

## **PRIORITY WATCH LIST**

### **CHINA**

China remains a top intellectual property enforcement and TRIPS compliance priority for the United States. China will remain on the Priority Watch List, and remain subject to Section 306 monitoring. The United States is seeking to resolve its concerns with respect to three IPR protection and enforcement issues through WTO dispute settlement with China. (See the “Dispute Settlement” section above).

The United States recognizes and appreciates the efforts of the many officials in China who continue to give voice to China’s commitment to protecting intellectual property rights and are working hard to make it a reality. In spite of these efforts, the shared goal of significantly reducing IPR infringement throughout China has not yet been achieved.

China has made welcome progress in some areas. Notable IPR improvements included completion of China’s accession to the WIPO Internet Treaties and its ongoing implementation of rules that require computers to be pre-installed with licensed operating system software. The United States believes that continued bilateral dialogue and cooperation can lead to further progress in these and other areas. The United States will continue to put serious efforts into its joint work with China on intellectual property enforcement and protection strategies, innovation policies, and the range of other important IPR-related matters in our bilateral economic relationship, including through the U.S. – China Strategic Economic Dialogue (SED), the Joint Commission on Commerce and Trade (JCCT), and other fora.

At the December 2007 JCCT meeting, China reported on steps it has taken since the previous JCCT meeting in April 2006 to improve protection of IPR in China, including accession to the World Intellectual Property Organization (WIPO) Internet Treaties, a crackdown on the sale of computers not pre-loaded with legitimate software, enforcement efforts against counterfeit textbooks and teaching materials, and joint enforcement raids conducted by the U.S. Federal Bureau of Investigation (FBI) and Chinese security agencies. China and the United States agreed to exchange information on customs seizures of counterfeit goods in order to further focus China’s enforcement resources on companies exporting such goods. China agreed to strengthen enforcement of laws against company name misuse, a practice in which some Chinese companies have registered legitimate U.S. trademarks and trade names without legal authority to do so. The two sides also agreed to cooperate on case-by-case enforcement against such company name misuse. In addition, China agreed to eliminate the requirement to submit viable biotech seeds for testing, a policy change which reduces the possibility of illegal copying of patented agricultural materials.

At the SED meeting in May 2007, the United States and China agreed to Principles and Outcomes for Strengthening Innovation Cooperation (SED Principles and Outcomes), including a decision to “jointly host a seminar on the innovation ecosystem in 2007 that would gather experts to discuss and share experiences on both sides regarding the critical elements of developing an environment conducive to technological innovation.” To realize this commitment, the two governments co-hosted an Innovation Conference on December 10, 2007 in Beijing. At this meeting, both sides reaffirmed that innovation is best fostered where there is effective rule of

law, and where governments pursue market-oriented policies that encourage merit-based competition, entrepreneurship, commercialization of new technologies, and flexibility for users and producers in choosing among competing technologies. Both sides also confirmed the essential role of a robust intellectual property protection and enforcement regime in supporting an innovation ecosystem.

Despite anti-piracy campaigns in China and an increasing number of IPR cases in Chinese courts, overall piracy and counterfeiting levels in China remained unacceptably high in 2007. The U.S. copyright industries estimate that 85 percent to 95 percent of all of their members' copyrighted works sold in China was pirated, indicating no improvement over 2006. Internet piracy is increasing, as is piracy over closed networks such as those of universities, in addition to concerns over webcasting of various kinds. The rapid increase in the Internet to over 210 million users suggests that this challenge is likely to continue to grow, with many industry groups focused predominantly on Internet piracy. Notwithstanding these new challenges, trade in pirated optical discs continues to thrive, supplied by both licensed and unlicensed factories and by smugglers. A crackdown in Beijing and certain other cities by municipal management authorities appears to have reduced the incidence of "backpack" vendors. However, small retail shops continue to be the major commercial outlets for pirated movies and music and a wide variety of counterfeit goods. Piracy of books and journals and end-user piracy of business software also remain key concerns. In addition, the share of IPR infringing product seizures of Chinese origin at the U.S. border was 80 percent in 2007, virtually unchanged from 81 percent in 2006. Chinese counterfeits include many products, such as pharmaceuticals, electronics, batteries, auto parts, industrial equipment, toys, and many other products, that pose a direct threat to the health and safety of consumers in the United States, China and elsewhere.

Inadequate IPR enforcement is a key factor contributing to these shortcomings, with high criminal thresholds as well as difficulties in initiating or transferring cases for criminal prosecution resulting in limited deterrence. Civil damages are also low.

There have been some successful enforcement actions, most notably the joint "Summer Solstice" investigation between the FBI and China's Ministry of Public Security (MPS). In 2007, MPS engaged with U.S. law enforcement on IP law enforcement initiatives as part of the Intellectual Property Criminal Enforcement Working Group (IPCEWG) of the U.S.-China Joint Liaison Group for Law Enforcement Cooperation (JLG). The IPCEWG includes participation by Chinese law enforcement officials from the MPS as well as officials from the Justice Department, the FBI, and U.S. Immigration and Customs Enforcement. The IPCEWG focuses on the development of more U.S.-China joint operations to combat transnational IP crime, in particular crimes committed by organized criminal groups and crimes that threaten public health and safety. In July 2007, this collaboration resulted in the largest ever joint FBI-MPS piracy investigation and prosecution, code-named "Operation Summer Solstice," which involved seizures of more than 290,000 counterfeit software discs worth more than a half billion dollars and arrests of over 25 Chinese nationals, and eliminated numerous manufacturing plants in China. This joint operation is believed to have dismantled the largest piracy syndicate of its kind in the world, estimated to have distributed more than 2 billion copies of counterfeit Microsoft software. U.S. law enforcement authorities look forward to continuing this cooperative relationship as this and other investigations continue.

