

# WORLD TRADE ORGANIZATION

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**Council for Trade-Related Aspects  
of Intellectual Property Rights**

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## REVIEW OF LEGISLATION

### Follow-up Questions by Japan

#### Addendum

By means of a communication from the Permanent Mission of Japan, dated 28 April 2003, the Secretariat has received a copy of the following follow-up questions that Japan has communicated to the delegation of China.

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*Questions are based on responses from China in document IP/C/W/374*

#### A. COPYRIGHT

##### Ad response to question 3:

Concerning Article 39.3 of Copyright Law, please explain with concrete examples how copyright holders should express their intention (like "notice on CD jacket"), in case that they do not want to permit any exploitation of their works.

##### Ad response to question 4:

The answer clearly states that, the State Council will issue Regulations on the royalty criteria. Please specify when it will certainly be made public, and also, please describe the detailed system in terms of royalty distribution from broadcasting organizations to individual right holders. (How royalty goes from broadcasting organizations to individual right holders? Is there any intermediary institution involved between them? If it is the case, please provide us the detailed description of such institution.

##### Ad response to question 5:

More than one year has already passed since China became a Member of the WTO. Even though there is a clear commitment by the Chinese Government, there seems to be little progress on the issue of "criminal procedures threshold". Please let us know what relevant authorities (the Supreme People's Procuratorate and the Ministry of Public Security) have done in this past year with respect to this issue. Also please provide the specific date by which the Chinese Government can execute its commitment.

#### B. PATENT

##### Ad response to question 9:

The average time needed for examination of patent applications filed by Japanese nationals is currently 36.8 months and is being shortened. Japan also understands from discussions between the Japan Patent Office and SIPO (State Intellectual Property Office) that the total average time needed

for examination of patent applications (filed by all applicants) is 46 months. Please inform if there have been recent changes to these time periods. Please provide the average time needed for examination of patent applications filed by Chinese nationals, if available.

The average time needed for examination of patent applications filed by Japanese nationals is currently 36.8 months and is being shortened. Even if the average time period is 36.8 months, does China agree that any time period that far exceeds 36.8 months might not be considered "a reasonable period of time" under Article 62.2 of the TRIPS Agreement?

### C. ENFORCEMENT

#### Ad response to question 11:

Please confirm that the cost for confiscation and disposal of patent infringing goods concerning patent right for inventions, utility models and designs, undertaken by enforcement agencies including the Customs, is also borne by the State government.

#### Ad response to question 16:

In application of administrative procedure, Chinese authority requires right holders to establish not only the infringement but also the precise amount of damage caused by that infringement. Unless right holders establish these two things, the Chinese authority does not initiate the administrative procedure. However, the object of "administrative procedure" is not to recover the damage of right holders. It is clear that mandating the establishment of precise damage to right holders would impose unreasonable burden on the right holders, despite it can be done through the investigation of relevant authority. This situation might not be consistent with Article 41 of TRIPS Agreement. Please explain why the Chinese authority does not initiate the administrative procedure even though there is a clear infringement, until the right holders establish the precise amount of damage. Does the Chinese authority have any intention to help right holders to establish the amount of damage in order to facilitate the administrative procedure?

#### Ad response to question 17:

According to the Supreme People's Court's notification (17 December 1998) which is mentioned in the answer, criminal penalty is applied to the individual who earned more than RMB 50,000 in infringement activities for commercial purpose and to the organized persons who earned more than RMB 200,000. That is, criminal penalty would not apply to the infringement on copyright whose illegal earnings is not quite high, even though it is in commercial scale. For example, it can be understood that the organized persons who sold off 10,000 copies of pirated CDs (RMB 10/CD) earning RMB 100,000, is not liable for any criminal penalty, if this notification is applied (pirated CDs are sold at around RMB 5-15 per copy in some market place). Such situation indicates that the Criminal Law and its interpretation might hardly work as deterrent against copyright infringement at all. Please explain why the Chinese government believes that such a situation is consistent with Article 61 of the TRIPS Agreement.

#### Ad response to question 18:

Japan understands that the administrative procedure would be initiated after the right holder's claim to administrative organization. Please explain why such a claim is necessary, where the "injury of public interest" is the essential reason which justifies administrative punishment. Moreover, in case of infringement over the Internet, please explain whether or not it is possible to apply effective administrative punishment on such infringement as the act of "injuring public interest".

D. OTHERS

Ad response to question 15:

Article 24 of the Technology Import/Export Control Regulation prescribes responsibility of surety for a third party. However, the Article 353 of the Civil Law not only stipulates responsibility of surety for a third party but also explicitly allows parties to agree otherwise in their contracts. Please explain if Article 24 likewise allows parties to agree responsibility of surety for a third party in a manner different from what the Article 24 explicitly provides. In other words, please confirm that the licensor shall not be responsible for surety for a third party under the Article 24 of the Technology Import/Export Control Regulation if the contract between the parties provides that the licensor shall not be responsible for surety for a third party. If this is correct, please make this interpretation known to the public.

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