES**

Under Republic Act No. 8293 or the Intellectual Property Code (IP Code, effective January 1998), the Intellectual Property Office of the Philippines (IP Philippines) is primarily tasked to administer and implement the state policies on the protection, utilization and enhancement of enforcement of IPR in the country. Furthermore, the IP Code mandates the IP Philippines to coordinate with other government agencies and the private sector to strengthen IPR protection. Consequently, IP Philippines convened the Intellectual Property Rights Enforcement Action Panel (IP-REAP) in 2002. The Panel is a joint government and private sector body established to provide coordination and cooperation among the various government enforcement agencies and the private sector. Among the enforcement agencies that comprise the Panel are the Bureau of Customs (BOC), the Philippine National Police (PNP), the National Bureau of Investigation (NBI), the Department of Justice (DOJ), and the Optical Media Board (OMB). Also part of the Panel is the Supreme Court, which controls the Judiciary, and takes part in the enforcement of IPR through its adjudicatory function.

Extending its network, IP Philippines joined the National Law Enforcement Coordinating Council (NALECC) to ensure closer coordination and a concerted approach towards IPR enforcement.

In 2005, Director General Adrian S. Cristobal, Jr., seeing the need to further strengthen and enhance government efforts on IPR protection, assembled the National Committee for Intellectual Property Rights, an inter-agency group composed essentially of the enforcement agencies belonging to IP-REAP, with the inclusion of the National Book Development Board. The Committee formulated a 2005-2006 Action Plan to pursue their objectives.

The BOC has, way back in 2002, issued Customs Administrative Order No. 06-2002, which provides for the administrative guidelines to expedite the handling and disposition of infringing goods pursuant to the provisions of the IP Code and the provisions on border measures of the TRIPS Agreement. The following year, the BOC created a permanent Intellectual Property Unit to further strengthen customs border control and centralize border policy development and implementation.

A new law primarily enacted to address the problem of video piracy was in effect since March 2004. Known as the Optical Media Act (Republic Act No. 9239), the law regulates the manufacture of optical media, regardless of content, as well as the importation of materials and equipments used in the production thereof. The law is implemented by the Optical Media Board, which was created out of the old Videogram Regulatory Board whose mandate was limited only to the regulation of entertainment media.

The Electronic Commerce Act (Republic Act No. 8792) was enacted in 2000 in the aftermath of the "I love you" virus that wreaked havoc to computers globally. It complements the IP Code as it defines the liability for computer hacking and piracy. The Department of Trade and Industry, in coordination with the National Computer Center and other relevant government agencies, is tasked to implement the law.

In February 2002, the Supreme Court introduced the new "Rules on Search and Seizure in Civil Actions for Infringement of Intellectual Property Rights", which provided for an ex parte procedure in the application for such warrants and can be availed of even if no case has yet been filed.

### **2. CIVIL IPR ENFORCEMENT**

#### **2.1 Competent Courts**

The Supreme Court, through a Resolution (A.M. No. 03-03-03-SC) effective 01 July 2003, has designated sixty-six (66) Regional Trial Courts as Special Commercial Courts that would have jurisdiction over cases involving intracorporate and intellectual property issues, apart from the usual civil and criminal cases that are assigned to them.

### **2.1.1 First instance**

Intellectual property cases would be adjudicated in the first instance with the abovementioned courts.

### **2.1.2 Appeal**

Decisions of the Special Commercial Courts are appealable to the Court of Appeals on questions of fact and law, whose decisions are, in turn, appealable to the Supreme Court on questions of law.

## **2.2 Remedies available (compensation, injunctions - preliminary and final)**

Under the IP Code, the following remedies are available for patent infringement:

### *Sec. 76. Civil Action for Infringement*

76.1. The making, using, offering for sale, selling, or importing a patented product or a product obtained directly or indirectly from a patented process, or the use of a patented process without the authorization of the patentee constitutes patent infringement.

76.2. Any patentee, or anyone possessing any right, title or interest in and to the patented invention, whose rights have been infringed, may bring a civil action before a court of competent jurisdiction, to recover from the infringer such damages sustained thereby, plus attorney's fees and other expenses of litigation, and to secure an injunction for the protection of his rights.

76.3. If the damages are inadequate or cannot be readily ascertained with reasonable certainty, the court may award by way of damages a sum equivalent to reasonable royalty.

76.4. The court may, according to the circumstances of the case, award damages in a sum above the amount found as actual damages sustained: Provided, That the award does not exceed three (3) times the amount of such actual damages.

76.5. The court may, in its discretion, order that the infringing goods, materials and implements predominantly used in the infringement be disposed of outside the channels of commerce or destroyed, without compensation.

76.6. Anyone who actively induces the infringement of a patent or provides the infringer with a component of a patented product or of a product produced because of a patented process knowing it to be especially adopted for infringing the patented invention and not suitable for substantial non-infringing use shall be liable as a contributory infringer and shall be jointly and severally liable with the infringer.

*Sec. 77. Infringement Action by a Foreign National.* - Any foreign national or juridical entity who meets the requirements of Section 3 and not engaged in business in the Philippines, to which a patent has been granted or assigned under this Act, may bring an action for infringement of patent, whether or not it is licensed to do business in the Philippines under existing law.

*Sec. 79. Limitation of Action for Damages.* - No damages can be recovered for acts of infringement committed more than four (4) years before the institution of the action for infringement.

***For trademark infringement:***

## Sec. 156. *Actions, and Damages and Injunction for Infringement*

156.1. The owner of a registered mark may recover damages from any person who infringes his rights, and the measure of the damages suffered shall be either the reasonable profit which the complaining party would have made, had the defendant not infringed his rights, or the profit which the defendant actually made out of the infringement, or in the event such measure of damages cannot be readily ascertained with reasonable certainty, then the court may award as damages a reasonable percentage based upon the amount of gross sales of the defendant or the value of the services in connection with which the mark or trade name was used in the infringement of the rights of the complaining party.

156.2. On application of the complainant, the court may impound during the pendency of the action, sales invoices and other documents evidencing sales.

156.3. In cases where actual intent to mislead the public or to defraud the complainant is shown, in the discretion of the court, the damages may be doubled.

156.4. The complainant, upon proper showing, may also be granted injunction.

### ***For copyright infringement:***

#### SEC. 216. *Remedies for Infringement*

216.1. Any person infringing a right protected under this law shall be liable:

(a) To an injunction restraining such infringement. The court may also order the defendant to desist from an infringement, among others, to prevent the entry into the channels of commerce of imported goods that involve an infringement, immediately after customs clearance of such goods.

(b) Pay to the copyright proprietor or his assigns or heirs such actual damages, including legal costs and other expenses, as he may have incurred due to the infringement as well as the profits the infringer may have made due to such infringement, and in proving profits the plaintiff shall be required to prove sales only and the defendant shall be required to prove every element of cost which he claims, or, in lieu of actual damages and profits, such damages which to the court shall appear to be just and shall not be regarded as penalty.

(c) Deliver under oath, for impounding during the pendency of the action, upon such terms and conditions as the court may prescribe, sales invoices and other documents evidencing sales, all articles and their packaging alleged to infringe a copyright and implements for making them.

