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For comments, please contact ASIA PACIFIC LEGAL INSTITUTE at 7046 Cradlerock Farm Court, MD 21045,
or call (410) 290-8740 (voice); (410) 290-9976 (fax), or e-mail to: apli@apli.org

BELING COURT DISMISSED MICROSOFT FOR LACK OF EVIDENCE: MAJOR SOFTWARE END USER INFRINGEMENT CASE IN CHINA MAY RETURN LATER

*Andy Y. Sun**

I. Introduction

On December 17, 1999, the Beijing First Intermediate People's Court (BFIPC) handed down its judgment on a landmark case, *Microsoft Corporation (China), Ltd. v. Beijing Yadu Science and Technology Group*. This is the first time a major foreign software manufacturer went directly after an end user for copyright infringement in China and the judgment came only three days after the same court's ruling on another landmark case, *Wang Meng, et al. v. Beijing Cenpok Intercom Technology Co., Ltd.*, a/k/a the *Beijing Online* case.¹ Unlike *Beijing Online*, however, here the BFIPC is the court of first instance. Having concluded the trial, the court summarily dismissed plaintiff's complaint for lack of sufficient evidence. Specifically, the court held that the plaintiff misidentified Beijing Yadu Science and Technology Group (hereinafter Yadu Group) as the defendant in its allegations. In all likelihood, the losing Microsoft (China) will fight on by filing a new complaint against the proper defendant in the near future.

In its complaint, Microsoft claimed that on November 17, 1998, its agent, the China United Intellectual Property Investigation Center (CUIPIC), joined the local authorities in a raid at Yadu Building, the office compound of defendant Yadu Science and Technology Group, and discovered more than a dozen pirated titles of its software being used on Yadu's computers.² The law enforcement authorities then impounded all the pirated software along

* Executive Director, Asia Pacific Legal Institute, Washington, DC.

¹ See Andy Y. Sun, *Beijing Court Ruled on A Major Internet Copyright Infringement Case*, 1 APLI UPDATE 1-4 (1999).

² The authorities involved in the raid were the Haidain District Bureau of the Administrative Department of Industry and Commerce (AIC), the agency that has primary authority on trademark enforcement, and the Beijing Haidian No. 3 Notarial Sector, which provided the certified/notarized statement from the two engineers. Noticeably missing here in the raid was the National Copyright Administration. It was not directly involved apparently due to lack of resources (only 20 or so full-time personnel working in the national headquarters). CUIPIC is a private (and perhaps the largest in China) investigative agency specialized in anti-counterfeiting activities.

with the computers and produced an official investigation report. This report contained certified statements of two engineers of Yadu during an interview by the investigators as the raid was carrying on. They admitted on the scene (and apparently without their attorneys being present) that there were at least 50 personal computers installed in the company with each of them contained more than 10 different types of pirated Microsoft software (such as Windows operating system and Office suite). This report turns out to be the most critical evidence in the lawsuit. Microsoft sued for *Renminbi* ¥1.5 million (US\$181,000) in loss profit, investigation and evidence collection costs, litigation and attorney's fees, immediate cease and desist of all infringing acts, eliminating the effects of the infringing act, and a public apology in accordance with Article 46 of the Copyright Law and Article 134 of the General Principles of Civil Law.

In its answer, the defendant claimed that it did not own the pirated software in the first place, nor is it the proper party to be named in the lawsuit. It claimed that CUIPIC and the government authorities in fact never visited its office. The raid was conducted, according to the defendant, against another company by the same name (Beijing Yadu Science and Technology, Ltd., hereinafter Yadu Ltd.) and located in the same office building. The defendant alleged that Yadu Ltd. is completely independent from Yadu Group, despite the fact that both companies retain the same individual, He Lumin, as their legal representative and that Mr. He is chairman of the board for both companies.³

Because the question of improper party was raised, the court must first resolve this issue. Here BFIPC accepted the defendant's arguments and found that there was no direct evidence that the two engineers who confessed were actually employed by Yadu Group (there was no question about their employment with Yadu Ltd.). Consequently, it dismissed the case on the ground of claiming improper party as defendant. Moreover, the court ordered Microsoft to pay *Renminbi* ¥500 (US\$60) for litigation costs. Microsoft (China) Co., Ltd. thereafter issued a statement stressing that it will file another complaint, this time against Yadu Ltd., the subsidiary of Yadu Group, in due course and in due time.⁴