However, right holders report that enforcement efforts, particularly at the local level, are hampered by poor coordination among Chinese Government ministries and agencies, local protectionism and corruption, high thresholds for initiating investigations and prosecuting criminal cases, lack of training, and inadequate and non-transparent processes.

Several factors contribute to China's poor IPR enforcement record. One major factor is China's chronic underutilization of deterrent criminal remedies. China channels the vast majority of enforcement to administrative authorities. The trademark and copyright industries continue to point out that administrative fines are too low to provide a deterrent, and as a result, infringers continue to consider administrative seizures and fines as a cost of doing business. Rules designed to promote transfer of cases to criminal authorities do not appear to have solved the problem.

At the 2005 JCCT, China agreed to increase the number of criminal prosecutions for IPR violations relative to the total number of IPR administrative cases. Unfortunately, there has been no sign yet of a significant shift in emphasis toward criminal enforcement. The safe harbors from criminal liability created by China's high thresholds for criminal liability (*i.e.*, minimum values or volumes required to initiate criminal prosecution, normally calculated on the basis of the infringer's actual or marked price) continue to be a major reason for the lack of an effective criminal deterrent. These safe harbors are among the matters for which the United States has requested WTO dispute settlement with China.

In April 2007, China issued a new Judicial Interpretation that appears to clarify certain aspects of China's criminal thresholds. Although the 2007 Judicial Interpretation appears to have resolved the problem in China's *Criminal Law* that required unauthorized distribution in order to prosecute unauthorized reproduction, other legal obstacles in the area of criminal enforcement remain. They include, for example, the lack of criminal liability for certain acts of copyright infringement; the profit motive requirement in copyright cases, which hampers efforts to fight Internet piracy where there is no clear motive of financial gain; the requirement of identical trademarks in counterfeiting cases; and the absence of minimum, proportionate sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity. The United States remains willing to work with China to achieve further progress in the area of criminal remedies.

At the same time, the United States has also been encouraging China to consider a variety of changes to its administrative and civil enforcement regimes, such as the restoration of minimum (and deterrent) fines in administrative trademark enforcement cases, increased referral of administrative enforcement actions for criminal prosecution, elimination of the need for legalization and consularization of foreign evidence, implementation of a discovery process with compulsory measures for evidence protection, provision of meaningful injunctive relief, and enforcement of judicial orders.

In addition, the United States calls upon China to take more aggressive action to prosecute manufacturers of counterfeit goods, producers of pirated optical discs, and entities engaged in commercial reproduction of pirated books, journals, and periodicals. Authorities should

investigate when right holders present evidence supporting a reasonable suspicion of illegal production, and should permanently close down, revoke the business licenses, and confiscate and destroy the machinery and materials of commercial pirates and counterfeiters, as well as criminally prosecute the persons responsible.

Trade in pirated optical discs continues to thrive, supplied by smugglers and by both licensed and unlicensed factories. China needs to do more to criminally prosecute the manufacturers of pirated optical discs. The United States also encourages China to facilitate cooperation in fighting optical disc piracy by sharing exemplar discs from Chinese factories with the international library and forensic facility maintained by right holder organizations.

Right holders report only moderate success in reducing piracy of pre-release titles. Lack of copyright protection for titles undergoing content review is another issue of concern. The United States has included this issue in its WTO dispute challenging apparent deficiencies in China's IPR enforcement regime. The United States also urges China to adopt and apply deterrent penalties for piracy of any title not yet authorized for distribution.

Strong action to curb counterfeiting and piracy on the Internet is critical to the future of IPR protection in China. China should significantly increase criminal prosecutions and other enforcement actions against Internet-based piracy and counterfeiting operations through a coordinated, national effort backed by appropriate resources.

The United States welcomes China's recent accession to the WIPO Internet Treaties. A number of gaps remain to be filled for China to meet the challenges of Internet piracy and fully implement the WIPO Internet Treaties. In May 2006, the State Council adopted an important Internet-related measure, the Regulations on the Protection of Copyright Over Information Networks, which went into effect in July 2006. Although it does not appear to fully implement the WIPO Internet Treaties, this measure represents a welcome step, demonstrating China's determination to improve protection of the Internet-based right of communication to the public. Several aspects still require further clarification. For example, China could benefit from further clarification that certain Internet "deep linking" and other services that effectively encourage or induce infringement are unlawful.

China should also provide strong administrative supervision, backed by penalties, to ensure that Internet service providers take down infringing content and/or links immediately upon receipt of a notice from internationally recognized right holders' representatives; take steps to suspend or terminate the accounts of serious or repeat infringers when they become aware of such infringers; and provide information about the identity of direct infringers to right holders (or to groups representing right holders) when requested.

China also maintains market access barriers, such as import restrictions and restrictions on wholesale and retail distribution, which discourage and delay the introduction of a number of legitimate foreign products into China's market. These barriers create additional incentives for infringement of products like movies, video games, and books, and inevitably lead consumers to the black market, again compounding the severe problems already faced by China's enforcement

authorities. The United States has requested WTO dispute settlement on several market access barriers affecting U.S. copyright industries.

Right holders report that in the seven years since China's current Copyright Law was adopted, China has yet to set a rate under Article 42 of that law for the remuneration of right holders for the use of their works by radio or television broadcasters. This has resulted in the unauthorized and, thus far, uncompensated broadcasting of musical works, prejudicing right holders in China and the United States. The United States urges China to set a fair rate for compensation under Article 42 of its Copyright Law without further delay, and to apply that rate to all of the broadcasts of works that have occurred since 2001.

Retail and wholesale counterfeiting in China is a major source of frustration for international brand owners. In spite of significant attention and resources from brand owners, administrative supervision, civil lawsuits, agreements with landlords, and attention from China's central government and foreign governments, counterfeiting remains pervasive in many retail and wholesale markets. It appears that further measures, including criminal sanctions, will be necessary to bring this problem under control.