(d) Deliver under oath for destruction without any compensation all infringing copies or devices, as well as all plates, molds, or other means for making such infringing copies as the court may order.

(e) Such other terms and conditions, including the payment of moral and exemplary damages, which the court may deem proper, wise and equitable and the destruction of infringing copies of the work even in the event of acquittal in a criminal case.

## **2.3 Execution of Court Orders**

### **2.3.1 Local Court Orders**

Under Section 1 Rule 39 of the Rules of Court, execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be

enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution.

### **2.3.2 Overseas Court Orders**

Per Section 48 Rule 39 of the Rules of Court, the effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing; and

(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

## **3. CRIMINAL IPR ENFORCEMENT**

### **3.1 Police Authorities (commercial, market, economic police etc.)**

Philippine National Police.

### **3.2 Competent courts and jurisdiction (including appeal)**

See 2.1.

### **3.3 Penalties**

#### ***For patent infringement***

Sec. 84. *Criminal Action for Repetition of Infringement.* - If infringement is repeated by the infringer or by anyone in connivance with him after finality of the judgment of the court against the infringer, the offenders shall, without prejudice to the institution of a civil action for damages, be criminally liable therefor and, upon conviction, shall suffer imprisonment for the period of not less than six (6) months but not more than three (3) years and/or a fine of not less than One hundred thousand pesos (PhP 100,000) but not more than Three hundred thousand pesos (Php 300,000), at the discretion of the court. The criminal action herein provided shall prescribed in three (3) years from date of the commission of the crime.

#### ***For trademark infringement***

SEC. 170. *Penalties.* - Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P50,000) to Two hundred thousand pesos (P200,000), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1. (Arts. 188 and 189, Revised Penal Code)

#### ***For copyright infringement***

SEC. 217. *Criminal Penalties.* -

217.1. Any person infringing any right secured by provisions of Part IV of this Act or aiding or abetting such infringement shall be guilty of a crime punishable by:

(a) Imprisonment of one (1) year to three (3) years plus a fine ranging from Fifty thousand pesos (P50,000) to One hundred fifty thousand pesos (P150,000) for the first offense.

(b) Imprisonment of three (3) years and one (1) day to six (6) years plus a fine ranging from One hundred fifty thousand pesos (P150,000) to Five hundred thousand pesos (P500,000) for the second offense.

(c) Imprisonment of six (6) years and one (1) day to nine (9) years plus a fine ranging from Five hundred thousand pesos (P500,000) to One million five hundred thousand pesos

(P1,500,000) for the third and subsequent offenses.

In all cases, subsidiary imprisonment in cases of insolvency.

216. 2. In an infringement action, the court shall also have the power to order the seizure and impounding of any article which may serve as evidence in the court proceedings

#### **4. BORDER CONTROL**

##### **4.1 Registration Procedure**

An IPR holder/Owner, or his agent, shall accomplish the prescribed Application Form and submit it to the Bureau of Customs' Intellectual Property Unit (IPU) Secretariat together with the following requirements:

a. Affidavit attesting that:

a.1 the applicant is the rightful owner of the IPR sought to be recorded, or,

a.2 in the case of a representative or an agent, that he is duly authorized by the IPR Holder/Owner to make the application, and

a.3 that the persons or other entities in the submitted list, if any, are so authorized or not so authorized to make the importation or distribution of such products covered by the IPR, together with a sufficient description of the products covered by the IPR sought to be recorded, and samples thereof, if possible.

b. Documentary requirements:

b.1 In the case of IPR registered with the IPO, three (3) certified true copies of the Certificate of Registration issued by the said office.

b.2 In the case of IPR not registered with the IPO, three (3) certified true copies of a decision or resolution of a court or other competent authority declaring or recognizing the claim to an IPR.

b.3 In the case of copyright and related rights, an Affidavit executed by the IPR Holder/Owner or his duly authorized representative stating that:

(i) at the time specified therein, copyright subsists in the work or other subject matter;

(ii) he or the person named therein is the owner of the copyright; and

(iii) the copy of the work or other subject matter annexed thereto is a true copy thereof.

c. Payment of recordation fee of PhP Two Thousand (P 2,000.00) per product but in no case to exceed PhP Twenty Thousand (P 20,000.00) per IPR Holder/Owner.

Upon compliance of the above requirements, the IPU Secretariat shall prepare, for the Commissioner's signature, a Customs Memorandum Circular addressed to all Collectors of Customs setting forth the fact of recordation together with a description or model of the registered product/s.

##### **4.2 Registration Authority**

Bureau of Customs.

##### **4.3 Relevant Courts**

See 2.1.

##### **4.4 Remedies (Injunction)**

See 2.2.

#### **5. ADMINISTRATIVE IPR ENFORCEMENT**

##### **5.1 Role of Patent Office (If any)**

*Sec. 5. Functions of the Intellectual Property Office (IPO)*

x x x

f) Administratively adjudicate contested proceedings affecting intellectual property rights; and

Sec.10. *The Bureau of Legal Affairs* . - The Bureau of Legal Affairs shall have the following functions:

10.1. Hear and decide opposition to the application for registration of marks; cancellation of trademarks; subject to the provisions of Section 64, cancellation of patents, utility models, and industrial designs; and petitions for compulsory licensing of patents;

10.2. (a) Exercise original jurisdiction in administrative complaints for violations of laws involving intellectual property rights: Provided, That its jurisdiction is limited to complaints where the total damages claimed are not less than Two hundred thousand pesos (PhP 200,000): Provided further, That availment of the provisional remedies may be granted in accordance with the Rules of Court. The Director of Legal Affairs shall have the power to hold and punish for contempt all those who disregard orders or writs issued in the course of the proceedings.

(b) After formal investigation, the Director for Legal Affairs may impose one (1) or more of the following administrative penalties:

(i) The issuance of a cease and desist order which shall specify the acts that the respondent shall cease and desist from and shall require him to submit a compliance report within a reasonable time which shall be fixed in the order;

(ii) The acceptance of a voluntary assurance of compliance or discontinuance as may be imposed. Such voluntary assurance may include one or more of the following:

(1) An assurance to comply with the provisions of the intellectual property law violated;

(2) An assurance to refrain from engaging in unlawful and unfair acts and practices subject of the formal investigation;

(3) An assurance to recall, replace, repair, or refund the money value of defective goods distributed in commerce; and

(4) An assurance to reimburse the complainant the expenses and costs incurred in prosecuting the case in the Bureau of Legal Affairs.

The Director of Legal Affairs may also require the respondent to submit periodic compliance reports and file a bond to guarantee compliance of his undertaking

(iii) The condemnation or seizure of products which are subject of the offense. The goods seized hereunder shall be disposed of in such manner as may be deemed appropriate by the Director of Legal Affairs, such as by sale, donation to distressed local governments or to charitable or relief institutions, exportation, recycling into other goods, or any combination thereof, under such guidelines as he may provide;

(iv) The forfeiture of paraphernalia and all real and personal properties which have been used in the commission of the offense;

(v) The imposition of administrative fines in such amount as deemed reasonable by the Director of Legal Affairs, which shall in no case be less than Five thousand pesos (PhP 5,000) nor more than One hundred fifty thousand pesos (PhP 150,000). In addition, an additional fine of not more than One thousand pesos (PhP 1,000) shall be imposed for each day of continuing violation; (vi)

The cancellation of any permit, license, authority, or registration which may have been granted by the Office, or the suspension of the validity thereof for such period of time as the Director of Legal Affairs may deem reasonable which shall not exceed one (1) year;

(vii) The withholding of any permit, license, authority, or registration which is being secured by the respondent from the Office;

(viii) The assessment of damages;

(ix) Censure; and;

(x) Other analogous penalties or sanctions.