II. Issues

This judgment did come as a bit of a surprise to many observers, and somewhat ironic. Microsoft deliberately went after the parent company of Yadu Ltd. to pursue the "deep pocket" but only wound up getting its case thrown out of court. By ruling on this procedural ground, the court apparently avoided, at least for the time being, the need to address the substantive and fundamental question of the case, *i.e.*, whether an end user of pirated software is directly or indirectly liable for infringement under the current copyright regime? Specifically, whether Article 32 of the Regulations on Computer Software Protection provides an end user sufficient exemption from any and all liabilities as long as that user has

³ In addition to claiming two independent corporate entities, Mr. He insisted that the alleged infringing activities, even if it were true, were at best individual acts committed by employees, not sanctioned by the company. Note that the current Chinese law does not have the doctrine of *respondeat superior*.

⁴ See Microsoft Corporation, Statement in Response to Judgment Dismissing Microsoft v. Yadu, December 17, 1999 (text in Chinese). In reality, there is a concern that there may not be many assets left under Yadu, Ltd. if and when Microsoft wins the case against that company many months later.

no knowledge of, or no reasonable basis for having knowledge of, the infringing nature of the software?⁵ If the answer is yes, whether this provision nevertheless contradicts with the Copyright Law (Article 45),⁶ its related regulations or the norm of applicable international conventions and should therefore be held invalid?⁷ Otherwise, what should be the scope of the exemption? On the other hand, if the answer is no, may the act of an end user nevertheless be liability free because the infringing act constitute “fair use” under Article 22 of the Copyright Law?⁸ If neither Article 32 nor fair use is applicable, then what ought to be the standard in resolving the end user issue?

III. Analysis

During the legislative process of the 1990 Copyright Law, there was an internal debate regarding the necessity of having a set of additional rules specifically in dealing with the registration, protection and licensing aspects of computer software.⁹ Eventually those in favor carried the day and Article 53 was created to give the State Council (the equivalent of the Cabinet) the authority to do so. The State Council then promulgated the Regulations on Computer Software Protection on June 4, 1991 (hereinafter RCSP). But the controversy did not end there.

⁵ Article 32 of the 1991 Regulations on Computer Software Protection: “Where the holder of a piece of software *has no knowledge of, or has no reasonable basis for having knowledge of*, the piece of software being an infringing object, the liability for infringement shall be borne by the supplier of the infringing piece of software. However, where the rights and interests of the copyright owner of the software will not be sufficiently protected without that piece of software held by the holder being destroyed, the holder has the obligation to destroy the piece of software it holds, and the holder may demand compensation from the supplier of the infringing piece of software for the losses the holder suffers in this connection.

“The term [“supplier of an infringing piece of software”] mentioned in the preceding section covers one who supplies *an* infringing piece of software to others fully knowing that it is an infringing piece of software.” [Emphasis added.]

⁶ Article 45 of the 1990 Copyright Law: “Anyone who commits any of the following acts of infringement shall bear civil liability for such remedies as ceasing the infringing act, eliminating the effects of the act, making a public apology or paying compensation for damages, depending on the circumstances: ... (6) exploiting a work created by another without paying remuneration as prescribed by regulations; ... (8) committing other acts of infringement of copyright and of other rights related to copyright.”

⁷ The International Copyright Treaties Implementing Rules provides special guarantee for the protection of foreign copyrighted works. These rules have in effect created certain preferential treatment for foreign works. With regard to how bilateral and multilateral agreements address the end user issue, please see *infra* for detailed illustration.

⁸ Article 22 of the 1990 Copyright Law: “In the following cases, a work may be exploited without permission from, and without payment of remuneration to, the copyright owner, provided that the name of the author and the title of the work shall be mentioned and the other rights enjoyed by the copyright owner by virtue of this Law shall not be prejudiced: (1) use of a published work for the purposes of the user’s own private study, research or self-entertainment; ... (6) translation, or reproduction in a small quantity of copies, of a published work for use by teachers or scientific researchers, in classroom teaching or scientific research, provided that the translation or reproduction shall not be published or distributed;”

⁹ Note that Article 3, Subsection (8) of the Copyright Law has already incorporated computer software as one of the protectable subject matters under that law.

