

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 673
FY 2009 Top Trading Partners for IPR Seizures

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