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## On China's Intellectual Property Rights Protection Online

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### Abstract

Online people conduct all kinds of business activities, such as promoting the sales of products and services, reading newspapers, watching TV and movies, and sending business messages by e-mail, by e-voice and by e-fax. Computers with access to the Internet are defined by the United Nations as the fourth media characterized by instantaneousness, openness, limitlessness, boundlessness and globalization. With the development and popularization of the Internet and the advance of the information technology in China, Intellectual Property Rights (IPRs) violations online have frequently occurred in e-business activities. IPRs protection online has posed a great challenge not only for business managers and officials, but also for judges and lawyers because the rapid development of the Internet has created a legal vacuum governed by no laws in IPRs violation and protection online in China. The paper at first classifies IPRs into several categories, then reveals China's serious problems and challenges of IPRs violations online and stresses the necessity of China's IPRs protection online. Finally it puts forward some suggestions concerning IPRs protection online.

Key Words: Online, Internet, IPRs, Violations, Protection, e-Business

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## I . Introduction

China ushered in the era of information in the middle of 1990s. Since then, the Internet has been developing very rapidly in China. According to *the Eleventh Survey Report on China's Internet Development* released by China Internet Network Information Center (CNNIC) in January, 2004, there had been 30.89 million computers with access to the Internet in China and the number of internet users had amounted to about 79.5 million by December 31, 2003. (<http://www.cnnic.com.cn>). The Internet has been making increasingly great impact on people's life, learning, research, work, and interactions. It has been changing radically the way people live, the way people learn, the way people are engaged in recreational activities, and the way people conduct business and research. All the aspects of social life have been affected with the arrival of the information age since people of all walks of life are increasingly aware of the great power and value lying in www. However, IPRs violations have frequently occurred online, which poses a great challenge to our traditional intellectual property protection.

## II . Definition and Classification of IPRs Online

### 1. Definition of IPRs online

According to the Intellectual Property Rights Protection Conference held in Warsaw in June 2001 (<http://www.embassy.usinfo.pl/events/rights/def.htm>), intellectual property is information that derives its intrinsic value from creative ideas. It is also information with a commercial value. IPRs are bestowed on owners of ideas, inventions, and creative expressions that have the status of property. Like tangible property, IPRs give owners the right to exclude others from access to or use of their property within the designated place during the specified period of time. Accordingly, IPRs online are those bestowed on owners of ideas, inventions, and creative expressions on the Internet. They are digital products online, such as literary works, music, visual and video contents, programs and computer-aided designs and graphics etc. However, even if it's still applicable to some extent to those online, the traditional sense of IPRs has to change as the Internet is characterized by instantaneousness, openness, limitlessness, boundlessness, and globalization and the IPRs online are more vulnerable to violation and piracy than those offline.

## 2. Classification of IPRs Online

IPRs online can be classified into the following three categories:

### 1) Copyrights and their related rights

Copyrights refer to those rights enjoyed by the authors concerning their literary works, arts, musical, visual and video works, and scientific works on the Internet. In a broad sense, they include the rights to revise them, publish them, sign their names on them, and protect them on the Internet. They also refer to the rights to duplicate, record, edit, broadcast or show them online and the rights to let them connected with other websites on the Internet.

### 2) Industrial property rights online, such as programs, software, computer-aided creative designs, etc.

3) Rights on domain names, which are made of letters or numbers and which are addresses registered by enterprises on the Internet and are regarded as trademarks registered online by enterprises in order to promote the sales of their products or services, such as [www.microsoft.com](http://www.microsoft.com). Once a domain name is registered on the Internet, its owner has the exclusive right to use it to promote the sales of his related products or services, just like a trade mark. Therefore, a domain name has the same economic and commercial value as a trade mark.

## III. Problems Concerning IPRs Protection Online

Compared with the traditional IPRs protection offline, IPRs protection online has posed a greater challenge not only to the owners, but also to the e-business administrators and lawyers in China because it is a brand new field and it seems that to some extent, the Internet has created a legal vacuum governed by no laws in China. So far the following problems have occurred online concerning IPRs protection:

### 1. Copyrights violations online

With the advance of information technology, online literary works, musical, visual, and video works, scientific works, and other multimedia products can be easily compressed, duplicated, and transmitted without the authorization from their authors or inventors. Anyone who can get access to the Internet can easily download, duplicate, and sell them. By doing so, he has violated or intruded into the authors' or owners'

rights. Such copyrights violations lead to unfair competition in the market and their owners' great economic loss.