To begin with, there are inconsistencies between the RCSP provisions and the Copyright Law itself, raising the question whether those contradictory provisions in the RCSP ought to be invalid. For instance, Article 15 of the RCSP provides a 25 years term of protection, subject to a possible one-time renewal for another 25 years. This obviously is in direct contradiction with Article 21 of the Copyright Law, which grants the term of copyright protection (which covers computer software) for the life of the author plus fifty years.¹⁰ Another example may be found concerning the proper government agency authorized to manage national copyright-related affairs. Under Article 8 of the Copyright Law, the National Copyright Administration (NCA) ought to be the proper agency, but for computer software registration and management, it was not until 1996 that the operations were finally transferred to the NCA from the Ministry of Electronic Industry.¹¹ Although there has not been any formal governmental action to invalidate the inconsistent portion of the RCSP yet, in all likelihood the new draft Copyright Law Amendment will take into consideration those frictions by consolidating the existing rules into a single, unified statute in the future. This will also ensure that the rules conform to China's international obligations.¹²

The reason for the creation of Article 32 in the RCSP is because "software sales agents in [China] have little knowledge of laws and the accepted rule in the international software

¹⁰ In addition, Article 15 of the RCSP is in violation of Article 7 (1) of the Berne Convention for the Protection of Literary and Artistic Works (1971) (hereinafter Berne Convention, of which China is a member) and Article 12 of the Agreement on Trade-Related Aspects of Intellectual Property rights (hereinafter TRIPS Agreement, 1994)(of which China in all likelihood is to become a member in 2000).

¹¹ The Ministry of Electronic Industry (MEI) has been reorganized and merged with several other ministries into a single Ministry of Information Industry in 1998, under the State Council's Agency Reform Plan, approved by the Ninth National People's Congress (NPC) on March 10, 1998. See EXECUTIVE OFFICE OF THE NATIONAL PEOPLE'S CONGRESS, ZHONGHUA REMIN GONGHEGUO DIJIUJIE QUANGUO RENMIN DAIBIAO DAHUI DIYICI HUIYI WENJIAN HUIBIAN (COMPILATION OF DOCUMENTS FOR THE NINTH NATIONAL PEOPLE'S CONGRESS FIRST CONFERENCE), at 82-98 (1998)(text in Chinese); Article 8, Organization Law of the State Council. It was formerly known as the Ministry of Machinery and Electronic Industry (MMEI) and charged with the responsibility of drafting the RCSP. It, therefore, did not come as a surprise when the Computer Software Registration Center (CSRC) was first established to enforce the RCSP, it was placed directly under the MMEI/MME. When the State Council finally determined to transfer CSRC's authority and lucrative operations to the NCA, tensions were quite high on several occasions between the two agencies. But the transition was eventually completed without major incidents.

¹² On November 18, 1998 and at its 10th Executive Meeting, the State Council approved a new draft Copyright Law Amendments and transmitted it to the NPC. The NPC committees then began an extensive consultative process across the country. Many local meetings generated heated debates concerning software and other high-tech issues. By April 1999, except databases, the final and revised bill did not add any new provisions concerning computer software, thinking this can wait until the dust is settled. Initially the plan was to have the bill formally voted on and enacted by the Standing Committee of the NPC at the end of the year. However, in light of this and the *Beijing Online* case, among other things, the NPC apparently became dissatisfied with the current version, put the brake on the process and quietly sent it back to the drawing board, with special demand that rules be formulated to deal with emerging technology issues. Note also that the NCA at first proposed the inclusion of those provisions and a major revision of the RCSP, but the State Council did not accept that. Ironically, the whole process now travels a full circle. See NCA, Draft Copyright Law Amendments of the People's Republic of China (1998-99).

market, and they are easily deceived. The attention is given to education than punishment.”¹³ Moreover, “in light of the complexity of international software market, it occurs quite frequently that people sell and distribute pirated software. We believe [the Copyright Law] should target those who duplicate and sell the illicit copies of software, not the bona fide acquirers who themselves are being deceived. The law, therefore, provides that where the holder of a piece of software has no knowledge of, or has no reasonable basis for having the knowledge of, the piece of software being an infringing object, the liability for infringement shall be borne by the supplier of the infringing piece of software.”¹⁴

It is precisely against this legislative background that at least one scholar suggests that *all* software end users in China who have no knowledge of the infringing nature and involve no commercial activities with that software should be exempted from infringement liability.¹⁵ To further back up this argument, he points to the 1999 State Council’s reissue of a Circular which prohibits any and all *units* (but not families and/or individuals) from using unauthorized software.¹⁶ He believes the national policy is clear on this point and regardless of what the future policy ought to be, as far as the present case is concerned, there is no need for China to go out of its way to be the leader of the pack, setting an ultrahigh protection standard than the rest of the world for intellectual property rights.¹⁷ This has touched off intensive internal discussions on what ought to be the fundamental intellectual property policies for computer software. As expected, there are also scholars who caution against an across-the-board exemption for end users and advocate a more balanced approach, by taking into consideration Article 21 of the RCSP, which only exempts certain acts of “personal usage” under the fair use principle.¹⁸ However, the differences seem to lie only in the degree

