

## IP ADVISOR

AN INFORMATIONAL NEWSLETTER FROM GOODWIN PROCTER LLP'S INTELLECTUAL PROPERTY GROUP

ARTICLE FROM APRIL  
2007 ISSUE**UPDATE ON GLOBAL EFFORTS TO FIGHT MOVIE PIRACY***By Jeffrey I. Klein*

Recent reports from the Motion Picture Association of America (“MPAA”) calculate total losses to the studios from piracy at around \$6 billion annually and total losses to the global motion picture industry (including domestic and foreign producers, distributors, theaters, video stores and pay-per-view operators) at \$18.2 billion. It is widely believed that most of this lost revenue arises from piracy outside of the United States.

Though the MPAA has been successful in fighting movie piracy with a multi-pronged approach of legislation, litigation, education and enforcement, scores of industry players feel that the problem is getting worse. In response to this growing threat, the MPAA, media companies and others continually urge the private and public sectors to step up current efforts to attack movie piracy around the world.

The international nature of this problem encourages a global perspective on current developments in the effort to fight movie piracy. Accordingly, here is a summary of recent notable developments in domestic and foreign anti-piracy legislation, technology and enforcement actions as of April 20, 2007.

**Legislation***United States*

United States Files WTO Actions Against China (April 2007). The United States filed two trade related challenges against China with the World Trade Organization in an effort to stimulate progress on China’s anti-piracy effort and to open access in China for U.S. films, music and software. According to U.S. Trade Representative Susan Schwab, “piracy and counterfeiting levels in China remain unacceptably high” and “because bilateral dialogue has not resolved our concerns, we are taking the next step by requesting WTO consultations.” A request for WTO consultations is the first step in a WTO dispute. If the parties do not resolve the matter within a 60-day consultation period, then the United States may refer the matter to a WTO dispute settlement panel. If a panel is convened, the decision would be expected to be delivered in May 2008. Note that the European Union did not join the U.S. challenge and Vivian Reding, the EU Information Society and Media Commissioner, stated on April 12, 2007 that “we will not join this complaint.”

Campus Anti-Piracy Bill (March 2007). U.S. Representative Ric Keller (R-FL) introduced the “Curb Illegal Downloading on College Campuses Act” which would give universities and colleges the opportunity to use federal funds to reduce student bootlegging. Under the proposed legislation, colleges and universities could apply for grants of money from the Fund for the Improvement of Postsecondary Education

Program under the Department of Education to fund “innovative on-campus, anti-piracy pilot programs designed to reduce digital piracy.”

New York City Anti-Camcording Bill (April 2007). The New York City Council approved a bill which makes secretly videotaping movies in a theater for illegal sale on the street a misdemeanor crime punishable by up to six months in jail and fines of up to \$5,000 (an increase from a \$250 violation). NYC Mayor Michael Bloomberg supports the bill and is requesting support from the New York State legislature for a state bill that would similarly classify theater videotaping as a misdemeanor and make the second offense a felony.

### *Russia*

Stronger Anti-Piracy Laws (April 2007). President Vladimir Putin approved amendments to Russia’s criminal code which result in tougher penalties on pirates. The amendments make piracy offenses a more serious crime under Russian law, punishable by up to six years in prison (up from five years) and maximum fines of up to \$20,000 (up from \$10,000).

New Law Bans Street Sales of DVDs (April 2007). The Russian government issued a new law banning the sale of DVDs, CDs and videocassettes from its street markets and kiosks. The Russian Anti-Piracy Organization welcomed the new law as a key component in Russia’s ongoing war against piracy. The new law is expected to be a valuable weapon in upcoming police campaigns aimed at stopping sales of pirated DVDs and CDs.

### *China*

Top Court Strengthens Piracy Rules (April, 2007). The highest court in China lowered the threshold for prosecuting movie, television, music and software pirates, and counterfeiters. The new judicial interpretation gives prosecutors the ability to punish makers and sellers of pirated discs caught with 500 or more counterfeit discs (reduced from 1,000 counterfeit discs under the old rules) with three years of prison.

### *European Union*

Parliament Approves Plans for Piracy Bill (March 2007). Members of the European Parliament’s legal affairs committee approved draft legislation which would implement standard criminal penalties across Europe for counterfeiting and intellectual property piracy. The proposal represents an increase from most of the financial penalties and custodial sentences under the various national laws in Europe.

## **Technology**

Copyright Infringement Detection Automation Software - Autonomy Corp. (April 2006). Autonomy Corporation Plc., an enterprise infrastructure software company, announced the release of Virage Automatic Copyright Infringement Detection (ACID). Autonomy claims that Virage ACID automates the detection of illegal distribution of copyrighted material on the Internet and thus eliminates the need for content owners to spend hours trawling through video sharing websites, or manually scanning p2p file contents.

Digital Fingerprinting Software - MySpace.com/Audible Magic (February 2007). MySpace.com announced that it implemented a pilot program to block videos containing unauthorized copyrighted content from being posted in its community. With the program's launch, MySpace becomes the largest Internet video site to offer free video filtering to copyright holders. Using digital fingerprinting technology licensed from Audible Magic, a content rights management company, MySpace's filter screens video uploaded by users and blocks any video matching a fingerprint in MySpace's database.

### **Enforcement Actions**

MPA Dog Raids in Malaysia (March/April 2007). In a revolutionary approach by the Motion Picture Association (the "MPA") in Malaysia, two specially trained dogs uncovered pirated DVDs and computer games in recent raids. Lucky and Flo, Labrador Retrievers, are the first dogs in the world trained to detect polycarbonate and other chemicals used in optical discs. In March, Lucky and Flo led investigators to 1 million pirated DVDs, CDs and computer discs worth approximately \$2.8 million. In April, officials from the Ministry of Domestic Trade and Consumer Affairs used the dogs to sniff out and unearth a stash of approximately 150,000 pirated optical discs from video shops in Kuala Lumpur which are reported to be worth more than \$430,000.

Chinese Seizure of 1.64 Million Discs (March 2007). Chinese officials seized 1.64 million illegal DVDs in southern China in the country's largest anti-piracy raid of the year. According to the MPAA, the raid on the DVD factory and storage center in Guangzhou discovered pirated versions of Chinese, American, Korean and Japanese movies and TV shows.

Operation Trident (February 2007). The MPA managed the launch of "Operation Trident," a new anti-piracy enforcement operation in Asia, in early December 2006. Operation Trident reported that by the end of January 2007 it had performed 1,874 raids resulting in seizures of 4.8 million pirated discs, 749 optical disc burners and 870 arrests of suspected movie pirates.

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**If you would like further information about the topics covered in this newsletter, or any of the above publications or conferences, please contact Ethan Horwitz, chair of Goodwin Procter's Intellectual Property Group, at 212.459.7455 or [ehorwitz@goodwinprocter.com](mailto:ehorwitz@goodwinprocter.com)**

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