Intellectual Property Rights Enforcement
TRIPS-Based Training Problem
Student Version in Subparts

Description/Purpose:

1. *These facts are based upon a composite of cases that occurred in the U.S. and elsewhere in the world. Following the facts in each section are a series of questions designed to stimulate discussion and understanding of the international standards for IP enforcement as set forth in the WTO TRIPS Agreement, Part III, Articles 41-61, with particular reference to factual situations that may occur in China.*

2. *The scenarios focus on the two most common areas of enforcement, commercial scale copyright piracy and trademark counterfeiting. However, other forms of intellectual property infringement also appear. The first section describes the facts that will be applicable throughout the problem. Following that are factual descriptions applicable to the immediate section: civil; administrative and border; or criminal.*

3. *TRIPS standards set minima for intellectual property enforcement. Many countries in the world have standards that may also exceed TRIPS minima that may be well suited to their economic or legal circumstances. In addition to focusing on TRIPS minima, it is also hoped that the case study will elicit consideration of unique responses to intellectual property enforcement that are found in the Chinese system, for comparison to the United States or other international practices.*

General Facts: Applicable throughout the program….

Bluestone, a U.S. company, developed a revolutionary software program that detects computer viruses. Millions of businesses and individuals worldwide use the software to protect their computer systems. Bluestone sells the program domestically and worldwide on compact disc (CD), floppy disk, and direct to consumers for download via the Internet. Legitimate copies of the program, retail in China in a Chinese language version for an average price of 100.00RMB, which includes an instruction manual for use and operation, access to technical support and free upgrades. All legitimate physical copies of the software sold worldwide are manufactured at a single factory in Canada. The factory has been assigned and uses a Source Identification Code Number on all of its CDs (a SID Code is a voluntary numerical designation assigned to a CD manufacturing facility by the Philips Corporation. The code, which is printed on the clear, inner ring of a CD, is employed by the intellectual property industries to track the origin of CDs sold worldwide). Bluestone conducts its Internet-based sales and distribution from its offices in London.

Rights: Bluestone owns the copyright in the software program and instruction manual. It also owns the English language trademark "Bluestone," which is registered in China and in several foreign countries, and which is used in conjunction with the sale and advertising of the software. The holographic logo design is also a registered trademark in China. The software uses a novel computer method for detecting viruses, which also anticipates the development of new viruses; Bluestone has been issued a patent on this discovery in the United States, Western Europe and China.

Products

Bluestone's Products: An anti-virus software program, an instruction manual, and accompanying packaging, including holographic symbol on packaging, bar code identification of product, registration information and "breakwrapper" license. (Samples)

Infringers' Products: Pirated software programs on CD. Programs are packaged in boxes that simulate the packaging of the genuine software. The packaging bears trademarks identical to the registered trademark, as well as a Chinese language trademark, and a Chinese language instruction manual. The Chinese language trademark is "lanshi" – literally blue stone in Chinese. The hologram is indistinguishable to the naked eye from Bluestone's hologram on its packaging. Other unauthorized copies are distributed on compilation CDs, which also contain unauthorized copies of other popular software titles. A third source of unauthorized copies of Bluestone software is the Internet – copies are distributed through unlicensed websites, where anyone with access to the Internet can download unauthorized copies of the software. A fourth source is the software itself may be hard loaded onto newly purchased computers. In all cases, the anti-copying encryption Bluestone uses to protect its software from unauthorized copying was "cracked" to allow the unauthorized reproduction ("cracking" refers to writing and introducing unauthorized software code that defeats the code in the program that prevents unauthorized copying). Some of the software being distributed is not only incapable of detecting destructive viruses, it contains one. (Samples)

Players:

Consumer(s) (including Mother - *the most feared consumer*)
Bluestone (Right Owner)
Lao Wang's (Retail Distributor of Illegitimate Product)
Wang Jingyi (Owner of Lao Wang)
New Media Trading Co., Inc. (Importer of Illegitimate Product)
Police (Public Security)
Corporate Security Inc., a market research firm that specializes in investigation of piracy or counterfeit products

Customs (or the administrative agency with border enforcement authority)
Other Administrative Officials
Procurator

Each of the three sections that follow contains questions designed to stimulate discussion on TRIPS requirements and implementation options. Participants are strongly encouraged to ask additional questions, discuss their own enforcement experiences, and present variations on the factual scenarios for consideration by the group.