## 5.2 Relevant Courts

See 2.1.

## 6. COMMENTS

Continue relentless enforcement operations.

Promote the creation of permanent IP units in relevant government agencies with proper budgetary and staff support.

Conduct vigorous public awareness and education campaign with the help of the government's media and information agencies, the Department of Education, and the private sector.

Focus on prosecution and conviction with the new IP Prosecutors unit in the Department of Justice and the designated IP prosecutors nationwide.

Continue collaboration with the Supreme Court and the Philippine Judicial Academy for the specialized IP training and support for judges and court personnel.

Creation of two or three Special IP and International Trade Courts similar to Thailand's.

Promote Mediation as an alternative to litigation in the resolution of cases and disputes involving IPR.



**PNP-CIDG ACCOMPLISHMENT ON IPR VIOLATIONS  
PERIOD COVERED: January- May 2007**

**January 2007**

a). **January 5, 2007-** Implementation of 32 Search Warrants, Nos. A07-10801 to A07-10832 for violation of Sec. 155 in rel to Sec 170 of RA 8293 by joint elements of DSOD, NCR-ECIDT, ADCI, TF MAVERICK, AFCCD and SRU under the direct supervision of PSUPT EDGARDO H. DIVINA, together with QUASHA, ANCHETA, PEÑA and NOLASCO law Firm representative of Rolex Centre Phils, Ltd., at 32 Stalls in Greenhills Shopping Center located at Brgy Greenhills, San Juan, Metro, Manila which yielded positive results to seventeen (17) stalls while the rest is negative, resulted in the confiscation/seizure of One Hundred Forty (140) pieces and Twenty One (21) pieces of assorted Rolex watch boxes, with estimated market value of PhP 140,000.00.

**RECAPITULATION**

<b>Nr of Operations Conducted</b>	-	<b>01</b>
<b>Nr of Persons Arrested</b>	-	<b>00</b>
<b>Nr of Search Warrant Implemented</b>	-	<b>32</b>
<b>Nr of Cases Filed</b>	-	<b>00</b>

b) January 26, 2007- Implementation of Search warrant, No. AO7-10891 issued by Hon. Judge Reynaldo G. Ros for violation of Section 168 in rel of Section 170 of RA 8293 by elements of the Division team led by PSUPT MARIO N. RARIZA together with representatives of Nestle Corp. at Residence-cum-Warehouse located at No. 242 Salonga St., corner Buendia St., Balut, Tondo, Manila that resulted to the arrest of one Ramona Delos Santos and confiscation/seizure of nine (9) pieces of fake Nescafe Doy pack/star-up pouch and ninety nine empty boxes with markings Nescafe and various documents with estimated value of **PhP1,210.00**.

**RECAPITULATION**

<b>Nr of Operations Conducted</b>	-	<b>01</b>
<b>Nr of Persons Arrested</b>	-	<b>01</b>
<b>Nr of Search Warrant Implemented</b>	-	<b>01</b>
<b>Nr of Cases Filed</b>	-	<b>01</b>

**February 2007**

1) **February 1, 2007-** Implementation of 3 Search Warrants, Nos. A07-10900 to A07-10902 issued by Hon. Judge Reynaldo G. Ros for violation of Sections. 155.1, 168, 168.2, 168.3 in rel to Sec 170 of RA 8293 elements of the Division under direct supervision of PSUPT MARIO N. RARIZA JR together with representatives from Del Monte Corp at the place/establishments indicated, which resulted in the confiscations/seizure of various documents, materials for printing labels and assorted counterfeit products of Del Monte Corp; The estimated market value of confiscated items was pegged at **PhP 2,210,000.00**

**RECAPITULATION**

<b>Nr of Operations Conducted</b>	-	<b>03</b>
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<b>Nr of Persons Arrested</b>	-	<b>00</b>
<b>Nr of Search Warrant Implemented</b>	-	<b>03</b>
<b>Nr of Cases Filed</b>	-	<b>00</b>

2) February 16, 2007 - Implementation of 4 Search warrants Nos. AO7-10971 to 10974 issued by Hon. Judge Reynaldo G. Ros for violation of Section 168 in rel of Section 170 of RA 8293 by elements of the Division team led by PSUPT MARIO N. RARIZA together with representatives of Nestle Corp. at suspected retailers/distributors of counterfeit Nestle products in Bacoor Public Market, Bacoor Cavite that resulted to the arrest of spouses Ben Ong and Didi Ong and confiscation/seizure of assorted counterfeit Nestle Products with estimated value of **PhP150,000.00**.

#### RECAPITULATION

<b>Nr of Operations Conducted</b>	-	<b>01</b>
<b>Nr of Persons Arrested</b>	-	<b>02</b>
<b>Nr of Search Warrant Implemented</b>	-	<b>04</b>
<b>Nr of Cases Filed</b>	-	<b>01</b>

3) February 09, 2007- Implementation of Search Warrant, No. A07-10915 issued by Hon Judge Reynaldo G. Ros for violation of Sec. 177.1 in rel to Sec 217 of RA 8293 copyright Infringement by joint elements of, AFCCD and 7<sup>th</sup> RCIDU under the direct supervision of PSSUPT NOEL DE LOS REYES, together with Atty Ed Pangan representative from Microsoft for Visayas and Mindanao at CYBER JAVA INTERNET CAFÉ located at unit 302-03B, 3<sup>rd</sup> Level, SM City Cebu, North Reclamation Area, Cebu City that resulted to confiscations/seizures of five (5) complete sets of computer hardware installed with pirated Microsoft operating systems and arrest of DONNA MATUTINAO y Tabamo and MARYSUR SILUD y Villasin having a total approximate market value of **PhP 234, 000.00**.

