Commercial Piracy
- Apex MNE hypothetical
  - Role of organized crime
- Copyright piracy
- Trademark piracy
  - the most serious form of piracy
- Patent piracy?
  - deemphasized as commercial piracy
- Comparison to narcotics trafficking for the above
- Trading partners and border seizure
Measures Protecting IP in China (WTO Panel, 2009)
- TRIPS Art. 61
- China’s criminal law for IP-based counterfeiting
- Need for the U.S., as challenger, to show counterfeiting “on a commercial scale”

<table>
<thead>
<tr>
<th>Year</th>
<th>Value of Seizures</th>
<th>Number of Seizures</th>
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<tr>
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London Film v. ICI (S.D.N.Y. 1984)
- Locations
  - London a UK plaintiff
  - ICI a NY defendant
  - Alleged infringement in Chile and South America
- ICI specializes in distributing “public domain” works
- ICI claims the NY district court should abstain from exercising jurisdiction
  - Alien treaty rights
  - Forum non conveniens
  - Complex foreign law for many countries
  - Act of state doctrine
- Comity
  - Difficulty of determining foreign IP rights validity
  - But, validity not as large an issue in copyright
  - No good alternative forum

- French fashion clothing companies
- Viewfinder fashion websites
- Default judgment in France in favor of French companies
- Comity
- Source of law to determine if foreign judgment is enforced
  - NY state law via uniform act
- Copyright law analysis
  - Fashion designs not copyrightable under U.S. law
  - Even if copyrightable, Viewfinder’s use was fair use
  - But, French copyright law isn’t “repugnant”
- Freedom of expression under the U.S. Constitution
  - Against this, the French copyright law is “repugnant”
  - Commercial speech is still protected speech
- But, the French companies argue . . .
  - Not action by Viewfinder to send a message
  - Not news