Fact Set 1: General Obligations; Civil and Administrative Procedures and Remedies; Provisional Measures: TRIPS Articles 41 - 50

Mother, a consumer, discovers that her teenage son's computer is infected with a virus. Earlier in the day, a classmate of her son's received an email message from her son, which contained an attached file named "I Love You." Not at all suspicious about such a message from a teenage boy, the classmate opened the attached file and launched a virus that deleted the contents of the grandparent's hard drive.

Mother, angry that the recently purchased anti-virus software installed on teenage son's computer had malfunctioned, called Bluestone's Technical Support number printed on the software packaging. After describing what had occurred, Mother's call was transferred to Bluestone's Legal Representative in Beijing, in their Anti-Piracy Office.

Mother explained that she had purchased the software last weekend at a "big sale" at Lao Wang's retail shop in Hometown, after hearing news reports about viruses and products designed to protect computers from them. Mother explained how Lao Wang generally has great prices on software, a tremendous selection of software titles and games, and that her family has never had any problems with software purchased from Bluestone, except that some of the less expensive programs are sold without instructions. Mother paid 25 RMB for the anti-virus program – having kept the receipt, just in case….

Bluestone Legal Representative asks a market investigation firm, "Corporate Security International" to investigate this matter ("CSI"). A CSI representative catches the next airplane to Hometown to visit the Lao Wang shop. CSI finds that that, indeed, Lao Wang offers a wide variety of software titles for sale. The shop is in a commercial area, in a small building that also houses a restaurant and a clothing store. Behind the building is a smaller, windowless structure with several bicycles, motorcycles and an unmarked delivery van parked in front. It is a Saturday afternoon, and there are several customers in the store. On the right side as CSI's representative walks in, is a copy of the business license of Lao Wang, issued by the local authority of Hometown, and signed by a Mr.

Wang Jinger, who the representative suspects is Wang Jingyi's younger brother. CSI's Representative browses, examining the merchandise. Numerous copies of Bluestone's software package appear as part of a wall display; packages are marked for sale at 100 RMB. Below the wall display, on a shelf, are other similar packages, marked for sale at 25 RMB. The CSI Representative purchases one of each and leaves the store.

The Representative sends both copies to Bluestone's laboratory for testing. To be thorough, the lab conducts two types of examinations: visual and electronic. On visual inspection, the products' packaging was identical in format and content, but differing slightly in color, in that the 25 RMB copy's package colors were muted, and the type on the RMB 25 copy was slightly blurred. The rear of the CD identifies the U.S. and Chinese patents that Bluestone has obtained.

Inside the packages, the instruction manual with the RMB100 copy is color-printed and bound. The RMB25 product's manual is an obvious, but competent color photocopy. Bluestone sells this manual separately in markets outside of China. The cover is reproduced at a higher quality level than the contents, and could be sold as a stand-alone manual. The copy contains the same references to customer support, copyright protection, trademark symbols, that the original does. Both CDs are printed with the same logos, but the less expensive CD does not bear a SID Code (unlike Bluestone CDs manufactured at the Canadian factory). When loaded into the computer CD drive, both programs "launch" – begin running. It is clear from the visual inspection, that the RMB25 copy is unauthorized.