¹³ See Ying Ming, *The Legal Protection System for Computer Software*, contained in STATE SCIENCE AND TECHNOLOGY COMMISSION (now Ministry of Science and technology) OF THE PEOPLE’S REPUBLIC OF CHINA, CHINA’S INTELLECTUAL PROPERTY SYSTEM, BLUE BOOK ON SCIENCE AND TECHNOLOGY NO. 7, at 187 (1992). Note that Professor Ying was the reporter and one of the drafters of the RCSP.

¹⁴ See Ministry of Machinery and Electronic Industry, *Illustrations Concerning the Draft Regulations on Computer Software Protection*, May 1991 (original text in Chinese). This is the equivalent of official legislative history of the statute. Note that thus far neither the NCA nor any other agencies (including courts) have issued any further interpretations on Article 32 yet.

¹⁵ See Shou Bu, *How to Determine Software Infringement*, CHINA COMPUTERWORLD, No. 30, August 9, 1999, at A14-18 (text in Chinese).

¹⁶ See Executive Office of the State Council, *Circular on the Re-issuance of the National Copyright Administration’s Circular Concerning the Prohibition of Using Illegally Duplicated Computer Software*, February 24, 1999. The NCA Circular was first issued in August 1995. See Office of Legal Affairs, the State Council, ZHONGHUA REMIN GONGHEGUO XIN FAGUI HUIBIAN (COMPILATION OF NEW LAWS AND REGULATIONS OF THE PEOPLE’S REPUBLIC OF CHINA), No. 1, 1999, at 183 (text in Chinese).

¹⁷ See Shou Bu, *supra* note 15.

¹⁸ See, for example, Zou Bian, *Legal Liability for Computer Software Users*, ZHONGGUO ZHUANLI YU SHANGBIAO (CHINA PATENTS AND TRADEMARKS), No. 2, at 68-71 (1999)(text in Chinese and English). Zou also argued for a reduced compensatory damage award in the event of end user liability: “[S]ince the user only uses the software himself and his infringement and damages to the right holder are also limited, the amount of compensation should be determined on the basis of the normal and reasonable license fee of the software. Obviously, it is inappropriate to over-extend the liability of a software user for compensation and even to punish by imposing too much compensation.”

or extensiveness of the end user liability, there seems to be a consensus in China that personal end users should be less liable than commercial distributors or users, although it is not clear how the line may be drawn.

It is troubling for the argument of such a broad-based exemption to software end users. Even with the most extensive scope and favorable terms given to the language of Article 32, such presumption can hardly be deduced, assuming the article is considered valid. First and foremost, under Article 32, the end user will still need to carry the burden of showing that he/she has no knowledge of the unauthorized nature of the software. Given the fact that there is a significant price difference between the genuine and pirated product, and that a “key number” (or password) is required before each individual software title can be successfully installed in a computer, a case of the end user’s lack of knowledge as such can hardly be made.¹⁹ For the simple reason of saving money under most circumstances, a not-so-gullible end user probably cannot justify his/her act as merely being “deceived.” Even the author/drafter of the RCSP indicated that Article 32 aside, an end user may still wind up being liable for civil liabilities under Article 7 of the General Principles of Civil Law.²⁰

Another problem for Article 32 is that it first exempts those who *possess* any unauthorized or infringing product and then shifts liabilities to the product suppliers. This approach is quite extraordinary in and of itself, considered that the international norm of copyright protection regime always regulates certain “use” of a copyrighted work, such as alteration, reproduction, distribution, performance, display and importation, but *not* possession.²¹ Even if possession itself constitutes no infringement, exploiting a work created by another without paid *is* under Article 45 (6) of the Copyright Law.²²

It should be noted that while initially this case seems to present a clear-cut scenario of infringement, it does seem to get clouded each day by the on-going debates inside China, especially between the issues of liability and how much the damage should be. This is primarily because Microsoft *is* the party who brought the case and it has been widely perceived to be “hegemonic” and come in court with an unclean hand, *i.e.*, by setting a pricing scheme for certain “must have” software products so high and so far beyond the reach of ordinary people, that Microsoft in effect induces the growth of piracy activities and should be barred from claiming itself being the victim of piracy. As a result, a prevalent sentiment in

