

Innovation Best Antidote for Piracy in China

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When China joined the World Trade Organization in 2001 it was thought the move would induce the nation to toe the line on the theft of intellectual property within its borders, but that hasn't been the case -- and it won't be until the Asian giant steps up its efforts at innovation, according to one IP attorney.

"Until China becomes more of a producer of IP, I suspect that it won't become more responsive to the issue," Emily Miao, an intellectual property attorney with McDonnell Boehnen Hulbert & Berghoff in Chicago, told TechNewsWorld.

"Right now, since it's not producing very much IP, piracy is no skin off its back," she added.

Copiers, Not Innovators

She noted that in 2004, for example, a little over 1,700 international patent applications were filed by the Chinese. "That's very low compared to other countries," she said. "It means that there's not much technological innovation coming out of China today.

"Until they become more innovative and file more applications to protect their intellectual property, the Chinese won't be enforcing intellectual property protections any time soon," she maintained.

"They're not a producer of intellectual property," she added. "They're a [copier](#) of IP."

Silk Road Ripoffs

When Miao visited China two months ago, she said that some of the things she saw would shock piracy fighters.

She recalled visiting a well-known shopping locale called the "Silk Road Marketplace." It had been closed two years ago by Chinese authorities because it was a den for distributing counterfeit and pirated goods.

"Now it reopened in a classier setting," she said. "The problem is, when you walk in, you still see the pirated goods. They're just better displayed."

Ironically, she noted, outside the marketplace is a sign proclaiming that its merchants respect intellectual property.

'Moving in a Healthy Direction'

She asserted that the Chinese have an attitude problem toward intellectual property.

"A lot of the piracy is done with a nudge-nudge, wink-wink type of thing," she said. "That's clear when you walk through the streets and see all these low-quality brand-name goods for sale and see police officers walking everywhere and nobody is doing anything."

However, Yufeng Ma, an intellectual property attorney with McAndrews, Held & Malloy in Chicago contends China is making progress in curbing piracy and protecting IP.

"The IP environment is moving in a healthy direction," he told TechNewsWorld.

Playing the Game

He cited two legal cases as evidence of that -- a trademark case where a Chinese court ruled in favor of [Starbucks](#) (Nasdaq: SBUX) and against a domestic company infringing on the [java](#) purveyor's brand, and drug giant Pfizer's appeal victory over a native firm knocking off Viagra.

Not only are the results of those decisions important, Ma contended, but also the fact that Chinese companies are using the courts to settle IP disputes.

"Chinese companies are trying to play the legal game," he observed. "They're going to court or to [a] patent office to validate their patent. That fact itself is a healthy development.

"It shows that Chinese companies are changing their behavior, from ignoring patents, infringing them, to recognizing patent rights and going through legal means to use them," he continued.

Protest Without Action

He acknowledged that there's still a lot of infringing activities in China, especially trademark infringement. "But there has been significant improvements in enforcement and in legislation to bring the Chinese IP law to the standards required by international agreements," he contended.

He argued that sometimes it appears foreign companies prefer complaining about abuse of their IP rather than doing something about it.

For example, he said that of 14,424 new IP-related cases filed in the Chinese courts in 2005, only two percent were filed by foreign companies.

"Private parties shouldn't just sit there and complain that their patents and trademarks were infringed," he declared.

"Many foreign companies cry out about how bad IP infringement is in China, but they're not bringing many lawsuits," he added.