

Research on TPP "Intellectual Property Damages" and China's Approach

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Since ACTA has been rejected, the U.S. engaged in another plurilateral negotiation - Trans-Pacific Partnership Agreement (TPP) - and proposed a draft on 10th Feb 2011. Based on Anti-Counterfeiting Trade Agreement (ACTA) and Stop Online Piracy Act, it stands for the most stringent Intellectual Property protection standard up till now. Not only does it enlarges the application of damages in ACTA, but also includes Triple-Damages in case of patent infringement for the first time in international agreement. Accordingly the flexibilities allowed by TRIPs shrink to a great extent. On 13th Nov 2013 another draft of TPP embracing the opinions of all parties was made. It differs from the U.S. draft in that it calls for proper flexibilities of making national IP policies. The deprivation of infringer's profit, pre-established damages and enhanced damages are the calculation methods of the actual losses, rather than new calculation standard; and thus they should obey the fundamental tort law doctrines - the Fulfillment Principle and the doctrine of non-differentiation of willfulness and fault - which base on the corrective justice and leave no room for deterrence at all. The introduction of Punitive Damages in China's IP law deserves a second thought. TPP's IP damages reflect the private enforcement of competition law, which could not be adopted by China. China's IP enforcement is characterized by the public intervention. It can effectively solve the under-compensation problem in China; it also best accords with China's domestic status and thus deserve international acknowledge.

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