The CDs are then tested electronically – the lab examines the software code, to determine the degree of copying, tampering, etc. The tests reveal that the RMB100 copy is a legitimately produced, genuine copy of the program. Examination of the RMB25 copy reveals that the anti-copying encryption was defeated, that the program is fatally flawed as a defense against viruses, and that the program is infected with the "I Love You" virus. This virus affects not only the computer on which it is loaded, but also has the potential to affect any computer that receives email from an infected computer. The virus destroys all data on an infected computer's hard drive, rendering the computer virtually inoperable.

Question Set 1:

Generally, what types of intellectual property rights does TRIPS require Member countries to protect?

What types of enforcement are required to be available for each of those rights? Civil?

Administrative: Border? Criminal?

Under TRIPS, what are a Member country's general obligations with respect to the enforcement of IP rights?

What discretion does TRIPS give Member countries with respect to administrative, judiciary or other government resources?

Does TRIPS require establishment of specialized courts to handle intellectual property enforcement matters? What are the benefits or detriments of establishing specialized IP courts? Are there likely to be specialized courts or specialized judges in your town that are familiar with TRIPS?

In the case described above, what are some of Bluestone's commercial concerns? What rights of Bluestone's are threatened in this scenario?

What rights does CSI have, if any, to bring Bluestone's issues to the attention of government authorities?

(8) In the current fact pattern, what enforcement-related goals might Bluestone have? Stop Lao Wang from selling the software? Terminate the business license? Stop the manufacturer of the products from distribution? Recover damages or lost sales? Limit its liability for problems caused by the defective software? Protect its reputation? Gather information? What else? Are there any remedies that are not specifically found in TRIPS that may be helpful in your country? What administrative remedies are possible against Lao Wang? Copyright Infringement? Trademark Infringement? Patent Infringement? Product Quality? Unfair competition? Business License methods? Taxation? Other?

(9) You have discovered that the local administrative agency for copyright enforcement and for trademark enforcement will only take actions for local companies, and does not normally cooperate with companies outside of China. What further steps might CSI take?

(10) Under TRIPS what enforcement-related steps could Bluestone initiate to protect its rights, given the information currently known? What additional information, if any, is needed? Desired?

(11) What administrative agency(ies) in China could assist Bluestone in this matter?

(12) Under TRIPS, what powers must the judiciary have in the enforcement context?

(13) If Bluestone is concerned about preserving evidence (fears destruction of warehoused illegal software, Lao Wang' business records), what could an administrative agency or court do under TRIPS? What value , if any, would the evidence be that is obtained by CSI? by the administrative agencies in a civil infringement action?

(14) Can CSI initiate these actions directly in China? Can Bluestone?

(15) What can CSI or Bluestone do if local administrative or judicial authorities refuse to act? What can Lao Wang do if they act too aggressively?

(16) If Bluestone is concerned about protecting the public and its reputation (Lao Wang might sell the remaining stock), what could a court do under TRIPS?

> At whose request can the court act? On its own? At Bluestone's request? At a consumer's request? Under TRIPS? Under your countries laws?
>
> Under TRIPS' requirements, what type of evidence must Bluestone put forth to get a court to issue an order to protect Bluestone's interests?
>
> What other type of information could satisfy TRIPS requirements?

(17) If Bluestone seeks a court's assistance or administrative agency to preserve evidence or to protect its business interests, does TRIPS require that Lao Wang receive notice of this request? Under what circumstances, if any, can the court act without giving prior notice to Lao Wang? What are the benefits of this?

(18) Under TRIPS, can the court require Bluestone to pay costs associated with the case?

(19) With the information known (the identity of the infringer, that Lao Wang' product is unauthorized, that the pirated software is infected with a virus, and the location of the shop where the software is being sold), under TRIPS, must a court grant some type of relief to Bluestone? If so, what? What relief would you grant to Bluestone?

(20) Can Bluestone ask a court to compel Lao Wang to provide information about the source of the software?

> For example, can a court order Lao Wang to provide information about the person supplying the software? What about business records associated with that purchase?
>
> What are the benefits of allowing the court to compel disclosure of these

types of information?