¹⁹ For example, a genuine Microsoft Windows 98 (simplified Chinese version) may be sold as high as *Renminbi* ¥1,998 (US\$241), more than twice the price being sold in the U.S. market and the equivalent of a month and a half salary for an average worker in China. On the other hand, a CD that contains pirated Windows 98 and Office 97 suite can be sold for no more than *Renminbi* ¥20 (US\$2.5). So stiff is the price of genuine product that two companies brought suit against Microsoft in December 1999 for monopoly and price discrimination against consumers. *See* Central News Agency, *Two Enterprises in Fuzhou Sue Microsoft*, WORLD JOURNAL, December 25, 1999, at A6 (text in Chinese).

²⁰ *See* YING MING, COPYRIGHT PROTECTION FOR COMPUTER SOFTWARE, at 176-77 (1991)(text in Chinese). Article 7 provides: “Civil activities shall have respect for social ethics and shall not harm the public interests, undermine state economic plans or disrupt social-economic order.”

²¹ *See* Articles 5, 8, and 9, Berne Convention.

²² *See supra* note 6.

China is that even if Microsoft should win on liability grounds, some form of equity should apply so that it will not be awarded the full amount it asked for.²³

In a widely publicized interview in mid-1998, Microsoft's chairman and chief executive officer Bill Gates was quoted, "[a]lthough about three million computers get sold every year in China, people don't pay for the software. Someday they will, though. And as long as they're going to steal it, we want them to steal ours. They'll get sort of addicted, and then we'll somehow figure out how to collect sometime in the next decade."²⁴ Not surprisingly, this statement was extremely ill received in China and almost instantly created a strong backlash against Microsoft. Adding more insults to injuries, the high price tag accompanying the formal release of Windows 98 and Office 2000 around the same time simply did not help the company's image (nor its sales) at all in China. Only government agencies and corporations (mostly large ones) are under mandatory rules to use genuine products. Both Microsoft and the Chinese general public found themselves distancing away from each other by the day.

In late October 1999, Juliet Shihong Wu, one of the most prominent businesswomen in China who formally resigned from her position as general manager of Microsoft (China) Co., Ltd. only two months earlier, published her autobiography in which she detailed Microsoft's managing style, premium pricing scheme, and "get tough," "go bullying them" anti-piracy practices in China, further confirming Microsoft's intent to carry out Gate's words.²⁵ These developments, on top of a growing and pervasive anxiety that any consumer who pays a few dollars for a pirated CD off the street may now wind up in court and be liable for thousands, if not millions, of dollars in damages, certainly do not sit well with the general public. Many people now firmly believe that Microsoft's China market strategy is no different from what the British did to China in the mid-19th century—*i.e.*, first to get people addicted to opium and then to reap windfall profit with full armory in hand—a modern showcase of "gun boat market-economy." For Microsoft, however, this is no doubt the pay back time.

In such a climate, exactly how the court is likely to rule on the substantive issues of the case? A Supreme People's Court's recent ruling on another software end user case, *Pacific Unidata v. Avon Products (Guangzhou), Ltd.* may offer some clues.²⁶ Although the court

²³ There is in fact a good legal authority that the court may use to react to this sentiment. Article 131 of the General Principles of the Civil Law provides: "If a person infringed upon is also at fault for causing the harm or damages, the civil liability of the infringer may be reduced." The statute does not, however, offer any specific guidelines on what might be reduced, that leaves the court plenty room to maneuver indeed.

²⁴ See Brent Schlender, Warren Buffett, and Bill Gates, *Cover/Feature Story: The Bill & Warren Show*, 138 FORTUNE, No. 2, at 48, 50 (July 20, 1998).

²⁵ See JULIET S. WU, NIFENG FEIYANG (UP AGAINST THE WIND), at 8-12, 89-96 (text in Chinese). This book became an instant best seller in China. Adding to her prominence was the fact that Wu only graduated from middle school and managed to pass an adult English placement test through self-study and qualify as being the equivalent of possessing college-level English capability. In the book, she claimed that she was completely in the dark regarding Microsoft's raid against Yadu until it happened and that it was apparently the work of Microsoft's legal team in Hong Kong, not her staff. This incident, as it turns out, becomes one of the reasons of her resignation. See *id.*, at 10.