#### RECAPITULATION

<b>Nr of Operations Conducted</b>	-	<b>01</b>
<b>Nr of Persons Arrested</b>	-	<b>02</b>
<b>Nr of Search Warrant Implemented</b>	-	<b>01</b>
<b>Nr of Cases Filed</b>	-	<b>01</b>

4) February 22, 2007 - Implementation of 25 Search warrants Nos. O7-10971 to 10974 issued by Hon. Judge Felixberto T. Olalia Jr. for violation of Section 168 in rel of Section 170 of RA 8293 by elements of the Division team led by PSUPT MARIO N. RARIZA together with representatives of Louis Vuitton Corp at suspected distributors of counterfeit Louis Vuitton products in Robinson's Place, Malate, Manila that resulted to the confiscation/seizure of 13, 432 pieces of assorted counterfeit Louis Vuitton Products with estimated value of **PhP163,200,000.00**

#### RECAPITULATION

<b>Nr of Operations Conducted</b>	-	<b>01</b>
<b>Nr of Persons Arrested</b>	-	<b>00</b>
<b>Nr of Search Warrant Implemented</b>	-	<b>25</b>
<b>Nr of Cases Filed</b>	-	<b>00</b>

## March 2007

1) **March 14, 2007-** Implementation of 3 Search Warrants, Nos. A07-11080 to A07-11082 issued by Hon. Judge Reynaldo G. Ros for violation of Sections 177.1 in rel to Sec 217 of RA 8293 elements of the Division under direct supervision of PSUPT MARIO N. RARIZA JR together with representatives from Microsoft Corp implemented the aforementioned search warrants against owners/occupants of SPA NET-café, TELETEX ENTERPRISE, and BOYZTREK internet café all in Davao City that resulted to the confiscations of 136 desktop computer set installed with pirated Microsoft software including computer accessories. Likewise, Rolando Baes, owner of TELETEX ENTERPRISE was arrested and presented for inquest before City Prsosecutor Paul B. Bendigo for viol of 177.1 in rel to Sec 217 of RA 8293. The seized items with estimated value of **PhP 4, 028, 500.00**.

### RECAPITULATION

<b>Nr of Operations Conducted</b>	-	<b>01</b>
<b>Nr of Persons Arrested</b>	-	<b>01</b>
<b>Nr of Search Warrant Implemented</b>	-	<b>03</b>
<b>Nr of Cases Filed</b>	-	<b>01</b>

2) **March 26, 2007-** Implementation of 14 Search Warrants, Nos. 07-11115 to 07-11128 issued by Hon. Judge Mercedes Posada-Lacap 2<sup>nd</sup> Vice Executive Judge of RTC Branch 15, Manila for violation of Sections 155 and 168 in rel to Sec 170 of RA 8293 elements of the Division under direct supervision of PSUPT MARIO N. RARIZA JR together with representatives from LACOSTE implemented the aforementioned search warrants against owners/occupants of 7 stalls located at ground and 2<sup>nd</sup> floor, Fashion Market of Market! Market! Shopping Mall, Bonifacio Global City, Taguig Metro Manila resulted to the confiscations of 1416 pieces of assorted LACOSTE products and the arrest of Pacita Romero, Marife Barcenal, Jane Solano, Karen Retonio, Catherine Clarito, Lydia Toc and Maria Teresita Palanas all owners/occupants of the aforementioned stalls the abovementioned owners/occupants was charged for viol of Sections 155 and 168 in rel to sec 170 of RA 8293. The seized items with estimated market value of **PhP 4M**.

### RECAPITULATION

<b>Nr of Operations Conducted</b>	-01
<b>Nr of Persons Arrested</b>	- 07
<b>Nr of Search Warrant Implemented</b>	- 14
<b>Nr of Cases Filed</b>	- 02

3) **March 29, 2007-** Implementation of 17 Search Warrants, Nos. A07-11130 to A07-11146 issued by Hon. Judge Reynaldo G. Ros, Executive Judge of RTC Branch 33, Manila for violation of Section 168 in rel to Sec 170 of RA 8293 joint elements of the Division and PNP SAF under direct supervision of PSUPT MARIO N. RARIZA JR together with representatives from LOUIS VUITTON implemented the aforementioned search warrants against owners/occupants of 17 Stalls all located at ground floor, Harrison Plaza, A. Mabini St., Manila that resulted to the confiscations of 2,486 pieces of assorted Louis Vuitton products. The seized items with estimated market value of **PhP 80,000,000.00**

### RECAPITULATION

<b>Nr of Operations Conducted</b>	-	<b>01</b>
<b>Nr of Persons Arrested</b>	-	<b>00</b>
<b>Nr of Search Warrant Implemented</b>	-	<b>17</b>
<b>Nr of Cases Filed</b>	-	<b>00</b>

## April 2007

1) **April 19, 2007-** Elements of AFFCD under direct supervision of PSUPT MARIO N. RARIZA JR together with representatives from Nike implemented 2 Search Warrants, Nos. 07-11221 and 07-11222 issued by Hon. Judge Cielito N Mindaro-Grulla for violation of Sections 155 and 168 in rel to Sec 170 of RA 8293 in a garments-factory located at No.4 St Jude Street, Road 20, Bahay Toro , Project 8, Quezon that resulted to the confiscations of the following items, to wit:

- a.) 1003 rolls of textiles;
- b.) 2,365 pcs of alleged fake assorted Nike shirts;
- c.) 180 pcs of alleged fake Nike shorts;
- d.) 45,928 pcs Nike label/tags;
- e.) 1 pc cutting machine with Eastman color blue streak marking;
- f.) 1 pc Fuji model pressing machine;
- g.) 20 roll threads;
- h.) 50 plastics sacks of textiles;
- i.) 1,700 grams of stainless buttons; and
- j.) delivery receipts, cash vouchers, and other documents used in the recording of sale and distribution and other transactions in connection with counterfeit/fake NIKE wearing apparels

Likewise, the raid also resulted in the subsequent arrests of the following owner/occupants of said garments factory, to wit: **EDNA DE CASTRO y Pilares , CONCORDIA PUYAOAN y Castillo, RANDY BARSOMO y Ricafort , ANNA AGUILA y Tubal, RONNEL YABES y Mendoza, LEONILA VENTURANO y Cahapon, and LUZVIMINDA ESGUERRA y Mier** and presented for inquest before State Prosecutor Rosanne G. Elepano-Balauag at the Department of Justice (DOJ). Bailbond recommended for the provisional liberty of the respondents was set at PhP **10,000.00** each. Luzviminda Esguerra on the other hand, was ordered released from detention.

The estimated fair market value of the **2,545 pieces of assorted counterfeit Nike apparels, 1003 rolls of textiles, 2 pcs cutting machine and 1 pc pressing machine** seized /confiscated from the garments factory in Quezon City was pegged at **PhP 9,949,500.00**

### RECAPITULATION

<b>Nr of Operations Conducted</b>	-	<b>01</b>
<b>Nr of Persons Arrested</b>	-	<b>07</b>
<b>Nr of Search Warrant Implemented</b>	-	<b>02</b>
<b>Nr of Cases Filed</b>	-	<b>03</b>

## May 2007

1) **May 4, 2007-** On May 4, 2007 at about 2:30 PM, a team of AFCCD led by PSUPT MARIO N RARIZA JR implemented search warrants Nos. 4357 (07) for viol of sec 8 of RA 8203 issued by Jaime N Salazar Jr 3rd Vice Executive Judge of RTC Branch 103 Quezon in the resident/warehouse of a certain Ferdinand Opao located along San Martin Street, San Pedro Compound 2@ 3, Banlat, Tandang Sora, Quezon City. The raid also resulted in the seizure/confiscation of the following items, to wit:

- a.) 324 tablets of Plendil;
- b.) 168 tablets of Tenormin;
- c.) 440 tablets Imdur;
- d.) 70 tablets Nexium;

- e.) 4 pcs imported display boxes of Imdur; and
- f.) 2 pcs imported display boxes of Nexium;

The estimated value of the seized/confiscated items was pegged at **PhP 40, 000.00**. The seized items are under the custody of the AFCCD while part of it was submitted to the Bureau of Foods and Drugs (BFAD) for examination /testing of its authenticity.