For example, 21ViaNet China Inc. once pasted the works of Mr. Wang Meng and other five writers on its website <http://www.21vianet.com>. On May 31, 1999, they respectively brought a lawsuit against 21ViaNet China Inc. at Beijing Haidian People's Court and requested Beijing Haidian People's Court to stop 21ViaNet China Inc. from violating their copyrights on their website, to make a public apology to them, and asked for both economic and spiritual compensation.

The argument of 21ViaNet China Inc. is as follows:

They were one of the first-generation Internet Service Provider (ISP) and one of the top brands in the Chinese ISP market. There had been no stipulations in our Chinese laws concerning whether they should get approval or authorization from the authors and how they should pay their authors before their works were put on their website. The works pasted on their website were downloaded from the Internet instead of getting them directly onto the Internet from the authors. They did not know that they should get the authors' approval before doing so online.

Finally, according to the Copyright Law of the People's Republic of China, Beijing Haidian People's Court reached a verdict asking the defendant (1) to stop using the plaintiffs' works on their website, (2) to issue a public apology to the plaintiffs, (3) to compensate the respective plaintiffs for the losses they had sustained. But the court turned down the plaintiffs' request for spiritual compensation.

The case shows that the Internet has created a legal vacuum on the Internet governed by no laws in China.

## 2. Inappropriate connection of websites

The connection between websites is one of the key information technologies in the development of the Internet, which can make the files or the documents connected from different servers so that the information can be shared by all the Internet users in the world. In this way, the owners of the websites or domain names or the enterprises can effectively push the sales of their products or services online. However, the connector may not enjoy any rights of the connected files and the connected documents. Once the owners of the connected files or the connected documents have raised an objection to the connection, a legal dispute will inevitably occur and other legal issues will follow. Does it involve the violation of the owners' rights if their connected files or documents or works are duplicated, sold and transmitted by the Internet users without the owners' approval since the connected files or documents are easily available to the general

public online? Who will be the defendant? The connector or the Internet user who has duplicated, sold, and transmitted or made use of the files or documents? Or will the connector AND the Internet user be the defendants in the dispute? So far there has been no laws concerning the legal issues resulting from the connection of websites and most of such disputes have ended with a compromise outside the court by the parties involved.

### 3. Poor management of BBSs and websites

Legally, on the one hand, once one has registered a website or a domain name on the Internet or owns a Bulletin Board System (BBS) on the website, the website or the domain name is put at his disposal and he enjoys the right to occupy the space and to use it on the Internet to make profits from it. On the other hand, he is supposed to be responsible for the information and the contents available at his website or at the BBS and has to see to it that all the information released there should be reliable and should not involve the violation of any other people's rights online or offline. According to *the Eleventh Survey Report on China's Internet Development* released by CNNIC in January, 2004 (<http://www.cnnic.com.cn>), China had registered 595,550 websites at www by December 31, 2003. Thanks to the advance of digital technology, people can exchange information and ideas at BBSs with ease and convenience. As websites' managers or Internet Service Providers (ISPs), they have to be legally responsible for the information released there. But in reality, some of them do not exercise effective supervision over their websites or BBSs because they have a weak sense of law, have limitations in their technology, or have a poor management system. As a result, some Internet users violate other people's rights at their BBSs, such as slandering people including state leaders at BBS. Some owners or some Internet users deliberately use the websites or BBSs to publicize false advertisements or engage in illegal business activities, such as selling sex and violating other people's IPRs. Since anyone who can have access to the Internet can release information at BBSs, it is difficult to find the violator if the information involves the violation of other people's rights or laws.

For example, <http://www.263.net> has a website [www.topcool.net](http://www.topcool.net). Internet users can provide free personalized information services at [www.topcool.net](http://www.topcool.net). Since April 1999, more than 100,000 individuals have created personal websites there. In July 1999, a graduate student from Nanjing University created a website in the name of Kaoyan according to the regulations of <http://www.263.net> and publicized information concerning graduate admission, such as guidance to review, admission tests and test-taking experience. In November 1999, the publisher of the magazine *College Students* found the contents that appeared in Kaoyan at [www.topcool.net](http://www.topcool.net) were the same as those published in its magazine *College Students*. On December 27,

1999, the publisher of *College Students* sued the owner of <http://www.263.net> since he could not find who released the contents and information at Kaoyan. The publisher of *College Students* thought that <http://www.263.net> had violated not only his copyrights, but also the right of reputation. He requested <http://www.263.net> to pay him economic loss amounting to RMB ¥100 thousand and to make a public apology.