In addition to stepping up administrative and criminal action against trademark counterfeiting at the manufacturing, wholesale, and retail levels, the United States calls on China to launch and publicize significant administrative and criminal enforcement actions against optical media piracy, Internet piracy, software end-user piracy, and other forms of piracy affecting U.S. copyright owners.

The United States recognizes that China recently announced a 2008 Action Plan laying out detailed strategies for improving IPR protection. China has the opportunity to achieve real and transparent results for U.S. right holders through implementation of the Action Plan. The United States has worked with China in the past few years on many legislative and policy efforts, including the National IPR Strategy, Internet Regulations, antimonopoly law and patent and trademark law reform. We welcome continued engagement on these issues including transparency and fair opportunities for the public and foreign governments to comment on proposed laws and policies.

The United States also looks forward to working with China to examine a variety of other reforms that would contribute to improving IPR enforcement. In addition to reforming China's criminal laws as discussed above, other areas that China should explore include the positive results that could be achieved through specialized national IPR courts and prosecutors (expanding a practice that already exists in some areas); reducing pendency and backlog in trademark opposition and cancellation proceedings; introducing regulatory mechanisms to ensure that active pharmaceutical ingredients produced in China are not used in counterfeit medicines; implementing effective, detailed plans and strategies for reducing the use of infringing materials by students, staff, and lecturers on school and university campuses; and ensuring that the resources available to local administrative, police, and judicial authorities charged with protecting and enforcing IPR are adequate to the task.

*Customs Enforcement:* The export of infringing products from China is of grave concern worldwide. Right holders have praised the achievements of China Customs over the past year in increasing seizures, starting to refer criminal cases to police and prosecutors, and cooperating with U.S. right holders. The United States is encouraged by the 2007 Memorandum of Agreement between China's Customs Administration and U.S. customs authorities to cooperate on preventing the exportation of counterfeit and pirated goods. Nonetheless, the statistics on seizures of Chinese-origin goods at the U.S. border, cited above, indicate that additional efforts are needed to stop outbound infringing products at China's borders. The United States calls on China to begin an aggressive campaign to prosecute exporters of infringing products and to expand enforcement cooperation as agreed at successive JCCT meetings. Also, the United States remains concerned about China's rules for disposal of IPR-infringing goods, seized by Chinese customs authorities, which among other things, appear in some circumstances to mandate auction of seized goods following removal of infringing features, rather than destruction or disposal outside of the channels of commerce. The United States has included these customs border enforcement measures as part of its WTO dispute challenging apparent deficiencies in China's IPR enforcement regime.

*Civil Enforcement:* U.S. right holders won several victories in civil IPR litigation in China in 2007. However, the United States continues to hear complaints of a lack of consistent, uniform, and fair enforcement of China's IPR laws and regulations in the civil courts. Litigants have found that most judges lack necessary technical training; that court rules regarding evidence, expert witnesses, and protection of confidential information are vague or ineffective; and that costs of investigation and bringing cases are prohibitively high. In the patent area, where civil enforcement is of particular importance, the process is inefficient and unpredictable. Concerns have also been raised that some Chinese companies may be inviting local protectionism, for example by bringing civil cases in their home areas against foreign companies in order to obtain disproportionately high damages, compelling detention of foreign nationals, and obtaining litigation or patent filing subsidies, among other things.

*Patents and Data Protection:* While China's patent laws are largely compliant with the TRIPS Agreement, right holders have noted that the narrow scope of patentable subject matter under Chinese law makes patents for transgenic plants and animals and methods of treatment or diagnosis virtually unobtainable. Concerns have been raised regarding draft amendments to the Patent Law that were recently made available for public comment on issues such as: the role of compulsory licensing; introduction of a two-year period of "laches" after the expiration of the two year statute of limitation; continuing challenges with low quality utility model and design patents; the introduction of disclosure of origins of genetic resources used in the completion of an invention and the concern that that claims in a patent application may be rejected on the basis that this disclosure requirement is not met. A lack of clarity in laws involving generic drug patent infringement is contributing to the continued growth of drug counterfeiting, with corresponding health and safety problems. In that regard, the United States welcomes proposals in the 2008 Action Plan to more closely link patent grants to pharmaceutical marketing approval. In addition, the United States has concerns about the extent to which China provides adequate protection against unfair commercial use for data generated to obtain marketing approval.

*Emerging Developments:* Apart from longstanding concerns over IPR enforcement, the United States is alert to U.S. industry concerns about the possibility that laws or policies in a variety of fields might be used or misused to favor domestic over foreign IPR. Such concerns are especially acute in light of Chinese government policies establishing a procurement preference for domestically innovated products, statements and consideration of legal and/or policy changes regarding such areas as the scope of compulsory licensing, the use of IPR in setting standards, and other emerging developments that have the potential to affect IPR protection and market access for IPR-bearing goods and services. The United States will monitor these developments closely to ensure fair treatment for U.S. right holders.

The treatment of intellectual property in standards-setting processes has garnered recent attention in China and elsewhere. In China, standards for third generation (3G) wireless technology are an example. China has committed to accord technology-neutral treatment to different 3G standards. To date, China has not licensed any 3G wireless technology. However, Chinese operators have taken steps to procure equipment and services for the installation of a network that appears will be dedicated to support wireless communications based on the TD-SCDMA standard. China Mobile, the world's largest mobile operator, began rolling out a massive "test" TD-SCDMA network in nine coastal cities in late 2007. As China Mobile's webpage attested in mid-April 2008, this service is now commercially available. No other operator has been permitted to deploy alternative 3G technology, even on the kind of "test" basis authorized to China Mobile. Such steps to advance the standard containing Chinese technology raise questions about China's commitment to accord technology neutrality to the different 3G standards.

