

**REVIEW OF LEGISLATION**

Follow-up Questions from Japan addressed to China

Addendum

The following communication, dated 22 December 2003, is being circulated at the request of the Delegation of Japan.

*Questions are based on responses from China in document IP/C/W/374/Add.5.*

1. Regarding Ad response to question 4, have the Regulations on Royalty Criteria for Broadcasting and Television Organizations been already established? Please provide us with a fixed copy of those. And/or please explain details about the draft including how the broadcast organizations distribute the royalty to right holders. (Do broadcast organizations distribute the royalty directly to right holders? Or is specific institution supposed to manage these distributions?)

2. Regarding Ad responses to questions 5 and 17, all the responses to these questions remain "under consideration" since last year. Please explain details of "the progress of discussion" about the criminal procedure threshold. Moreover, please let us know what obstacles in decreasing the threshold are. Do you recognize illegal earnings by selling off 10,000 copies of pirated CD, which we gave as an example in the last question, are not regarded as "commercial scale" stipulated in Article 61 of the TRIPS Agreement, and therefore, the reused example is not applicable to an "act that endangers society to a certain extent"?

3. Regarding Ad response to question 11, we are concerned about whether the following two points, which might be inconsistent with Article 41.2 of the TRIPS Agreement stipulating that "Procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays", have been improved by, for example, amending the Customs Law. Please provide information on this matter.

- (1) After the Customs injunction, the right-holders have only 3 days to examine the item and pay a deposit. (Article 14 of Regulations on Customs Protection of Intellectual Property Rights).

- (2) After the Customs injunction, there is no provision stipulating who bears the cost of storage. For Intellectual Property infringement, there have been some cases where the cost of storage is borne by the right-holders.

4. Regarding Ad response to question 16, do you mean that establishing the amount of damage is not a legal requirement for bringing an administrative case, and therefore, that even if right-holders could not establish the amount of damage, the Chinese authority could initiate the administrative procedure? Also, please tell us which article in Copyright Law stipulates the evidence that right holders should submit. Article 47 of the Copyright Law, which you referred to in answer 6, seems to be nothing to do with the requirement of evidence. Is the burden of proof, which is required to initiate the administrative procedures, alleviated by implementing the Regulation for Copyright Administrative Punishment this July?

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