This case shows that ISP should be responsible for what is published at his website and that it is really tough to find the violator if the violation has taken place at one's website or BBS because of being open to the general public.

#### 4. Inappropriate or illegal registration of domain names

It was reported that the number of Chinese enterprises' domain names registered improperly or illegally by businessmen overseas had amounted to over 600. Haire, 505, Changhong, Wahaha, Qingdao Beer, Jianlibao, Quanjude Roast Duck, to name only a few, were once registered online by overseas businessmen. Forty brand names from Zhejiang Province alone were registered online by others abroad. Of great concern is the fact that some of the Chinese enterprises have not been aware of the registration. Nor do they seem to understand the negative consequences of these acts of piracy because some managers have not realized the importance of the Internet in the promotion of the sales of their products or services. If an enterprise's brand name or trade mark has been registered online by another enterprise, the enterprise can not sell its products or services through the Internet, which will put the enterprise in a very disadvantageous position in the competitive business community. Though there is a Trade Mark Law in China, it does not touch upon the inappropriate or illegal registration and protection of domain names online. So far there has been no law in China regarding domain names though eight regulations have been issued in this respect by the departments concerned.

During the period of August and September, 1999, *American On Line* (<http://www.aol.com>) brought a lawsuit against Shenzhen Tengxun Company, requesting that Shenzhen Tengxun Company's two domain names, oicq.com and oicq.net be transferred to *American On Line* (<http://www.aol.com>) free because oicq.com and oicq.net involved the violation of *American On Line* (<http://www.aol.com>)'s IPRs and their spellings were very similar to the name of its software, ICQ and to the domain name ICQ.com *American On Line* (<http://www.aol.com>) had. Though Shenzhen Tengxun Company defended itself on time, finally it was defeated in the lawsuit and had to transfer the two domain names to *American On Line* (<http://www.aol.com>). In order to avoid violating IPRs again, in April 2001, Shenzhen Tengxun Company

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registered the following two domain names: tencent.com and tencent.net (<http://www.chinabyte.com/20030325/1659110.shtml>).

## 5. Lack of legal e-professionals

The issue of online IPRs protection has appeared with the development and popularization of the Internet and the advance of the information technology in China. IPRs online is at the frontier of e-business development. China is lacking in legal e-professionals in this brand-new field. For example, Hangzhou Hi2000 InfoTech Co. Ltd. was involved as a defendant in a lawsuit with a foreign business concerning the ownership of the domain name [www.chemnet.com](http://www.chemnet.com) and it tried to seek legal assistance from a large number of Chinese law firms in China, but all of the law firms declined to offer assistance, saying that they did not know how to deal with it, that they were not able to know how to use the Internet, or that they could not read or speak English. The lack of legal e-professionals with a good command of the English language and a good knowledge of e-business or information technology put China in a very unfavorable position indisputes with foreign countries concerning IPRs protection online.

## 6. Lack of a complete national law and unified international laws regarding e-business

Though the Ministry of Information Industry of China has issued 8 regulations concerning domain names, yet there has been no national law regarding e-business and IPRs protection online. At present, judges and lawyers deal with disputes concerning IPRs online according to some traditional laws regarding IPRs protection offline. Therefore, a lot of disputes or issues in this respect remain unsettled because of the characteristics of the Internet. For example, how shall we define the place of IPRs violation on the Internet? How shall we confirm the authenticity of the evidence online? How shall we locate the owner of the information violating IPRs online or pinpoint the defendant? What should we do if the defendant denies the charge since the information and data online can be easily revised, amended, or deleted? What responsibilities should the violator and the ISP bear respectively once the violation online is confirmed? Since IPRs protection online is so different from IPRs protection offline, it makes judiciary departments' job very difficult.

Since the Internet is characterized by instantaneousness, openness, limitlessness, boundlessness and trans-nationality, different countries are at different levels of development in their information industry. All the countries in the world do not have unified laws or regulations regarding online IPRs protection. Some countries even do not have any laws or regulations at all regarding e-business. All these have made it difficult and complicated to protect IPRs online.