(21) Assume Bluestone files a civil lawsuit against Lao Wang. Under TRIPS, what remedies are available if Bluestone is successful in the lawsuit against Lao Wang?

Monetary damages? If so, how should these be calculated? By the pirate's profits? By the right owner's lost profits? By the retail price of the infringing goods or the retail price of the genuine goods infringed? By some other formula? Will it depend on the court? Will an administrative agency act differently?

Must Bluestone be allowed to recover court costs and attorneys fees in all cases?

According to TRIPS, how could the court dispose of the infringing goods? What do you think should happen to the software?

Under TRIPS, what other property might be subject to the court's jurisdiction in this case? The warehouse where the products are stored? The van used to transport the products? What else?

What about Lao Wang' future conduct? What relief must be ordered? What relief should be ordered? Does a judge have jurisdiction over Lao Wang? Does an administrative agency?

(22) Under TRIPS, what, if any, protection (against unfair claims, damage to the business, etc.), is available to Lao Wang during the civil case?

(23) Considering the circumstances in your own country? -

What measures are available to Bluestone against the company that makes the holographic symbol? The packaging? The printed manual?

What remedies does Lao Wang have for using its trademark in non-Latin letters (Chinese)?

Are there any particular administrative remedies available to Bluestone for patent infringement under your country's laws?

(24) Can Bluestone initiate a criminal case under TRIPS? Under local law?

(25) Suppose the facts of the case were not so clear-cut, and Lao Wang was able to mount a successful defense to the civil infringement allegation. Does TRIPS require Member countries to provide for any recourse against the plaintiff, Bluestone? Against the court?

Fact Set 2: Special Requirements Related to Border Measures: TRIPS Articles 51 - 60

In the context of the on-going proceedings, the Judge compels Wang Jingyi, Lao Wang' owner, to provide Bluestone with the identity and location of the source of the infringing software, the manufacturer of the manual, and the printer of the hologram. As it turns out, all of the infringing CD copies are manufactured in Malaysia, and imported for sale. Lao Wang names the importer New Media as the source of the pirated software it sells. All other materials are sourced in China itself.

New Media and Lao Wang have been doing business for 3 years. According to Lao Wang, New Media regularly sells to Lao Wang numerous software and game titles, and imports and sells software and other computer-related products to approximately10-15 small and medium-sized businesses in the region. At present, New Media is actively importing and selling infringing copies of Bluestone's software.

The civil case against Lao Wang is proceeding, but the case may take several months to resolve. In the interim, Bluestone's business and reputation are being damaged and the public's computers are at risk.

Question Set 2:

(1) What are Bluestone's enforcement-related goals with respect to New Media? Block importation of shipments? Collect evidence? Obtain shipping records and other information? Identify additional importers? What else?

(2) Does TRIPS require that countries provide any recourse other than civil enforcement for Bluestone in this situation? What additional types of enforcement are required? Desired?

(3) Why is border enforcement important, distinct from (and in addition to) civil enforcement? Can you identify any resource issues? Jurisdictional issues?

(4) Under TRIPS, border enforcement must be available for which rights?

(5) What type of border enforcement system may a Member state create? A system requiring right owners to initiate enforcement actions? A system requiring the government to initiate?

(6) Does TRIPS require that different border measures be invoked against pirated goods (copyright) and counterfeit goods (trademark)? Can pirated goods and counterfeit goods be treated differently? Should they be?

(7) What does TRIPS require with respect to patented goods? Should they be treated differently?

(8) Does TRIPS specify which enforcement entity (i.e., customs police or taxation authorities) has jurisdiction over New Media's importation activities? What are the benefits or detriments associated with assigning that responsibility to customs?

(9) Under TRIPS, who can initiate a border enforcement case? Under an application system (right owner initiates cases)? Under an "ex officio" system (competent authority – customs – initiates cases)?

(10) What information might Bluestone have to provide in this case to initiate border enforcement activities? In an application system? In an ex officio system?