More generally, the Chinese Electronics Standardization Institute (CESI) is in the process of drafting IPR rules for standards-setting organizations (SSOs). These draft rules provide for SSOs to report to government authorities on the possible relevance of patent claims in draft standards submitted for examination and approval by the authorities. It is unclear what purpose is envisaged for this governmental review, including whether such a review of the possible relevance of patent claims could involve governmental authorities in the determination of the terms and conditions for licensing essential patents.

### **Provincial and Local Issues**

**Regional Coordination of IPR protection and enforcement.** To promote greater coordination, most municipal authorities in China have established a working group on IPR, appointed a vice mayor, adopted action plans, and opened IPR complaint centers. The widespread use of databases by provincial and local authorities, as well as information provided through [www.ipr.gov.cn](http://www.ipr.gov.cn), has provided greater access to information regarding regional IPR protection and enforcement activities. The United States encourages coordinating authorities to regularly publish white papers, summaries of regional enforcement cooperation, and English language complaint forms, and establish English language complaint call centers. We also encourage publication of information on relevant local laws and regulations

**Beijing City** is both the nation's capital and one of its most visible centers for retail counterfeiting and piracy. IPR enforcement in Beijing varies between different districts and

authorities. Beijing courts enjoy a generally good reputation, which contributes to Beijing having the nation's highest number of civil IPR cases.

*Hot spots.* According to industry reports:

- Retail and wholesale markets such as the Silk Market, Tianyi Market, and Yaxiu Market are associated with trade in counterfeit fashion, jewelry, sports, and apparel products.
- Chaoyang District authorities have agreed to enhance their cooperation with copyright owners.
- Local protectionism remains strong in Chaoyang District.
- Much of this counterfeiting and piracy is occurring notwithstanding an apparent lower incidence in the infringement of Olympic-related merchandise. We look forward to China addressing these additional areas at the time of the Olympics, as mentioned in the Action Plan, and on an ongoing basis thereafter.

*Retail and wholesale markets.* Retail piracy and counterfeiting remain widespread in Beijing; progress in getting the problem under control has been very limited.

- In spite of increasing attention from foreign governments, the media, and China's central and local governments, the Silk Market in Beijing remains possibly the world's most notorious market for counterfeit goods. Landlords at the market have signed agreements to oust counterfeiters, and Chaoyang District officials believe the situation at the market has improved.
- In September 2007, the Silk Street Market was found to bear civil liability for infringement based on the failure to provide evidence that it had implemented the required "trademark authorization systems" established by the Beijing City and Chaoyang District Administrations in March 2006. However, right holders' surveys show no real change in the level of sales of counterfeit goods.

*Internet.* Beijing authorities have been among the most proactive in China in recognizing and moving to address the serious challenges of Internet piracy that are emerging throughout China.

- Internet cases have successfully been transferred from the copyright bureau to the Public Security Bureau (PSB), and suspects have been tried and convicted. However, suspects who violate copyrights are often convicted for illegal business operations rather than copyright infringement.
- Beijing authorities have been proactive in looking for ways to make Internet enforcement procedures more effective and to address new technological challenges, such as retransmission via the Internet of sporting events.
- Beijing's courts are considering significant copyright cases regarding provision by Internet service providers of "deep links" directly to unlicensed music downloads.

*Universities.* Beijing's university campuses have also been cited by right holders as magnets for textbook piracy, and they offer a broadband environment that can support copyright infringement. Beijing authorities state that universities receive no safe harbor from IPR laws. Industry praised authorities for enforcement actions involving a Tsinghua University textbook center, and called for investigations to be repeated at the beginning of the school term and at other peak copying times.

**Fujian Province** is home to large-scale manufacturing, including athletic footwear companies that have repeatedly been the target of infringement allegations by U.S. right holders.

*Hot spots.* According to industry reports the cities of Jinjiang, Putian, and Quanzhou are particularly associated with counterfeiting in the footwear sector. Local protectionism appears to be a problem.

*Criminal enforcement.* Right holders in the footwear sector praised the willingness of provincial public security authorities to take the lead in a number of cases where other approaches proved ineffective. However, there is a continuing need for more criminal enforcement in other sectors, including copyright cases.

*Administrative enforcement.* Right holders in both trademark and copyright industries have noted that in Fujian, like other parts of China, low administrative penalties often have little or no deterrent effect.

*Export.* Xiamen is one of China's major ports of lading for infringing goods seized at U.S. borders. Xiamen Customs has jurisdiction over approximately half of Fujian province, including the port cities of Quanzhou and Zhangzhou, and has a special division that handles IPR enforcement. Xiamen Customs has worked closely with foreign right holders, and has won praise for its work. Reports in early 2008 indicate that due to better enforcement of IPR by Customs authorities in Xiamen, shippers of pirated and counterfeit goods now seek to avoid using the port of Xiamen.

**Guangdong Province** is the center of large-scale counterfeit and pirate manufacturing in China for a variety of goods, ranging from low-cost consumer goods, such as household items, clothing and optical media, to high-technology products, such as computer equipment, video game consoles (and game discs/cartridges), and other electronics. A leading industry group calls Guangdong "the biggest problem spot for counterfeiting in China." Right holders have also complained of patent infringement by Guangdong-based companies.

Last year, Provincial officials in Guangdong acknowledged the need to improve deterrence against IPR violations, and expressed a welcome openness to closer engagement with U.S. and other foreign right holders. However, law enforcement cooperation with U.S. right holders appears to have deteriorated since last year's Special 301 Report.

*Hot spots.* Provincial officials stated that specific cities targeted for enforcement during the past five years included Guangzhou, Shenzhen, Shantou, Jieyang, and Chaozhou. According to industry reports:

- The cities of Guangzhou and Dongguan are particularly associated with counterfeiting in the fashion and sports equipment sectors.
- Internet based vendors trafficking in counterfeit apparel are increasing at alarming rates.
- Guangzhou and Shantou are associated with counterfeiting of health, beauty, and household care products.
- Shenzhen is associated with counterfeiting in the information technology, fashion, and cosmetics sectors, as well as e-commerce in all products.