²⁶ This is by far the largest amount (Renminbi ¥250 Million, approximately US\$30 Million) involved in an intellectual property dispute in China (and perhaps one of the most bazaar ones as well). In April 1995, Avon (Guangzhou) Ltd. bought a sales-tracking software directly from a U.S. based company, Unidata,

does not specifically indicate in its judgment (which remands the case to the lower court) what position it will take on the issue of software end user's liability, the way it was handled, *i.e.*, to issue the ruling by the court's highest authority, the Judgment Committee, can be interpreted as a rather strong signal against the imposition of such liability, at least for that particular case. The Supreme People's Court clearly thinks the defendant in that case falls squarely within the realm of protection that Article 32 was designed for. Given the significantly different fact patterns between *Pacific Unidata* and *Yadu*, it remains, of course, highly unpredictable what the court may do by turning on the fate of this provision, or even the RCSP as a whole.

Whatever the outcome of this case, the end user liability issue remains unresolved with regard to other forms of copyright. Unlike software, there is no counterpart of Article 32 in dealing with other types of expressions under the current Copyright Law. Thus, more efforts are needed to clarify this issue.

IV. Conclusion

While Microsoft lost the first round in its latest campaign against software piracy in China, this certainly will not be the end of it. Aside from Microsoft, many indigenous firms in China are yearning for better protection of *their* intellectual property rights and they may well be the strength of China's future economy. There are also consumers who are demanding affordable price, good quality and a well-balanced approach between the protection of foreign and domestic interests. After all, China is not yet a completely opened market-economy and the role of government is simply too significant to be ignored.

Inc., for US\$15,000. Unidata subsequently dispatched its technicians to China to help install the software system and train Avon's local personnel. In June 1996, Hong Kong-based Pacific Unidata, Ltd. (PU) first filed a complaint to the NCA, claiming Avon illegally bought the software because PU owned the sole licensing right for China, Hong Kong and Taiwan. PU specifically requested that the NCA levy administrative penalties against Avon. Having concluded that PU is the legal licensor and Avon has used unauthorized software, Avon was fined *Renminbi* ¥490,000 (US\$59,000) in May 1997. Thinking this would have ended the dispute, Avon paid the fine, completely uninstalled the software and returned it back to Unidata. Only three months later, however, PU and its affiliate in China, Jingyan Co., Ltd. jointly brought suit against Avon (Guangzhou) before the Guangdong Province High People's Court, asking for *Renminbi* ¥250 Million in damages. They claimed this case being an instance of a major U.S. corporation pirating a Chinese company's intellectual property right. In June 1998, the court issued its judgment in favor of the plaintiffs and awarded *Renminbi* ¥100 Million (US\$12.5 Million) in damages. *See Guangdong Province High People's Court Judgment, (1997) Yue Zhi Chu Zi No. 1.* Avon appealed to the Supreme People's Court and an "appeal trial" was conducted from February 2 to February 4, 1999. Avon claimed that it is a completely innocent party to the case and the problem lies with Unidata and its relationship with its subsidiary PU. It bought the software directly from Unidata in the United States and what it bought was the legitimate English version, which is different from the Chinese version that PU registered in China. Avon further claimed that as an end user, it did not resell nor make any profit out of the software. If there is any party that may be liable, it should be Unidata, not Avon (Guangzhou). *See Avon Unit Braces for Copyright Ruling, SOUTH CHINA MORNING POST, March 3, 1999, at 4; Ian Johnson, Chinese Court to Hear Appeal in Avon Case, ASIAN WALL STREET JOURNAL, February 2, 1999, at 3.* In December 1999, it was reported that the Supreme People's Court remanded the case back to the Guangdong High Court for improper fact-finding. What is unusual is that, as opposed to the normal panel ruling, it was the Supreme People's Court's highest authority, the Judgment Committee, that issued the judgment (somewhat similar to an *en banc* decision). For a detailed illustration, *see* China NTD Intellectual Property Office Newsletter, December 1999, available at <http://www.chinantd.com/chinese-main.html> (text in Chinese).

Therefore, more punches will be thrown from all sides and courts throughout China will probably be getting more and more cases such as this, challenging the wisdom of the existing law and the creativity of judges in light of innovations and consumer demands. China is indeed facing a new kind of tug-of-war among different interest groups that it has not seen before. Yet this on-going trend, hopefully, will continue the healthy debates on how best to legislate and enforce the law, better educate the general public, test the strength of its market-oriented economy and, in the end, significantly eradicate the piracy problem that has plagued China for so long.