Under TRIPS, what information must Bluestone be required to provide to the border authorities?

Under TRIPS, what details related to the suspect goods could Bluestone be required to provide to the border authorities in order to initiate action, (e.g., description of goods, mode of transportation)?

Will Bluestone be required to identify the port?

Is Customs required to refer its seizures on to criminal authorities?

Is Customs required to destroy the goods? Can they resell them to a charity?
Is Customs required to cooperate with any administrative agency?

What are "reasonable" categories and levels of specificity of information that can be required of a right owner? A description of the goods? The name of the manufacturer? A shipment's arrival date?

In your opinion, what are the characteristics and results of unreasonably burdensome, prohibitive requirements?

(11) Does TRIPS impose any "fairness" obligations in border enforcement cases (e.g., notification requirements, deadlines for filing claims, etc.)?

(12) Does TRIPS require that countries provide for any protection for New Media, in case Bluestone is mistaken? Does TRIPS provide for any measures to help ensure that Bluestone's request for assistance is valid and, not designed to inhibit competition or to exact revenge?

(13) Under TRIPS, must the customs authority have the legal authority to make the legal determination on whether goods are counterfeit or pirated? If not, who must have jurisdiction? Who can be the "competent authority"?

(14) If the border authority is not the competent authority, what other agencies could be made responsible for actions against the importation of counterfeit and pirated goods? Who, in your opinion should be the competent authority and why? Who is the competent authority in your country?

(15) Under TRIPS, what should the competent authority have the power to do with New Media's infringing CDs?

(16) What remedies does TRIPS require that countries provide against individuals found to be importing infringing goods? On behalf of the government? On behalf of the right owner?

Does TRIPS require imposition of any monetary penalties?

Does TRIPS require border authorities to withdraw New Media's importing license?

Does TRIPS require border authorities to keep track of companies or individuals engaged in the importation of pirated or counterfeit goods on any database?

Does TRIPS require the competent authority to refer New Media to another government agency for fines or other action against New Media?

Under TRIPS, what remedies must be imposed on New Media, as an individual importer of pirated software?

(17) Under TRIPS, what actions must be taken against illegal exports? Illegal goods in-transit? Parallel imports? What actions should be taken, if any?

(18) Under what, if any, circumstances can border authorities refuse to detain infringing goods without violating TRIPS?

(19) What considerations does a government have with regard to customs activities that might compete with enforcement considerations? Resources? Facilitating legitimate trade? Others?

(20) If Bluestone becomes aware that goods are being exported with the manual and final assembly in China, what steps can Bluestone take under TRIPS? Under local law?

(21) What measures can be taken under your country or regions laws to stop the manufacturer of the holographic device, the printer of the manual, or the company that assembles the final product? What measures can be taken at the border? Are these measures required under TRIPS?

(22) What rights of appeal would the manufactures, printers or other companies have to administrative sanctions? to what kind of court?

Fact Set 3: Criminal Procedures: TRIPS Article 61

At a popular gift-giving holiday time of year, barely six months after the conclusion of the civil and administrative cases against New Media and Lao Wang, Bluestone discovers that New Media and Lao Wang are back in business. Lao Wang' owner, Wang Jingyi, is operating the store in violation of a permanent injunction issued by the judge in the civil case. New Media has changed its Customs identification number to avoid detection of imported shipments of infringing software. In addition, given the increased popularity of the Internet, and a thirst for revenge created by the court case, Lao Wang now maintains a website in China from which anyone with access to the Internet can download hundreds of popular software titles free of cost or at a nominal cost.

Another strain of destructive computer virus has swept through the country's computers, fueling the demand for anti-virus software, including Bluestone's product. On another Saturday afternoon, CSI – in disguise – returns to Lao Wang to monitor compliance with the judicial order. The shop is full of customers, many of them are buying "Special Offer – Court-Ordered Sell-Off" copies of Bluestone's software for RMB25 each. This time, Bluestone's Representative finds no RMB100 copies of the software in the store. When the Representative asks the clerk about the "Special Offer," the clerk laughs, and says, "I'll give you a tip – you can download it from our website for even cheaper." Foregoing the bargain, the Bluestone Representative buys the RMB25 copy of the anti-virus software and leaves.

