

## White Collar Crime - USA

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### Increased Efforts to Coordinate International Fight against IP Crime

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#### **Background**

#### **Recent Coordinated Efforts to Enforce IP Rights**

#### **Comment**

#### **Background**

"Global Enforcement of IP Crimes Continues as High Priority" reported on US government efforts to coordinate enforcement of trademark rights, particularly in conjunction with the People's Republic of China. Since publication of that update, those governmental efforts have continued and intensified.

On September 21 2005 the US Department of Commerce announced new initiatives to address the theft of intellectual property. The initiatives are targeted at putting in place, directly in foreign jurisdictions, individuals dedicated to addressing IP theft. The first initiative involves appointment of IP rights experts, who will provide in-country assistance to US companies dealing with piracy issues and will serve as advocates to local prosecutors to enforce IP rights. Initially, the IP rights experts will be posted in countries that have been identified as being on the front line of the battle for IP rights, including Brazil, China, India, Russia and Thailand.

The second initiative involves the formation of a Global IP Rights Academy, which will be based at the US Patent and Trademark Office. The academy will train foreign officials (including judges, prosecutors and patent officials) on international patent rights. The Department of Commerce hopes that the academy will "further raise awareness of IP rights theft worldwide".

These initiatives will continue the focus of the US government on securing enforcement of copyright and trademark rights, among other IP rights. That focus has recently been directed at China, with mixed results. Earlier in September, Chinese President Hu Jintao met with President Bush and gave assurances that China is prepared to strengthen anti-piracy rules. Indeed, recent prosecutions in China have resulted in jail sentences for defendants found guilty of manufacturing and/or trafficking in counterfeit goods. However, the level of cooperation by some Chinese authorities has been criticized as being too little, and often too late.

#### **Recent Coordinated Efforts to Enforce IP Rights**

In June 2005 the US Department of Justice coordinated the execution of search warrants at 70 locations in the United States and 20 overseas, in 10 different countries. The focus of that investigation, Operation Site Down, was copyright infringement in which defendants were accused of illegally distributing and trading in copyrighted software, movies, music and games. The countries involved included Canada, France, Belgium, Denmark, the Netherlands, the United Kingdom, Germany, Portugal, Israel and Australia. The prosecution of these defendants, which is still ongoing, was the result of Federal Bureau of

Investigation undercover investigations run out of a variety of field offices, with the support of the Department of Justice's Computer Crime and Intellectual Property Section.

Federal officials have conducted other recent operations focused on piracy issues, including:

- Operation D-Elite (2005; copyright infringement on peer-to-peer networks; 10 search warrants across the United States);
- Operation Digital Gridlock (2004; copyright infringement on peer-to-peer networks; six search warrants in three states); and
- Operation Cyberstorm (2002; counterfeit software; simultaneous arrests of 27 individuals in three states).

It appears from the recent announcements by the Department of Commerce and the Department of Justice's Computer Crime and Intellectual Property Section that coordinated criminal enforcement of IP rights will increasingly involve foreign prosecutions.

### **Comment**

Violation of copyrights and trademarks may be prosecuted criminally in the United States. The recent efforts to coordinate enforcement of IP rights make clear that violators who are not in the United States may be targeted both in US proceedings and in proceedings in their home country. It may no longer be sufficient to be concerned about criminal enforcement in one's home jurisdiction alone. Thus, foreign criminal defence lawyers should familiarize themselves with these IP laws and with the efforts to coordinate enforcement internationally.

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