- Chaozhou and Jieyang are associated with counterfeiting of pharmaceuticals and cigarettes.
- Local protectionism remains strong in the Baiyun and Huadu Districts of Guangzhou.

*Criminal enforcement.* Availability of criminal remedies is a continuing problem in Guangdong. Statistics for 2006 showed that Guangdong referred only 36 copyright infringement cases for criminal prosecution. Viewed in light of the size of Guangdong's economy and its role as a center of manufacturing, this number was surprisingly low.

In the sector of health, beauty, and household care products, Guangdong has been identified as a relatively difficult place to criminally prosecute counterfeiters. Industry has called for particular attention to intensifying criminal enforcement in hot spots, such as Shenzhen, Guangzhou, and Dongguan. Guangdong Province reported that police handled 396 cases of criminal IPR infringement in 2006, solving 288 cases. Criminal fines and prison sentences were criticized by right holders as being relatively light in Guangdong province.

*Administrative enforcement.* According to official statistics, trademark infringement cases in Guangdong Province increased by about 30% in 2007, and 31 cases were transferred for criminal investigation, down from 38 in 2006. Guangdong IP officials report that since 2004 they have participated in a Pan-Pearl River Delta group to improve regional cooperation on IPR protection and enforcement.

In spite of being a manufacturing hub and center for counterfeiting, Guangdong in 2006 had fewer copyright infringement cases, relative to its economic size, than other jurisdictions. Provincial authorities recognize that administrative enforcement at trade fairs is especially important given Guangdong's role as host of the Canton Trade Fair and other major fairs; the U.S. Government looks forward to continuing to work closely with local officials and trade fair organizers to improve enforcement at these fairs.

*Export.* Guangdong's role as an export engine creates a need for more deterrent customs remedies. Despite Guangdong Customs reportedly solving 636 IPR cases in 2006, its ports remain significant sources for infringing goods seized at U.S. borders. Reports in early 2008 indicate that shippers of pirated and counterfeit are seeking to avoid using the port of Shenzhen due to better enforcement of IPR by its Customs authorities.

*Optical disc production.* The 2007 Special 301 Report highlighted the need for criminal prosecutions to address optical media piracy in Guangdong. The use of online distribution and on-site OD burning facilities is increasing the challenges of addressing OD piracy.

*Retail and wholesale markets.* Local authorities in Guangdong have achieved mixed results in their efforts to address piracy and counterfeiting in retail and wholesale markets.

- Among other problem areas, right holders cited Ziyuangang Market in Guangzhou and Lowu market in Shenzhen.

*Internet.* Guangdong is increasingly a center for Internet piracy. It has taken some positive actions in this area, but, like the rest of China, faces serious challenges.

- In 2006, Guangdong ranked in the top five in China in the number of notices for alleged Internet infringement sent by a recording industry group.
- Industry commended Guangdong authorities for taking action in some cases, but awaited action on other sites that had been the subject of complaints.
- Trademark owners are increasingly concerned about use of the Internet, in connection with express delivery services, for direct marketing of counterfeit products to foreign consumers.

*Universities.* Right holders have expressed concern regarding a lack of transparency in the process of inspection and punishment decisions against university textbook centers.

**Jiangsu Province** is another large-scale manufacturing center in China. Jiangsu has been recognized for innovative and proactive IPR protection and enforcement efforts, including promulgation of local regulations and policies, and engagement with domestic and foreign institutions on IPR training and cooperation. In early 2007, Jiangsu officially entered into a cooperative IPR program with the U.S. Chamber of Commerce.

Despite high-level attention to IPR issues, industry reports local level discrepancies in IPR enforcement efforts with respect to case transfer practices, trade secret protection, and seized good valuations. As in many other Chinese provinces, Jiangsu IPR enforcement efforts continue to focus on administrative remedies, resulting in fewer criminal referrals.

*Hot spots.* According to industry reports:

- IP infringers are moving their operations to the less-developed northern part of Jiangsu province to escape raids and other IPR enforcement activities.
- The southern Jiangsu city of Wuxi is particularly associated with the manufacture of counterfeit auto parts.
- In 2006, Jiangsu was home to the largest share of China's Internet Service Providers (ISPs) receiving cease and desist notices for alleged Internet infringement by a recording industry group. The northern city of Yancheng has been referred to as the "home of pirate servers."

*Administrative enforcement.* In 2006, Jiangsu Administration of Industry and Commerce (AIC) reportedly handled 1,543 trademark cases.

- The Nanjing IPR Complaint Center reported that it handles mostly administrative cases but reported transferring one case to the PSB in 2007, which resulted in a 10 year prison term and a RMB 100,000 fine.
- Nanjing Customs reportedly investigated 92 cases of suspected IP infringement in 2006.
- Nanjing issued a rule that reverts the burden of proof in administrative copyright cases to the suspect to prove that the source of seized goods is legitimate.
- The Nanjing Copyright Bureau has also enlisted local computer repair shops to refuse to service computers that contain pirated software.
- Jiangsu IP administrative authorities report actively participating in the Yangtze River Delta Protection Network to coordinate with other administrative and enforcement officials on cases where right holders and infringers are located in different provinces.

*Criminal enforcement.* Increasing criminal prosecutions and case transfers should remain a priority for Jiangsu authorities.

- Distinctions in methodologies for valuation of infringing goods continue to impede criminal prosecutions for trademark and copyright infringement in Jiangsu. The courts should accept criminal cases based on thresholds met by combined sales volume and seized inventory.
- Despite positive steps, criminal fines and prison sentences in Jiangsu remain relatively light, as in many other Chinese localities.

*Retail and wholesale markets.* Local authorities in Jiangsu continue to expand efforts to prevent the sale of infringing goods in retail and wholesale markets.