Bluestone visually inspects and electronically tests the product and finds it to be identical to the unlawful copies that were the subject of the previous civil and border cases. Again, the unlawful copy and its packaging offend the patent, copyrights and trademark rights associated with Bluestone products, and the anti-virus software is virulent - infected with a destructive virus.

The Bluestone Representative later visits www.bluestone.com.cn, at the store clerk's suggestion, and finds hundreds of business software and game titles available for download for free or at a nominal cost. Also on the site are sound recording files available for downloading, and links to other websites that offer unauthorized software and sound recording files for downloading.

In addition, Bluestone now knows, based on information provided by Customs prior to their crackdown (and prior to New Media's ID number change), that the volume of shipments indicates that New Media was, and may still be, a major supplier of pirated software to retail stores nationwide. Angered by this, and by the new, devastating Internet distribution, Bluestone is convinced that only criminal sanctions will deter Lao Wang and New Media from continuing to violate its rights and damage the public's computers.

Question Set 3:

Under TRIPS, which intellectual property violations must be subject to criminal procedures? In your country, violations of which rights can be a basis for criminal actions? In your opinion, what other types of IP violations should be subject to criminal procedures? What other criminal remedies are available apart from those specified in the criminal code or elsewhere as intellectual property crimes? Illegal business operations? Inferior product quality? Violating a court order? Tax evasion? Customs evasion?

Does TRIPS limit the application of criminal procedures to cases involving commercial quantities of merchandise?

What other conduct may be subject to criminal penalties under existing intellectual property treaties? What if Lao Wang is "cracking" encryption before posting programs on its website?

What are Bluestone's enforcement goals at this stage in the case? Work with administrative agencies for enhanced enforcement? Convince the police to initiate an investigation? File a criminal complaint? Obtain evidence? Close down operations? What else? Does TRIPS provide any guidance?

Under TRIPS, can Bluestone or the government do anything to Lao Wang for violating an existing civil court order? Can Bluestone take steps against Wang Jingyi?

Under TRIPS, does Bluestone have sufficient information to ask the authorities to initiate a criminal investigation of Lao Wang? Of New Media? Is there sufficient information to initiate an investigation in your country? What authorities should Bluestone ask? Can CSI ask the same authorities?

Under TRIPS, who can initiate an IP criminal investigation? Who should initiate the investigation in this case? May investigators initiate an investigation without a complaint by Bluestone? If yes, under what circumstances? What will be the status of evidence collected by Customs or administrative authorities? Will authorities cooperate with each other? How will they cooperate, or refuse to cooperate? Also answer these questions from your country's perspective.

Can information gathered by Customs be used for a criminal enforcement of Lao Wang? Information regarding both imports and exports?

Under TRIPS can Bluestone initiate a criminal investigation on its own? Can Bluestone initiate a criminal investigation under the laws of your country?

(10) Who could be responsible for gathering evidence of the elements of the offense? Bluestone? Law enforcement officials? CSI? Administrative Agencies? Can the Agency refer the case to the police for criminal enforcement? Is it required to refer the case? How can Bluestone and the law enforcement agencies work together to investigate New Media and Lao Wang? Can SCI's information be used?

(11) Under TRIPS, can a court order Lao Wang to make an apology? to publish an apology? What is the legal effect of an apology? What about the law of your country? Do you think an apology a useful remedy? What about Lao Wang' future conduct? What relief must be ordered? What relief should be ordered?

(12) Under TRIPS, what, if any, protection (against unfair claims, damage to the business, etc.), is available to Lao Wang during the civil case?

(13) What additional steps can be taken to close down the bluestone.com.cn website?

