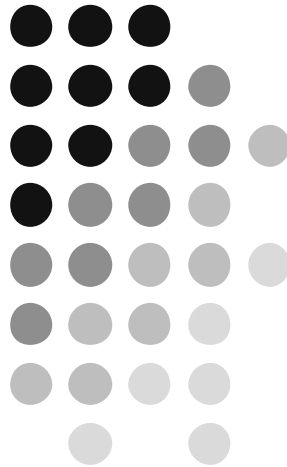


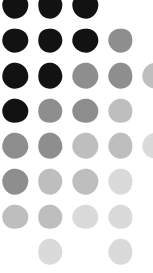
# Intellectual Property Protection in China

## Progress and Potential

Tom Robertson  
Associate General Counsel, Microsoft  
RIETI Brown Bag Lunch Series  
October 18, 2002



# Perspectives on Intellectual Property



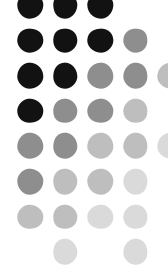
“it is an urgent and long-term task with great significance to formulate incentive policies so as to speed up the development of software and IC industries . . . The authorities shall enhance anti-smuggling and anti software piracy efforts, and sternly investigate and prosecute the organized activities of copying, producing and selling pirate software.”

State Council, 2000

" we must energetically promote the long-term development of our economy by supporting the nation's patent undertaking, enhancing the role of the patent system and furthering growth of high-tech products with self-owned independent intellectual property rights and market prospect."

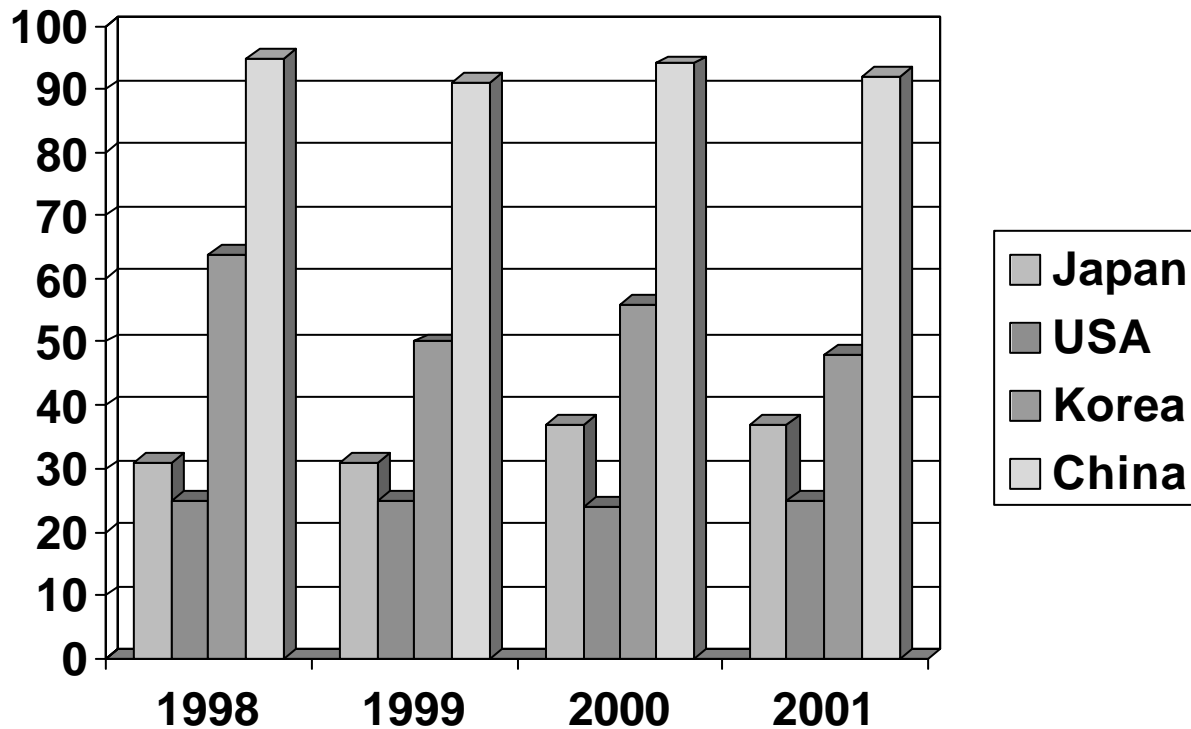
President Jiang Zemin, 2000

# Is IP Important to China's Future?



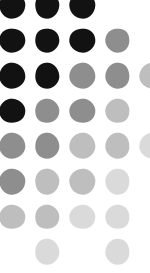
- 2001-2005 five year plan focuses in part on the growth of the high tech industry, with emphasis on IT (software and integrated circuits), bio-tech, new materials and space technology.
- Strategic goal is to use information technology to boost overall industrial development.
- Ministry of Science and Technology supports 161 national labs and 197 engineering centers.
- From 1996-2000, high tech industry grew at an average annual rate of 21.2 percent, 11 percentage points higher than that of the industrial sector.
- Education Ministry has selected 33 universities to set up subsidiary computer software industries to train high-level software development personnel, with goal of producing 10,000+ grads per year.
- September 20 State Council Action Plan to Revitalize the PRC Software Industry

