

Int'l IP

- Module 6
- Int'l Enforcement of Intellectual Property Rights

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”

Number and Domestic Value of IPR Seizures 673

| Fiscal Year | Value of Seizures | Number of Seizures |
|-------------|-------------------|--------------------|
| 2010 | \$188,125,346 | 19,959 |
| 2009 | \$260,697,937 | 14,841 |
| 2008 | \$272,728,879 | 14,992 |
| 2007 | \$196,754,377 | 13,657 |
| 2006 | \$155,369,236 | 14,675 |
| 2005 | \$93,234,510 | 8,022 |

Source: Intellectual Property Rights 2010 Seizure Statistics—Final Report, U.S. Customs Office.

U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement
FY 2009 Top Trading Partners for IPR Seizures 673

| Trading Partner | Domestic Value | Percent of Total Seizures |
|-----------------|----------------|---------------------------|
| China | \$204,656,093 | 79% |
| Hong Kong | \$26,887,408 | 10% |
| India | \$3,047,311 | 1% |

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Major Distributors and Manufacturers of Counterfeit Goods in China



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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

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Sarl Louis Feraud Int'l v. Viewfinder Inc. (S.D.N.Y. 2005)

- 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