(14) Can Bluestone ask a court to seize records or evidence of Lao Wang on an emergency basis without Lao Wang being present? If Bluestone wants to bring a civil action or a criminal action, can the evidence from an administrative action be used? Does this process comply with TRIPS?

(15) Does TRIPS specify who should have jurisdiction over investigating this case?

(16) Do the administrative agencies in your country have the same jurisdiction as the courts?

(17) What are the advantages and disadvantages in a criminal case compared to an administrative case?

(18) Under TRIPS, does it matter whether New Media and Lao Wang knew that the goods were illegal? How can knowledge be proven? In the present case? In general?

(19) In your country would the evidence available in this case be sufficient for prosecutors to file a criminal complaint? Against New Media? Against Lao Wang? Against the merchandise? What if Bluestone collected all of the available evidence itself - does this affect your answer?

(20) In your country, from whom could prosecutors accept matters for prosecution? From the police? From Customs? From the victim, Bluestone?

(21) May prosecutors initiate investigations? Must prosecutors "reinvestigate" the case presented by the police or the right owner or can they file charges against defendants New Media and Lao Wang based on the information already gathered?

(22) How much discretion do prosecutors have to accept/reject cases? How much do you believe they should have?

(23) Who can file a criminal complaint before the court? Who should be able to file criminal charges?

(24) Can Bluestone conduct the criminal prosecution?

(25) What would you consider most influential factor(s) in deciding whether to file criminal charges against New Media? Lao Wang? Wang Jingyi? -- Quantity of infringing goods? Value? Number of victims - right owners vs. public (fraud)? Loss to right owner? Nature of suspect(s)? Possible links to other crimes? Complexity and scope of the crime?

(26) How should the value of the damages caused be calculated for criminal, civil or administrative cases? By value of the infringing goods? By sales prices proved by Lao Wang? By CSI or Bluestone? What if there is no evidence of sales?

(27) Who may dispose of criminal intellectual property cases? Prosecutors alone?

Prosecutors, in agreement with the parties? Courts? Administrative agencies?

Under TRIPS, if Lao Wang (Lao Wang' owner) and New Media are tried and found guilty, must their convictions be subject to any review? At whose request? Reviewed by whom? If they are acquitted, must their acquittals be subject to review?

(29) What penalties does TRIPS require in the criminal context? Imprisonment? Monetary fines? What, in your opinion, constitutes deterrent penalties?

(30) In your country, who determines punishment? How is the length of imprisonment or amount of fines determined? Does TRIPS require minimum sentences? Does TRIPS specify what are "crimes of a corresponding gravity" to IP crimes? What do you consider to be crimes of corresponding gravity?

(31) What would you consider to be appropriate criminal sanctions? For New Media? For Lao Wang or its owner Lao Wang? Should there be a difference between administrative and criminal sanctions? What kinds of difference?

(32) What other remedies are available in criminal IP cases? From courts? From prosecutors? From police? Are these remedies available only post-conviction? Are remedies available against convicted infringers? Against merchandise? Against materials or equipment used to manufacture or transport merchandise?

(33) Assume that Bluestone's product is world-famous, with over 90% of the market, are there any other remedies available to it in your home country?

(34) Why do you suppose TRIPS provides so little guidance in the area of criminal procedures, leaving Member countries with significant discretion?

Summary – Impressions/Discussion

What are the three main categories of IP enforcement?

What quality of enforcement does TRIPS require?

What constitutes "effective enforcement"…? According to TRIPS? In your opinion?

What are expeditious remedies…? According to TRIPS? In your opinion?

What constitutes "deterrent penalties"…? According to TRIPS? In your opinion?

What, if any, resources must a Member government commit to IP enforcement?

What, if any, structures must Member governments create to deal with IP enforcement?

In what ways is TRIPS a helpful guide? In what ways is it lacking?

What is the most challenging aspect of TRIPS enforcement provisions…? In theory? In practice?

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