The raid also resulted in the arrest of MARCIANO CABALDAN JR y Roque occupant of said warehouse. On the same day, CABALDAN was presented for inquest before Prosecutor Edwin A Valdez at Quezon City Prosecutor Office. Arrested suspect was ordered released for further investigation by Prosecutor Valdez for the reason that CABALDAN was only a driver of the main suspect who was at large and was not allegedly committing any of the acts enumerated in Sec 4 of RA 8203 during the arrest.

#### R E C A P I T U L A T I O N

Nr of Operations Conducted	-	01
Nr of Persons Arrested	-	01
Nr of Search Warrant Implemented	-	01
Nr of Cases Filed	-	01

**2) May 5, 2007-** at about 10:30 AM combined elements from SAF and AFCCD led by PSUPT MARIO N RARIZA JR simultaneous implemented 13 search warrants issued by Reynaldo Ros Executive Judge of RTC Branch 33 Manila for viol of sec 168 (Unfair Competition) in relation to sec 170 of RA 8293 against eight (8) stalls located at the ground floor of Harrison Shoe Plaza, FB Harrison St., and five (5) stalls (Warehouse) at # 155 Ara Bldg Plaza, all in Baclaran, Pasay City, Metro The raid also resulted in the subsequent arrests of the following owner/salespersons, to wit: ***Lin Hao Chao, Erlita B. Relota, Jonathan C. Qui-ay, Leandy P. Nasino, Kenneth S. Gamba, and Jemmabel D. Delos Reyes – Stall # 11-12 ; Margie T. Bautista, Sheryl P. Delapina, Jun P. Baculi and Jaime M. Corong – Stall # 1-2; Glenda Marie F. Pangilinan – Stall # 9-10; Glen A. Mamon, Jaypie C. Parcon, and Jennet D. Pasia – Stall # 31-32; Nancy P. Pacay, Rosemarie S. Gonzales, Romeo B. Carolino, Virgilio D. Baquigo, and Nelie M. Nacion; Marlon H. Ancheta – Stall # 41- 42; Ednalyn A. Bringino – Stall # 23-24; Carolina S. Lim and Sara Cheung.*** Confiscated were **8,399 assorted ADIDAS Shoes** with an approximate value of **PhP 38,467,875.00**

#### R E C A P I T U L A T I O N

Nr of Operations Conducted	-	01
Nr of Persons Arrested	-	12
Nr of Search Warrant Implemented	-	13
Nr of Cases Filed	-	02

**3) May 10, 2007-** combined elements from SAF and AFCCD AFCCD led by PSUPT MARIO N RARIZA JR simultaneous implemented 18 search warrants issued issued by Hon. Judge Cielito N Mindaro-Grulla for violation of Sections 155 and 168 in rel to Sec 170 of RA 8293 against 18 stalls in Bridgeway Shop, Center Mall located in Greenhills Shopping Center, San Juan City, Metro Manila. The raid also resulted in the subsequent arrest of the following persons, to wit: ***Velinda Alolor, Jaybert Gatan, Cristen Avila, Anabel Derotas, Dennis Adran, Dante Bitancur, Armando Yadao, Gilda Castroverde, Leopoldo Toco,Janette Aquino,Sheryl Diciembre and Dearly Teodosio.*** Confiscated were 1808 assorted Nokia cellphones and other products bearing the trademark and trade name Nokia (i.e. housing, chargers, battery, accessories, housing board, dummy phones). The estimated value of the seized/confiscated items has yet to be determined.

On the same day, another combined elements from SAF and AFCCD AFCCD led by PSUPT MARIO N RARIZA JR simultaneous implemented 28 search warrants issued by Reynaldo Ros Executive Judge of RTC Branch 33 Manila for viol of sec 168 (Unfair Competition) in relation to sec 170 of RA 8293 against 28 stalls in Shoppesville of Greenhills Shopping Center in San Juan City, Metro Manila. Confiscated were 3,482 pieces of assorted LV products. The estimated value of the seized/confiscated items was pegged at **Php 19,263,185**

**TABLE of IPR Accomplishment**  
(Summary as of May 18, 2007)

Month	No. of Opn/s conducted	No. of arrested person	No. of SW implemented	No. of cases filed	Estimated value of confiscated items
January	2	1	33	1	<b>PhP</b> 141,210.00
February	5	4	33	2	165,794,000.00
March	3	8	34	3	88,028,500.00
April	1	7	2	3	9,949,500.00
*May	3	13	47	3	19,303,185.00 **
<b>Total</b>	<b>13</b>	<b>33</b>	<b>149</b>	<b>12</b>	<b>PhP 283,216,395.00</b>

Note:

\* As of May 10, 2007

\*\* Estimated value of seized knock-off Nokia products is not yet included/determined

## **Overview of Key Measures Taken To Enhance the Level of Rights Protection of Intellectual Property Owners in the Russian Federation (2005 - 2007)**

A great and complex work was fulfilled in the Russian Federation in order to increase the level of Intellectual Property Rights (IPR) protection. It applies to the improved efficiency of legislative, law enforcement, organizational and administrative measures. Therefore we can establish a fact of an unconditional progress achieved in above spheres.

### **I. Activities of the Government of the Russian Federation in the Field of IPR Protection**

In 2005 - 2007 **the Governmental Commission for Counteracting IP Infringements, its Legal Protection and Application** has continued to make an active effort aimed at enhancing the level of IPR protection in the Russian Federation.

In 2005 the Russian departments and other governmental bodies concerned with IPR protection fulfilled the **“Plan of Government Commission for Counteracting Intellectual Property Infringements for 2005”** and the **“Plan of Priority Measures to Counter Violations of Intellectual Property Rights in the Russian Federation”**. The implementation of internal departmental plans of the Ministry of Interior, Federal Customs Service (FCS) and a number of other ministries has been continued.

**This Plan** provides for further work on enhancing the IPR protection in Russia and sets out a complex of administrative, legislative, organizational and law enforcement measures, as well as PR information measures, interaction with rights holders intended to increase efficiency of the federal bodies, courts, and prosecutor's offices in counteracting violations in the IPR sphere.

**On May 18, 2005** the Government signed **Resolution of the Government of the Russian Federation No. 308**, in which **the functions of the Commission have been expanded by adding a remit for “legal IP protection and its application”**, including the creation of economic incentives for advanced technology introduction in manufacturing processes, exchange of intellectual activity results between military and non-military industries, and legal regulation of their transfer to the foreign countries. In May 2005 representatives of law-enforcement agencies joined the Commission and its renewed composition was approved.

All the information on the activities of the Government of the Russian Federation is



available at [www.government.gov.ru](http://www.government.gov.ru).

## II. Development of Legislation and Normative Legal Acts

Changes in Russian legislation have been made in order to bring Russian IP law into conformity with international standards and to meet practical needs in the development of efficient legislation in this field.

**On July 2, 2005** Federal Act No. 80-FZ “**On Amendments to the Federal Act No.128-FZ “On Licensing of Some Types of Activities”**”, was adopted. This law reduces types of activities subject to licensing, optimizes the licensing regime, facilitates procedures to obtain licenses and re-register licenses, protects the rights of business entities as well as provides for easier access to the information possessed by licensing authorities for citizens and business entities.