- Local Nanjing officials reported that, after recognizing Nanjing was becoming a transit center for retailers and wholesalers of counterfeit optical discs, they formed an interagency anti-piracy task force to better monitor areas known for selling pirated audio-visual (AV) products.
- Jiangsu promulgated Provincial Rules on AV Market Management, which require that AV business operators carry proof of relevant licenses of the publishers and distributors of the AV product and proof of the legality of the AV product.
- Jiangsu has established landlord liability rules, but IP authorities report difficulty pursuing cases because of the need to establish proof that the landlord is aware of IP-infringing business.

*Internet.* Piracy on the Internet remains a problem for Jiangsu province, along with many other localities around China. Officials in Jiangsu and elsewhere noted the difficulty for enforcement officials to collect evidence and establish a profit motive, in accordance with Chinese law. A recording industry survey found Jiangsu as the top Chinese location of ISPs allegedly hosting infringing products in March 2007.

**Shanghai City** has been praised by industry observers as a relatively bright spot in China's IPR protection environment. Shanghai IPR officials are generally well-trained and responsive to industry requests for IPR actions, welcome cooperation with foreign industry and governments, and have instituted creative programs to improve coordination among relevant IPR agencies. Shanghai is also increasingly becoming the venue of choice for foreign companies filing IP-related cases because of the expertise and competency of Shanghai judicial officials. However, the continued widespread availability of counterfeit and pirated products through retail venues in Shanghai demonstrates the limited effectiveness of administrative remedies and need for Shanghai to pursue more deterrent criminal enforcement.

*Hot spots.* According to industry reports:

- Despite the welcome July 1, 2006 closing of the notorious Xiangyang Market, infringing products in retail markets and through mobile vendors remain widely available in Shanghai.
- Industry reported that most vendors from Xiangyang relocated to other markets, including nearby Yatai, Fengxiang, Longhua, and Qipu Road markets.

*Retail and wholesale markets.* Government officials have responded to concerns over widespread retail piracy and counterfeiting rates through increased actions.

- Shanghai administrative authorities have devised a strategy to proactively visit retail outlets (conducting 20,000 visits in the first half of 2006).
- Throughout anti-piracy and anti-counterfeiting campaigns, industry surveys show that infringing goods remain widely available in Shanghai.

*Administrative Enforcement.*

- In 2006, Shanghai reportedly handled 2,217 trademark cases, among which, foreign related cases accounted for 75.6 percent. In 2007, Shanghai handled 2,946 trademark cases, among which, foreign related cases accounted for 72.5 percent.
- In 2006, Shanghai Culture Task Force launched a special action on audio-video markets and in total handled 2,232 cases.
- In 2007, the Shanghai IP Administration set up IPR information desks in 16 exhibitions and handled over 80 IPR infringement cases involving exhibitions.
- In early 2008, Shanghai established an IPR Aid Center to give legal advice and counseling to both foreign and Chinese businesses with IPR-related issues.
- From January to November 2007, Shanghai Customs reportedly investigated 241 IPR cases, increasing by 91.1% over the same period in 2006.
- Shanghai has drafted special regulations and plans regarding IPR protection during the World Expo in 2010. According to Shanghai IP officials an “experts group” will be established to handle complex IPR issues.
- The Shanghai IP Coordinating Office created the Yangtze River Delta Protection Network in 2003, which includes 26 cities in the area, to facilitate communication among administrative and enforcement officials on cases where right holders and infringers are located in different provinces. The IP Coordinating Office reports that cooperation is increasing under this network and plans to expand its coverage to other areas. The IPR Complaint Centers throughout the region also cooperate by transferring cases.

*Internet.*

- In 2007, Shanghai courts reportedly handled 207 cases involving infringement on the Internet, an increase of 91.7% compared with 2006.
- In 2007, Shanghai reportedly referred one Internet piracy case for criminal prosecution.
- Local authorities have worked closely with the telecommunications industry to close down over 1,000 Internet sites to date that facilitated illegal downloads.
- In 2007, Shanghai established the Leading Group of Anti-Infringement on Internet, a working group of Internet and IP officials and experts working on ways to combat Internet piracy.

*Criminal Enforcement.* The number of IPR criminal case transfers in Shanghai remains much too low relative to the size of the local economy. The Shanghai government should be commended for initiating a number of pilot programs to assist in better administrative-criminal coordination on IPR.

- Shanghai PSB launched a pilot program whereby it initiates criminal investigations based on “suspicious leads” rather than evidence of illegal activity. Industry continues to

commend Shanghai for this initiative and would like to see it copied in other jurisdictions.

- Shanghai has also instituted a cross-agency, horizontal Case Monitoring System digital database that tracks IPR cases from initial raids to the transfer of information to the police and prosecutors, to judicial adjudication of a case.

#### *Courts.*

- Industry commends the efficiency of many Shanghai courts. Cases there typically move quickly, usually within 6 months for the first trial, with the courts awarding statutory damages if they find infringement.

*Universities.* Shanghai authorities recognize that illegal copying of textbooks is an issue at Shanghai universities, particularly in small-scale student-run facilities.

- Well-known Shanghai universities have reportedly allowed wholesale book copying in on-campus textbook centers. Shanghai authorities should proactively continue to monitor campuses to prevent continuation of this illegal activity.
- The Shanghai Copyright Bureau reports coordinating with universities to train students on IPR awareness.

**Zhejiang Province**, a manufacturing hub in eastern China with a large proportion of privately owned production facilities and the major Ningbo port, has been identified over the years as a major distribution center for infringing goods to overseas markets. Right holders have repeatedly drawn attention to the city of Yiwu as an important distribution center for small commercial goods.

