

CHINA

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Recent WTO ruling – assistance in the fight against piracy?

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On 12 August 2009, a World Trade Organisation (WTO) Panel issued a decision on “Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products”, following a complaint filed by the United States against China in which the United States claimed that China unfairly restricts the import of films, music, books and other works that are copyright-protected. In its decision, the Panel focused on three main market access concerns:

- import restrictions on foreign media products;
- discriminatory operating requirements imposed on foreign-invested distributors; and
- discriminatory treatment of imported reading material.

The Panel found that China’s restrictions on the importation and distribution of publications and audiovisual products by foreign suppliers do indeed violate its commitment under the WTO Accession Protocol, and decided in favour of the United States in all three aforementioned items. The Panel’s recommendation that China should “bring the relevant measures into conformity with its obligations” is aimed to remove market access barriers, but some experts have interpreted it as a step in the fight against music and film copyright piracy.

According to the current legal framework, foreign companies are required to submit their sound and video recordings for content review and can only import them into China through two wholly state-owned Chinese enterprises designated by the government. Moreover, only about twenty foreign films are allowed for screening each year. These restrictions have helped to make the Chinese voracious consumers of illegally copied and purchased foreign movies and music. Copyright infringement in this area is extremely high and, due to consumer demand, very difficult to curb.

Liberalising imports would give copyright owners a greater share of the market and place them in a better position to

implement suitable anti-counterfeiting strategies. However, the WTO Panel did not rule on certain areas of the complaint filed by the United States, partly due to insufficient evidence and partly due to its view that such areas were outside the scope of the Panel’s mandate. For example, the Panel did not criticise China for censorship, for limiting the number of imported films, for the approval processes for distributors, or for restrictions on subscription systems and electronic reading materials. The Panel further agreed that China may ban foreign films and publications.

Although the decision indicates that China should allow audiovisual products to be imported by entities other than through the two currently appointed state-owned enterprises, the various limitations, such as the importing of only twenty movies per year, remain. The WTO Panel decision therefore does not resolve the problem of a growing market that can only satisfy its demand for a wide variety of international music and films by illegal means, and will do little to reduce copyright piracy in the music and film industry.

Despite the relatively narrow scope of the decision, China has filed an appeal against the decision of the WTO Panel. The PRC government seems determined to deny greater market access to foreign entertainment companies. It appears that this opposition is related to the difficulty of controlling content in a more liberal distribution regime. The WTO decision on the appeal filed by China is due at the beginning of 2010. It is generally expected that the WTO will uphold its previous decision and that China will then have to bring its legal framework in line with its WTO obligations. However, copyright infringement in the film and music industry will remain rampant for some time thereafter.

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