



Economic Aspects of Global IPR Enforcement: Current Issues

Professor Keith E. Maskus

University of Colorado at Boulder

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Introduction

- Major contributions of information goods and services to growth, trade, and investment.
- IP-sensitive goods display:
 - High up-front investment costs;
 - Low marginal production and distribution costs;
 - Significant brand values;
 - Reliance on global research collaboration and production networks;
 - Substantial price differentiation across markets and consumers.
- Digital piracy, trademark counterfeiting and patent infringement naturally grow in this environment.



Scope of the Problem: Piracy

- Motion Pictures Association reports 57% global piracy rate in DVDs and VCDs in 2005.
- International Federation of Phonographic Industry reports 37% global rate in CDs in 2005.
- PC software piracy rates falling (Business Software Alliance, see table).
- But \$ losses in East Asia rising.
 - Reasons for higher losses.
 - Problems with these calculations.

Estimated Software Piracy Rates and Losses (\$M), East Asia

	Piracy Rates		Losses (\$M)	
	2003	2006	2003	2006
China	92%	82%	\$3,823	\$5,429
Hong Kong, China	52%	53%	\$102	\$180
Indonesia	88%	85%	\$367	\$1,275
Japan	29%	25%	\$1,633	\$1,781
Malaysia	63%	60%	\$129	\$289
Philippines	72%	71%	\$55	\$119
Singapore	43%	39%	\$90	\$125
South Korea	48%	45%	\$462	\$440
Taiwan	43%	41%	\$139	\$182
Thailand	80%	80%	\$141	\$421
Vietnam	92%	88%	\$41	\$96
Average Rate	64%	61%		
Total Losses			\$6,982	\$10,337
Share of Global			24%	26%
United States	22%	21%	\$6,496	\$7,289
European Union	37%	36%	\$9,786	\$11,003
Global	36%	35%	\$28,803	\$39,576

Source: BSA/IDC 2006 Global Software Piracy Study



Scope of the Problem: Unauthorized Downloads

- P2P sites such as Kazaa, Grokster, etc. (US);
- Free download sites such as pplive (China);
- User-supplied content sites such as youtube (US);
- RIAA global statistics, 2001-2006:
 - number of music CDs sold fell 30%;
 - total dollar value fell 29%;
 - Authorized single downloads rose from \$0 in 2003 to \$581 million in 2006.
- Both unauthorized downloads and illegally copied CDs have recently exceeded the levels of legitimate CD single and album sales.
- P2P global networks grow faster than any other distribution channels.



Scope of the Problem: Trade in Counterfeit Goods

- One WHO estimate suggested 2005 global volume of counterfeit medicines produced of \$32 billion.
- Not much systematic trade data but OECD customs survey (2007) suggests:
 - Total counterfeit trade volume estimated between \$100 billion and \$200 billion in 2005.
 - Scope of products counterfeited broadening from luxury to common products.
 - Growing share of counterfeit products in goods where consumer safety is a concern.
 - Significant presence of organized crime in international distribution.
 - Greatest production and export intensity is in East Asia, especially China. (Reported shares of seizures from China: US 69% (now 80%), Korea 94%, Thailand 100%, EU 38%.)



Factors Explaining Infringement Rates

- Economic development;
- Age structure (demographics);
- Market size;
- Industrial structure and comparative advantage;
- Technological change;
- Sophistication of distribution channels;
- Cultural views of copying;
- Laws and resources devoted to enforcement;
- Differences in legal systems.



Patent Enforcement Issues

- Costs of achieving patent protection in different countries.
- Examination procedures and patent standards.
- Differences in legal systems and litigation costs.
- Essential tradeoff: national patent policies differ but this raises transactions costs in trade and investment.

Do Differences in IPR Enforcement Affect Innovation and Technology Transfer?

- A difficult question to answer:
 - Hard to measure enforcement activities and efforts.
 - There may be alternatives to complex litigation procedures.
 - Many other issues.
- But recent empirical evidence suggests:
 - Global tendency toward patent harmonization has increased R&D.
 - Provincial differences in enforcement in China are correlated with local innovation.
 - Licensing contracts of US firms expand after national patent reforms.



Global IPR Enforcement System

○ WIPO Treaties:

- Berne Convention, Paris Convention say little about enforcement.
- WIPO Internet treaties require copyright protection of internet content to support digital rights management. (WCT has 64 members, WPPT has 62; China joined both in 2007).
- Patent Cooperation Treaty and Madrid Protocol reduce international filing costs.

○ TRIPS Agreement at WTO

- Language of Part III on enforcement;
- Access to dispute settlement;



Global IPR Enforcement System

- Preferential trade agreements may commit partners to TRIPS-Plus standards and enforcement.
- Bilateral investment treaties increasingly require IPR enforcement.
- Collaboration among customs authorities.



TRIPS and Dispute Settlement

- To date there have been 23 disputes on IPR at WTO.
 - 21 involved US as complainant (17) or defendant (4).
 - Just 7 involved developing countries on one side only.
 - China was never involved until current US complaint.
 - All above were about deficiencies in law rather than enforcement procedures.
- New case: US complaint against China.
 - Panel requested in July 2007, pending.
 - Large stakes involved.



Suggestions for Further Approaches

- IPR system presents powerful tools but badly coordinated and inflexible.
- Consider “IPR amnesties” and broader licensing models.
- Encourage stronger price differentiation of IP goods.
- Develop revenue sources for subsidizing enforcement activities and courts.
 - Supplemental fees at PCT, Madrid Protocol.
 - More technical and financial assistance in foreign aid budgets.
- Work to establish greater coordination and mutual recognition of patent procedures.