The Government of the Russian Federation adopted Resolution No.685 of November 17, 2005 “**On the Procedure of Exercising Rights to the Results of Scientific and Research Works**” aimed at increasing efficiency of the application of research activities results.

**On December 27, 2005** the Federal Law FZ-193 “**On Amendments to the Code of Administrative Offences of the Russian Federation (CoAO)**”, signed by the **President of the Russian Federation** ([www.president.kremlin.ru](http://www.president.kremlin.ru)) **V.V.Putin**, was **entered into force**. This Law is intended to increase the operating efficiency of law enforcement bodies.

In aid of ordering activity of the organizations making audio and video production including optical media and also in aid of preventing from infringement of rights and legitimate interests of authors and owners of the related rights an **Enactment of licensing of activity on reproduction (manufacturing of copies) audiovisual products phonograms on any kinds of records** was approved by **Resolution of the Government of Russian federation № 252 of 28 April 2006**.

The big attention paid to IP protection in this Resolution. At this rate manufacturers of audio and video production obligated to have documentary proof of the rights to manufacturing copies of audiovisual products and phonograms, to conduct the detailed account of all let out production, nominate grantee of license and a number of license. To the enterprises breaking license requirements and conditions, strict measures, including suspension of a license and withdrawal of a license are applied. In particular, licensing of manufacture of audiovisual products and phonograms has made transparent

and accessible data on manufacturers of audio, a video production, and also concretized conditions of application of measures administrative and the criminal responsibility to manufacturers of counterfeit production.

In 2006 the Ministry of Culture and Mass Communication of the Russian Federation ([www.mkmk.ru](http://www.mkmk.ru)) developed a draft law **“On Amendments to the Federal Law No.128-FZ “On Licensing of Some Types of Activities”**. The draft provides **for the implementation of a licensing procedure for activities in the field of reproduction of computer programs and databases**. Currently this draft is undergoing an approval stage in the Government.

The Ministry of Education and Science of the Russian Federation ([www.mon.gov.ru](http://www.mon.gov.ru)) in cooperation with Rospatent developed a **draft resolution “On the Procedure of Exercising Rights to the Results of Scientific, Research, Experimental and Engineering Works Intended for Civil Application and Funded from the Federal Budget.”**

**Federal Law № 42-FZ of April 9 2007 “On Amendments to the Criminal Code of the Russian Federation”** approved by Council of Federation on march 30, and signed by the President of Russian Federation Vladimir Putin.

The law provides increase in the maximal punishment for infringement of copyrights and related rights, in the sphere of trademarks appellations of origin till 6 years of imprisonment. Thus the law transfers it from moderately grave crimes to grave crimes.

Rating the crimes provided by articles 146, 180 CC RF to grave crimes will allow:

Court to apply more strict measure of punishment (court, considering an insignificant degree of public danger of the crime, frequently, during the trial on articles 146, 180 put criminals on probation, before adopting the law);

Investigator, prosecutor and court to put under more strict preventive measures in relations to suspect and defendant. (for example, house imprisonment, commitment)

In case of inability to finish preliminary investigation in two month extend it till twelve months.

Thus increase the efficiency of combat against violation of copyrights and related rights and unlawful use in the sphere of trademarks in Russia.

**Part fourth of Civil Code (Federal Law № 233 FZ of December 18, 2006)** is directed on full codification of the legislation in sphere of intellectual property. Part fourth of Civil code attached in January 1 2008.

**The parliamentary hearings** were held for many times in the State Duma on the topic “Statutory Measures and Technical Methods of Counteracting the Turnover of Counterfeit, Falsified and Poor Quality Products in Russian Federation ”, attended by representatives of state authorities, science and business entities.

### **III. Law Enforcement Activity**

#### **A. Administrative measures**

In 2005-2007 the Federal Service for Supervision of Protection of Consumers’ Rights and Human Welfare (**Rospotrebnadzor**) ([www.gov.ru/main/ministry/](http://www.gov.ru/main/ministry/)) have continued IP inspections on the consumer market. As a part of the operation, **Counterfeit**, the Rospotrebnadzor departments also have conducted inspections aimed at the protection of intellectual property rights and countering distribution of the pirate audiovisual products on the consumer market.

Rospotrebnadzor along with the Ministry of Interior of the Russian Federation ([www.mvdinform.ru](http://www.mvdinform.ru)) and other agencies continues to develop measures to counter the distribution of counterfeit medicines, alcoholic beverages and other consumer and manufacture goods.

**The Federal Service for Enforcement of the Mass Media Legislation and Protection of Cultural Heritage Federal Service for Supervision on (Rosokhrankultura)** issues licenses and conducts inspections of producers of audiovisual works and phonograms on optical media.

**The Federal Antimonopoly Service of the Russian Federation (FAS)** ([www.fas.gov.ru](http://www.fas.gov.ru)) also conducts activities aimed at IPR protection by eliminating unfair competition. FAS local bodies took part in inspections of different trade organizations, based on leads regarding the production and distribution of counterfeit goods. Some of these inspections were conducted together with law enforcement authorities.

**The Ministry of Information and Communications of Russia** ([www.minsvyaz.ru](http://www.minsvyaz.ru)) within its competencies participates in updating of normative legal acts in the area of telecommunications and informational technologies, and in

cooperation with the Ministry of Interior bodies takes part in the activities aimed at counteracting IPR infringements in informational and telecommunications networks.

**The Ministry of Agriculture** ([www.mcx.ru](http://www.mcx.ru)), **Ministry of Health and Social Development of the Russian Federation** ([www.gov.ru/main/ministry/](http://www.gov.ru/main/ministry/)) have rendered assistance to law-enforcement agencies in the course of activities aimed at suppressing the production of counterfeit food and flavors products, as well as counterfeit medicines.

## **B. Border Measures**

In conformity with the Customs Code of the Russian Federation **the Federal Customs Service of the Russian Federation (FCS)** ([www.customs.ru](http://www.customs.ru)) continually performs activities aimed at the protection of IPR during customs checks of goods crossing the customs borders of Russia.

FCS conducted "**Brand**" operation in all regions of Russia in order to strengthen customs control of the goods containing IP objects.

## **C. Criminal Law Measures**

Active criminal enforcement operations have been undertaken in 2005-2007, including special inspections and control measures conducted by the Ministry of Interior and bodies supervising the Russian consumer market aimed at preventing the sales of counterfeit medicines, consumer and industrial goods, as well as the sales of audiovisual products by street vendors and at kiosks. There have also been special raids on enterprises and producers of audiovisual products, located on the area of restricted access facilities.

## **D. Activities of the General Prosecutor's Office**

The General Prosecutor's office of the Russian Federation ([www.genproc.gov.ru](http://www.genproc.gov.ru)) has continued its activities aimed at perfecting law enforcement practice. **The Resolution of Coordination Meeting** "On the current situation and measures to strengthen the combat with the violations in the IPR sphere" is being actively implemented. In conformity with the above Resolution comprehensive and urgent measures are being taken by federal bodies of executive authorities in law enforcement area, including trips of special interior and Prosecutor's Offices units in the regions, putting of IP-related cases on a special control list, strengthening of courts' attention to the given category of cases etc. The implementation of the Resolution of Coordination Committee has already supplied the concrete results – series of efficient inspections on the plants-infringes, "Counterfeit" operation, etc.