*Hot Spots.* According to industry reports:

- The cities of Ningbo, Cixi, Yiwu and Wenzhou have been particularly associated with counterfeiting manufacturing and distribution (including export).
- Industry representatives have noted that counterfeiters have been moving to the smaller cities of Yuhuan and Taizhou in response to increased enforcement efforts in Yiwu, Cixi and Ningbo.

*Retail and Wholesale Markets.* Zhejiang is home of the China Small Commodities Market in Yiwu, reportedly the world's largest wholesale market.

- Yiwu officials have set up a coordination body to improve enforcement. They are pursuing closer coordination between industries and the Yiwu government, training for officials on IPR issues, a policy of revoking business licenses for repeat IPR offenders, and employment of undercover Consumer Protection Office investigators to root out underground sales of pirated and counterfeit goods.
- Industry reports that local enforcement authorities are increasingly responsive to right holders' complaints.

*Administrative Enforcement.*

- Industry reports that Zhejiang AIC is one of the most active in helping right holders investigate trademark infringement.
- The Zhejiang AIC handled 8,403 trademark cases in 2006.

- In comparison to trademark issues, the Copyright Bureau handled 61 copyright cases in 2006.
- To improve coordination and oversight of cultural product markets, Zhejiang State Administration of Radio Film and Television, Culture and Copyright Bureau offices are now co-located.

*Criminal Enforcement.*

- In 2006, Zhejiang transferred 119 cases of trademark infringement for criminal investigation. There were no reported transfers of copyright cases.
- Criminal remedies continue to be largely non-deterrent, as in other parts of China.
- Zhejiang authorities have confirmed that facilitating more criminal transfers of copyright, patent and trademark cases remains a top priority.
- Local court officials in Yiwu and Ningbo described efforts to increase IPR training for judges and expedite the handling of IPR cases, and industry sources have reported that, in recent years, it has become easier to file criminal IPR complaints in Yiwu.
- Valuation of seized goods remains a key problem..
- Industry reports continued resistance by local administrative officials to transfer cases for criminal investigation and prosecution, a problem in many localities around China.

*Exports.* The Ningbo port is a significant port of lading for infringing goods seized at U.S. borders. In 2006, Ningbo Customs handled 235 IPR infringement cases valued at RMB 27.51 million, and Hangzhou Customs investigated 123 cases valued at RMB 12 million.

## **RUSSIA**

Russia will remain on the Priority Watch List in 2008. The United States will continue to monitor closely Russia's progress on IPR protection and enforcement and to assess implementation of the November 19, 2006 bilateral agreement on intellectual property rights ("IPR Bilateral Agreement").

Piracy and counterfeiting remain major concerns in Russia. The U.S. copyright industries estimate that they lost in excess of \$1.4 billion in 2007 due to copyright piracy in Russia. The U.S. copyright industries continued to report that in 2007, Russia's optical disc production capacity was far in excess of domestic demand, with pirated products being produced both for domestic consumption and export. Due to growing broadband penetration and the continued proliferation of pirate websites, the United States remains concerned about Internet piracy in Russia.

In spite of some improvements, weak enforcement against piracy and counterfeiting in Russia remains a serious problem. In 2007, Russian law enforcement authorities initiated raids on optical disc production facilities and retail sites, and investigations of Internet sites. However, prosecutions and adjudications of IP cases remain sporadic and inadequate; there is also a lack of transparency and a failure by courts to impose deterrent penalties for IPR violators.

The United States conducted an Out-of-Cycle Review in 2007 to encourage Russia to implement its commitments in the IPR Bilateral Agreement and evaluate further actions that Russia needs to take to improve protection and enforcement of intellectual property rights. As part of the IPR Bilateral Agreement, Russia has committed to fight optical disc and Internet piracy, protect against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, deter piracy and counterfeiting through criminal penalties, strengthen border enforcement, and bring Russian laws into compliance with WTO and international IPR norms. Russia's implementation of those IPR commitments will be essential to completing the final WTO accession process. While Russia has made some progress in implementation, additional work remains for Russia to fully implement its commitments under the IPR Bilateral Agreement.

Part IV of Russia's Civil Code, which covers IPR, went into effect on January 1, 2008. Russia has pledged in the IPR Bilateral Agreement to ensure that Part IV and its other IPR measures will be fully consistent with the TRIPS Agreement upon Russia's accession to the WTO. Russia has also committed to introduce legislation in the Duma to implement its TRIPS Agreement obligations that will take effect upon Russia's accession. The United States is awaiting additional efforts by Russia in this area.

In addition to the multilateral work to ensure Russia's compliance with the TRIPS Agreement and Russia's other international IPR obligations, the United States continues to work with Russia on the enforcement of IPR and Russia's compliance with its bilateral obligations through the United States – Russia Bilateral Working Group on Intellectual Property Rights. In addition, the United States is reviewing Russia's status as a beneficiary country under the U.S. Generalized System of Preferences (GSP) Program.

## **ARGENTINA**

Argentina will remain on the Priority Watch List in 2008. Although cooperation has improved between Argentina's enforcement authorities and U.S. copyright industries, and the Argentine Customs authority has taken steps to improve enforcement, the United States encourages stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products. Copyright piracy remains a significant problem in numerous industry sectors. Civil damages are ineffective and in criminal cases the judiciary is apparently reluctant to impose deterrent-level penalties. The United States notes that Argentina continues to make progress in decreasing its backlog of patent applications. However, Argentina still does not provide adequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. The United States also urges Argentina to implement an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. The United States will continue to monitor Argentina's efforts to address these IPR concerns.