# Software Piracy Rates



Source: Business Software Alliance

# Elements of an IP System



- Clear laws and regulations establishing rights consistent with international standards
- Effective public awareness of value of IP
- Effective enforcement system that creates a deterrent to future infringement

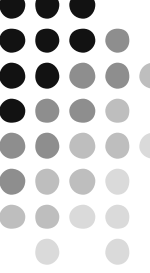
# *Short* **History of IP Rights in China**



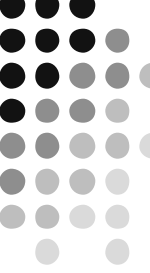
- 1980 Membership in WIPO
- 1982 Constitution refers to creation of inventions and artistic works
- 1982 Trademark Law
- 1984 Patent Law
- 1986 General Principles of the Civil Law makes IP a civil right
- 1990 Copyright Law
- 1991 Computer Software Regulations
- 1993 Unfair Competition Law
- 1994 Decision on penalizing crimes in copyright area
- 1995 Regulations on Border Protection
- 2002 Entry into the WTO and adherence to the Agreement on Trade-Related Aspects of Intellectual Property Rights (amendment of patent, trademark and copyright laws and related regulations)

# Responsibility for IP Protection in China

- State Intellectual Property Office
  - International
  - Patents
- State Administration for Industry and Commerce
  - TMs
  - Unfair competition
- National Copyright Administration
  - Copyright
- Customs
- Prosecutors
- Police
- Courts (Specialized and non-specialized)



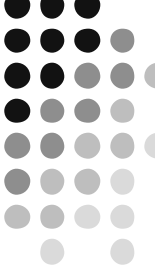
# Legal Norm Development



- Substantive Administrative Bodies
  - Administer and interpret laws and regulations
  - Draft laws and regulations
- State Legislative Affairs Bureau
  - Reviews, revises and clears drafts
- State Council
  - Passes legislation to Peoples' Congress
  - Issues regulations
- Supreme Court
  - Issues interpretations that are binding
- Key Courts – Beijing and Shanghai lead thinking on novel issues



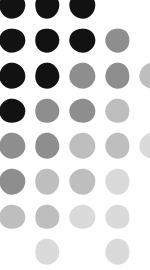
# Enforcement of Rights: Structure



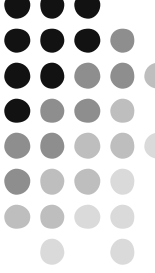
- Administrative Enforcement
  - Pros: speed, simplicity, expense, effectiveness, use evidence in civil and criminal cases
  - Cons: no damages, fines low, and not always effective
- Civil Enforcement
  - Pros: precedent, damages, permanence
  - Cons: expense, time consuming, wild card
- Criminal
  - Pros: strong message/deterrence
  - Cons: not fully engaged yet, poor coordination with administrative officials
- Customs
  - Pros: Can catch significant shipment
  - Cons: Cumbersome recordation process

# Case Studies

- Trademark Violation: Counterfeit Products
  - Rely on local AIC to investigate and take action against retailer
  - Work up through retailer to distributor and manufacturer
  - Get police and prosecutors involved against manufacturers
  - Follow up criminal action with civil claims
- Copyright Violation: Corporate End User
  - Identify unlawful user
  - Ask administrative authorities to take action
    - Who?
    - What will they do?
  - File claim in Court
    - With what evidence?
    - With what standard of proof?

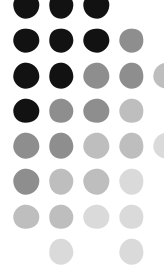


# Short Term IP Enforcement Success Factors



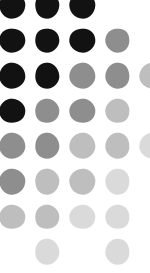
- Operate within existing policy mandate for actions
- Work locally, unless there may be local conflicts of interests, and provide training
- Shy away from novel theories or claims
- Use authority with resources, mandate and interest
- Cooperate with local parties (partners, right holders, etc.)
- Effective publicity of government involvement

# Long Term IP Enforcement Success Factors



- Promote awareness to drive political mandate for action [QBPC example]
- Train judges, police, prosecutors, lawyers and administrative authorities
- Promote the value of IP to Chinese interests
- Promote public education on value of IP protection

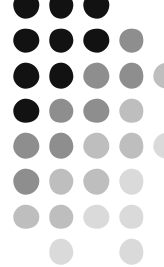
# What does WTO Membership Mean?



- Laws have been modified
- Greater appreciation for role of IP in competitiveness, leading to more protection
- International scrutiny on implementation
- But standards are unclear and TRIPS + is key

# Action Items

- Engage with those who are already active in IP protection: QBPC, BSA, etc.
- Take action locally and learn what works as you go.
- Participate in educational exchanges to raise awareness and skills of authorities involved in IP protection.
- Promote government to government dialogs on the importance of IP protection and how to achieve it, in the bilateral, regional (APEC) and multilateral (WIPO/WTO/WCO) contexts.



# Thank You

---