**Coordination Meeting of the law-enforcement agencies** (Ministry of Interior, State Service for Control over Drug Turnover of Russia, FCS) was held in the **General Prosecutor's office**, devoted to law enforcement practice development, elaboration of complex measures in the IP sphere and suppression of the production and distribution of pirate and counterfeit products. Heads of the public agencies concerned with IPR protection (Ministry of Education and Science, Ministry of Culture, Ministry of Economic Development and Trade, Ministry of Health and Social Development, Rospatent), as well as the Supreme Court ([www.supcourt.ru](http://www.supcourt.ru)) and High Court of Arbitration of the Russian Federation ([www.arbitr.ru](http://www.arbitr.ru)) also participated in this meeting.

### **E. Judicial Procedures**

Court data were further generalized in relation to IP infringement cases. In order to train judges in the necessary skills to consider cases about IPR infringement, a number of training seminars were organized.

The Plenary meeting of the Supreme Court of the Russian Federation was held on April 6, 2006. The meeting considered draft resolution **“On the Issues Arising in Courts during the Hearings of Civil Cases Related to the Application of the Copyright and Related Rights Legislation”**. The given resolution provides for the explanations designed for judicial workers concerning the issues of court hearing qualification in the area of the violations of copyright and related rights. Currently the draft resolution is being reworked taking into consideration the remarks and proposals put forward at the meeting.

And this resolution was adopted by the Plenary of the Supreme Court of the Russian Federation on June 19, 2006.

On April 26, 2007 Resolution of the Supreme Court of the Russian Federation № 14 **“About court practice during the Hearings of criminal cases of infringement in copyrights, related rights, patent right, invention right and of illegal use of trade mark”**, was adopted.

## **IV. Public Awareness, Media Campaigns, Professional Training and Cooperation with Rights Holders**

The Russian Government attaches great importance to the development of negative attitude to piracy in Russian society. A considerable role in this process is assigned to the active use of the mass media potential. Increased attention has been paid to public

education campaigns, crime prevention measures, as well as to increasing the legal consciousness of Russian citizens.

Mass media covers in depth the activities of the consulting bodies concerned with the development of different legal initiatives aimed at perfecting Russian IP legislation.

Rospechat of Russia ([www.fapmc.ru](http://www.fapmc.ru)) provided one million rubles for the development of **informational and consulting Internet portal “Copyrights in Russia”** ([www.copyright.ru](http://www.copyright.ru)), informational resource about the copyright and intellectual property on the whole. This portal contains the information about copyright observance procedures and methods to combat the infringements; there is also the database of Russian legal and normative acts, international agreements, and judicial practice.

**The Advisory Council (AC) on Intellectual Property Matters established under the aegis of Rospatent** has continued its activities since 2004. The AC is a public organization that unites the representatives of federal bodies of executive authority concerned, rights holders and business organizations. The Council provides the opportunity to constantly discuss the key problems related to IPR protection. The activities of the Council are aimed at finding ways of efficient intellectual property enforcement, legislation development, and contribution to the favorable innovation climate development.

The public authorities **cooperate on a constant basis with Russian and foreign right holders associations**. The representatives of right holders' organizations take part in the activities connected with revealing and suppression of legal violations in the IP sphere conducted by Ministry of Interior of Russia, Rosokhrancultura, Rospotrebnadzor and others, as well as in the discussion of current issues in the IP field within the framework of different advisory and consulting bodies.

## **Viet Nam's Intellectual Property Law 2005**

Since its establishment in 1981 Vietnam's legislation on intellectual property has been continuously developed, especially over past ten years when remarkable efforts has been made in the development and implementation of Intellectual Property Action Plan for accession to WTO and for the signature and implementation Bilateral Trade Agreement with the US (BTA) and other major partners. Such efforts have made Vietnam's intellectual property legislation about consistent with TRIPS and BTA as acknowledged by the US and WTO members. However, Vietnam's policies on strengthening the protection of intellectual property have not only aimed at meeting conditions on international integration but at first at satisfying its internal needs, that is to develop legal tools for encouraging creative activities in literary, artistic, and scientific fields, promoting innovation, transferring new technologies and disseminating literary, artistic and scientific works, with a view to meet the targets of national industrialization and modernization. Therefore, Vietnam has ever improved its intellectual property protection system, in which legal system has been considered a key factor.

Year 2005 has marked an important milestone in the development of Vietnam's IP legal system. With the Civil Code and IP Law promulgated in 2005, the IP legal system has been upgraded greatly in respect of both force and effect.

On one hand, the IP legal system has changed drastically in its structure to become systematic, centralized, synchronic, transparent and highly effective. The Civil Code, which played the role of foundation of the whole system of IP legalization in the past, now retains only civil principles of IPRs, including provisions on entities, objects, contents, establishment grounds and transfer of IPRs in respect of each category of IPR. Based on the Civil Code 2005 as a fundamental act, the IP Law has specified such civil principles as well as codified all previous regulations in such provisions detailed enough to be directly applicable, therefore has become basic source of law governing any intellectual property relations.



On the other hand, the contents of IP legislation inherited from those provisions of the previous system which had been practically tested and also was supplemented to fully satisfy requirements of international treaties as well as domestic needs. Moreover, legal experience of developed countries and countries with the same conditions like Vietnam was consulted thoroughly and selectively to be adopted reasonably to Vietnam's situations. Therefore, the IP Law can be considered an advanced and suitable to the development level of Vietnam.

The IP Law consists of 222 Articles, which are divided into 6 Sections, namely General provisions (Articles 1-12); Copyrights and related rights (Articles 13-57); Industrial Property Rights (Articles 58-156); Plant Variety Rights (Articles 157-197); Enforcement of Intellectual property Rights (Articles 198-219); and Provisions of Implementation (Articles 220-222).

The main contents of the IP Law can be summarized as follows:

- The general policy of the State is to recognize and protect IPRs, to encourage and assist the creation and exploitation of IP, to balance benefits between IPR holders and society; With certain exceptions permitted by international treaties, foreign nationals enjoy the protection according to international treaties without discrimination between them and the Vietnamese or among themselves; Responsibility of state management of intellectual property belongs to Ministry of Science and Technology (for industrial property), Ministry of Culture and Information (for copyrights and related rights) and Ministry of Agriculture and Rural Development (for plant variety rights), in which Ministry of Science and Technology plays a leading role and takes direct responsibilities to the Government.

- The categories of IPR protected consist of copyrights (rights to literary, artistic and scientific works); related rights (rights to performance, phonogram, video recordings, broadcast, satellite signals carrying encrypted programs); industrial property rights (rights to inventions, including utility solutions, industrial designs, semiconductor integrated circuits layout designs; trademarks; trade names and geographical indications – including appellation of origin and repression of unfair competition rights); and plant variety right.

- For each IPR object, its concept is defined separately from protection conditions; the protection conditions, the protection terms, the grounds for arising of copyright and

related rights, principles and procedures for establishment of industrial property rights and plant variety right, the right holders, the contents, scopes and limitations of rights are provided in details.