## IV. Suggestions Concerning IPRs Protection Online

IPRs protection online is closely related not only to the interest of IPRs owners, to the safe operation of the Internet and to the successful transmission of information online, but also to the smooth development of the e-business in China. Therefore, we should attach importance to IPRs protection online as well as offline in consideration of the Internet's characteristics. For the sake of effective IPRs protection online, we put forward the following suggestions for both the government and enterprises:

### 1. For the Government

#### 1) Making e-laws regarding IPRs online and strengthening judiciary protection

The rapid development of the Internet has created a legal vacuum in IPRs violation and protection online in China. It has posed a great challenge not only for business managers and officials, but also for judges and lawyers. The Chinese legislature should draft e-laws or perfect existing laws to cover this issue as soon as possible so that a legal framework can be provided for e-business, the IPRs owners can exercise and protect their IPRs online effectively, and those who violated IPRs online can be dealt with properly according to corresponding e-laws. Once it is found that our IPRs have been violated online, we should settle the disputes through friendly negotiation, diplomatic channels, or other legal means on the basis of e-laws. Before China has issued its online IPRs law, judiciary departments and arbitration tribunals can refer to the present offline IPRs laws and their related regulations and explanations in their settlement of the disputes in IPRs protection online, such as Copyright Law, Trademark Law, Patent Law, Law Against Unfair Competition of the People's Republic of China, and the regulations issued by the Ministry of Information Industry of the People's Republic of China concerning domain names, in addition to the agreements and



conventions China has signed with other international bodies concerning IPRs protection. More legal e-professionals should be trained and e-courts should be established to specialize in e-disputes in judiciary departments so that related e-laws may be effectively enforced.

### 2) Strengthening international cooperation

Since the Internet is instantaneous, open, limitless and boundless, we should strengthen international cooperation and exchange with developed countries and international institutions, especially with our major business partners, so that we may learn from their experience in IPRs protection, get their support and cooperation in settlement of disputes, and draft and promulgate e-laws which will conform with international laws and practices.

### 3) Strengthening IPRs law education to ISPs and Internet users

IPRs law education should be provided to the general public through the news media, especially to Internet Service Providers (ISPs) and Internet users, so that they may strictly observe the present offline IPRs law and related regulations issued by the Ministry of Information Industry, China.

## 2. For Enterprises

Traditionally, Chinese enterprises have a weak sense of OFFLINE IPRs law. Acts of piracy have been prevalent in China. Compared with the USA and some other developed countries, China is still in the initial stage in its e-business development. Therefore, Chinese enterprises have a WEAKER sense of IPRs protection ONLINE. In China a lot of business leaders and business managers have not been fully aware of the radical changes and the miracle the Internet has brought about and will bring about in the way we live, the way we learn, and the way we conduct business. The majority of them have not learned how to use the Internet yet. According to CNNIC's *Survey Report* on Internet Development in China released in January, 2003 (<http://www.cnnic.com.cn>), most of the well-paid people of 40 years old do not use the Internet. Most of the Internet users are students or young employees just fresh from universities. Most of the business managers and business officials are above 40 years old in China. Since they do not know how to use the Internet, they will hardly know that their IPRs online have been violated or how to protect their IPRs online. Therefore, it is important to train them in computer applications, in information technology, and in online IPRs laws and regulations in order to increase their awareness of IPRs protection online. Five

suggestions to limit Web site problems with intellectual property laws are as follows: See Brad A. Kleindl, *Strategic Electronic Marketing : Managing E-Business*, South-Western College Publishing, Thomson Learning, 2001, p.293.

- 1) Independent contractors should release to the e-business all copyrights related to the creation of the Web page. The independent contractor should also obtain copyright releases from all subcontractors.
- 2) E-businesses should place a copyright notice on the Web page.
- 3) For extra protection, an enterprise may register the website with the Copyright Office as well.
- 4) The website should have a legal page so that people can see the rules concerning the use of the website and downloading materials from the site, especially materials and information owned by third parties.
- 5) To protect from being sued for copyright infringements, e-businesses should obtain written permission before using any other Web site's material or when they establish links to other sites.

## V. Conclusion

IPRs violations online have posed a challenge in the rapid development of China's e-business. However, if we increase our enterprises' awareness of IPRs protection online, make e-laws regarding IPRs, strengthen judiciary protection, international cooperation, and exchange with other countries and international bodies, and provide IPRs law education to ISPs and Internet users, IPRs can be effectively protected and China may speed up its e-business development in a legal framework.

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