## **CHILE**

Chile will remain on the Priority Watch List in 2008. Chile's IPR performance continues to fall well below expectations for a U.S. free trade agreement partner. The United States remains concerned about inadequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products and insufficient coordination between Chile's health and patent authorities to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. While some U.S. pharmaceutical companies have reported positive outcomes in patent infringement cases, the underlying weaknesses in Chile's legal regime require resolution in order for Chile to fully implement its obligations under the U.S.-Chile FTA Free Trade Agreement (FTA). The United States also remains concerned about continuing copyright piracy and trademark counterfeiting. Chile's Congress is continuing to consider legislation to implement various provisions of the FTA regarding Internet service provider liability, limitations and exceptions to copyright protection, and enforcement and penalties against copyright infringement. Further amendments to Chile's IPR legislation are needed to bring Chile's IPR regime into line with its multilateral and bilateral commitments. The United States will continue to work together with Chile on the implementation of its IPR commitments in the FTA.

## **INDIA**

India will remain on the Priority Watch List in 2008. The United States remains concerned about inadequate IPR protection and enforcement in India. The United States continues to urge India to improve its IPR regime by providing stronger protection for copyrights, trademarks, and patents, as well as protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. The United States encourages India to implement the WIPO Internet Treaties by strengthening its copyright laws, and to improve its IPR enforcement system by enacting and implementing an effective optical disc licensing scheme to combat optical disc piracy. Piracy remains a serious problem in India, as does trademark counterfeiting, including of pharmaceuticals and distilled spirits. India's criminal IPR enforcement regime remains weak, with improvements needed in the areas of police action against pirates and counterfeiters, expeditious judicial dispositions for copyright

and trademark infringement with imposition of deterrent-level sentences for IPR infringers, and stronger border enforcement against counterfeit and pirated goods. The United States urges India to strengthen its IPR regime and stands ready to work with India on these issues during the coming year through the Trade Policy Forum and other bilateral mechanisms.

### **ISRAEL**

Israel will remain on the Priority Watch List in 2008 and the United States will conduct an Out-of-Cycle Review as a positive step to encourage progress in Israel on IPR issues. The United States is encouraged by recent progress on certain IPR issues in Israel, including: the passage of copyright legislation and issuance of a decree in 2007 that ensures national treatment for U.S. rights holders in accordance with the 1950 exchange of letters between the United States and Israel; the issuance of regulations in 2007 and policy clarifications in 2008 on the manufacturing of pharmaceutical products for export; and increased positive engagement between the United States and Israel on IPR issues. The United States remains seriously concerned, however, with Israel's inadequate level of protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products, and Israel's laws that adversely affect the term of pharmaceutical patent protection by effectively reducing the time granted to compensate for delays in obtaining regulatory approval of a drug. The United States hopes to see Israel accede to and implement the WIPO Internet Treaties in order to address the growing problem of Internet piracy in Israel. As noted in last year's report, the United States expects Israel to provide an appropriately high level of IP protection that reflects its status as a partner in the U.S. – Israel FTA and its objective of becoming a member of the Organization for Economic Co-operation and Development (OECD). The United States will continue to work together with Israel during the Out-of-Cycle Review to ensure the strengthening of Israel's IPR regime.

### **PAKISTAN**

Pakistan will be elevated to the Priority Watch List in 2008. In 2007, the United States conducted an Out-of-Cycle Review to monitor Pakistan's progress on enacting legislation to provide effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products, as well as a system of coordination between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. Due to a lack of progress this year in either of these areas, Pakistan is being elevated to the Priority Watch List. The United States and Pakistan will remain closely engaged on these issues during the coming year. The United States commends Pakistan for continuing to take enforcement actions against large-scale illegal optical disc production and retail sales of pirated and counterfeit products, but encourages Pakistan to take enforcement actions against book piracy, aggressively prosecute IPR crimes, and ensure that its courts issue deterrent-level sentences for IPR infringers, especially against those connected with the optical disc pirate plants that were shut down in 2005. The United States will continue to monitor closely the IPR situation, and will work together with Pakistan to achieve further improvements in its IPR protection and enforcement regimes.

### **THAILAND**

Thailand will remain on the Priority Watch List in 2008 due to a broad range of concerns surrounding IPR protection and enforcement. Elections in December 2007 re-established

democratic governance in Thailand, and the United States looks forward to working with the new Thai government to seek resolution of these concerns. The United States recognizes that in 2007, Thai law enforcement officials continued to conduct actions against infringing activity at the retail and distribution levels. Despite these efforts, however, piracy and counterfeiting rates remained high. The United States strongly urges Thailand's authorities to take additional concrete actions to strengthen its IPR regime that include continuous and sustained enforcement actions that get to the source of the infringing activity and issuance of deterrent penalties to IPR infringers, specific steps to improve interagency coordination, and to combat optical disc piracy, large-scale organized book piracy, cable and signal theft, and entertainment and business software piracy. Thai authorities should also take steps to address production and distribution of counterfeit products, as well as delays in the granting of patents. While the United States recognizes the importance of Thailand's public health challenges, Thailand's recent policies and actions regarding the compulsory licensing of patented medicines have contributed to continuing concerns regarding the adequate and effective protection of IPR in Thailand. The United States is awaiting further information on the new Thai government's approach in this area and hopes to work constructively on this and other IPR issues in order to strengthen Thailand's IPR regime.

## **VENEZUELA**

Venezuela will remain on the Priority Watch List in 2008. Venezuela made no effort to improve its weak IPR regime in 2007. Copyright piracy continues to worsen, while proposed copyright legislation, if re-introduced, would severely undercut the existing Venezuelan copyright law, as well as bilateral and international standards of IP protection. The U.S. pharmaceutical industry reports that Venezuela has not issued a patent to a foreign pharmaceutical product since 2003, and has not issued any patents at all since 2005. Venezuela also does not provide protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. In April 2006, Venezuela withdrew from the Andean Community, raising questions about Venezuela's ability to fulfill its international IPR obligations and whether it will provide for the effective administration of its IPR system. The United States urges the Venezuelan government to take immediate action to improve IPR protection, particularly by addressing piracy and counterfeiting, amending inadequate legislative proposals or laws, protecting against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products, and improving IPR enforcement.