- The assignment and licensing (commonly called the transfer) of intellectual property rights) shall be conducted in the form of written contract, with certain restrictions. For the purposes of national defense and security, public health, other urgent needs of society, and prevention from monopoly, licensing of inventions and plant varieties may also be compelled under decision of state competent authority in certain situation with strict conditions and procedures.

- Activities of assistance to IPR holders such as collective management, consultancy and services related to copyright and related right, industrial property representation are recognized and governed by provisions on conditions, authority and responsibilities of organization or individual practitioners; the conditions for practicing in industrial property representation service are considerably loosen to widen opportunity of doing business in the field.

- Legal measures (remedies and procedures) of IPR enforcement consist of three types, namely civil, criminal and administrative ones, including border control measures.

Civil measures are paid special attention by detailed provisions on principles of damage calculation, grounds for compensation and mechanism of application to provisional measures.

Because of its certain advantages of being effective, simple, neither much time consuming nor costly, administrative measures are developed with the adoption of mechanism of monetary fine calculation based on the value of the discovered infringing goods (from one to five times of such value) to ensure they provide a deterrent. On the other hand, the situation of administrative abuse in civil case has been considerably abolished with the narrowing scope of IPR infringement acts subject to administrative remedies, which are confined to only such acts that are prejudicial to consumers and society; or willfully committed, or related to IP counterfeit goods).

With the definition of “counterfeit IP goods” under IP Law, which consist of trademark counterfeits, geographical indication counterfeits and copyright piracy goods,

acts of doing business of IP counterfeit goods shall be considered crimes of production of and trading in counterfeit goods under Articles 157-159 of the Criminal Code beside crimes of IPR infringement specifically provided for therein.

Border control measures for imports and exports are provided for in details, consisting of the suspension of custom clearance of suspected goods and the tracking (checking and supervising) to detect suspected goods. These measures would only be taken at the IPR holder's request. For IP counterfeit goods, the custom offices have the power and responsibility to act *ex-officio* with administrative remedies.

As it inherited a legal system which had been considered as being basically compliant with international standards, the IP Law includes in considerable changes in substance, mainly provisions on the following: in respect of IPR enforcement there are sufficient remedies and procedures that ensure the effectiveness of IPR protection system; in respect of objects of protection with the satellite signals carrying encrypted program was added; in respect of the restrictions of rights in order to ensure the balance of social benefit, the right to use inventions in name of the state and strictrict conditions for compulsory licensing, etc were included); in respect of geographical indications the protection mechanism with mandatory registration for geographical indications of all kinds without separation of appellations of origin, the relationship with trademark are solved, the subject of domestic geographical indications are clearly defined to include the owner, the manager and the users; in respect of trademarks, there are detailed provisions on special kinds, namely collective mark, certification mark, mark under joint ownership and especially well-known mark with the principles of establishment of rights based on use without registration, criteria of assessment of well known status etc.

The IP Law has made the intellectual property protection system fully consistent with requirements of international treaties to which Vietnam is party and appropriate to the development trends of international intellectual property legislation and the real situation of Vietnam.

## **SUMMARY REPORT**

### **APEC Seminar on Capacity building to Implement Anti-counterfeiting and Piracy**

*Hanoi, 31 May - 1 July 2007*

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The APEC Seminar on Capacity building to Implement Anti-counterfeiting and Piracy Initiative was held in Hanoi, Vietnam on 31 May – 1 June 2007. The Seminar attracted around 80 APEC officials from 16 APEC member economies, including: Australia; Chile; China; Indonesia; Hong Kong, China; Japan; Korea; Malaysia; Mexico; Papua New Guinea; Peru; Russia; Singapore; Thailand; the United States and Vietnam and representative of World Customs Organization (WCO).

The Seminar was held in response to APEC series of efforts in enhancing capacity for developing member economies to effectively carry out IPR enforcement and protection with strong focus on anti-counterfeiting and piracy.

#### **Main contents of the Seminar**

The Seminar was divided in 4 sessions.

Session 1: Overview of counterfeit and piracy: fact, figure and specific violated cases

Session 2: Current situation in APEC member economies and effective steps to combat counterfeit and piracy in APEC member economies: experience sharing among APEC members

Session 3: Keeping supply chain free of counterfeit and pirated goods

Session 4: Public-private cooperation to combat counterfeiting and piracy

In session 1, participants listened to very interesting presentation made by speakers from the USA and World Customs Organization (WCO) and Honda Vietnam about real fact, figures and cases on counterfeiting and piracy in the world. Representative from Honda Vietnam brought to the Seminar practical experiences of Honda Vietnam to deal with IP violation to Honda bicycles, which harms their image and cause losses to the company. To deal with this problem, Honda Vietnam has introduced a number of activities, including violating makers'

routine, collecting evidence to bring to authority and court as necessary, taking photo of violation and petition authority, organizing seminars to train concerned authority and businesses on Honda IP, conducting PR on IP to raise society's awareness.

In session 2, speakers from China, Australia, Korea, Indonesia and Vietnam presented their country's efforts to combat counterfeiting and piracy with different range of measures such as:

- Launching laws and legal documents against counterfeiting and piracy
- Enforcing law with severe penalties for IP violators;
- More active involvement of customs officers at entry/exit points including the airport, container terminals and boundary control points in IPR protection;
- Training to enhance capacity of IP officers;
- Establishing IPR protection Alliance to strengthen enforcement actions in partnership with IPR owners and to protect consumers and tourists against pirated and counterfeit sale
- Raising awareness of and education for consumers through different campaigns.

Session 3 gave strong focus on the issue of keeping supply chain free of counterfeit and pirated goods. Increased supply chain complexity means greater vulnerability to counterfeit products, therefore, companies should play more active role to prevent the production and sale of pirated products and exert control over the security of their supply chain. The government should also join hand by creating necessary legal infrastructure to protect IPR and enforce IP laws to deter fraudulent behavior.

Session 4 emphasized on the need of strengthening public-private cooperation to combat counterfeiting and piracy. Without support from public, counterfeiting and piracy can never be cracked down. Singapore has shared a very good and successful example of on HIP, which stands for Human plus IP program, aiming at enhancing public awareness on IP related issues. The program was established in 2002 as a government-industry collaborative platform, making up of government agencies, private organizations and industry associations to promote IP. A lot of activities have been held under the program, including annual high profile public roadshows to promote IP awareness and respect, different campaigns, establishment of HIP website and publication of brochure etc...

Vietnam shared its experiences on the work of Standard and Consumers Association (VINASTAS) on combating counterfeiting and piracy. For many years, VINASTAS has cooperated with government organizations and many businesses to deal successfully with many counterfeiting practices in the market for the interest of consumers and businesses and for the national economy

development. VINASTAS has paid attention to education and information given to consumers on their rights and social responsibilities; to improving their skills to identify the difference between fake goods and genuine goods by giving information, organizing fake and genuine goods exhibitions.

In general, the Seminar has provided a good opportunity for APEC members to learn from each other on the issue of anti-counterfeiting and piracy. More and more Seminars as such need to be organized in the future to help strengthen APEC work on IPR protection and enforcement with strong focus on counterfeiting and piracy.

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