

China further improves copyright protection environment

射手网、人人影视字幕翻译网站在中国相继关闭——

只有尊重版权才会有出路

Some Chinese netizens indicate regrets when two Chinese subtitles websites announced its closure recently.

The closure of the two websites mainly because there were some hidden troubles in copyright. The Chinese Fansub Group is a not-for-profit voluntary team, and its translation activity failed to obtain a permit from original copyright holder. So which legal issues involve in such translation action? "There are mainly two possible legal issues, the first is whether the subtitles documentaries need to ask right holder for permission, and the second is whether the subtitles are valid and infringing after it is uploaded to website," said Zhan Yi, the Executive Director of Shanghai Kehui Law Office, and member of China Law Society.

About the first question, Zhan Yi says, if Fansub Group merely translates the subtitles of the foreign films into Chinese edition, without any commercial affairs, it can't be illegal. Of course, any commercial affairs could

be the exception. For the second question, according to Zhan Yi, "It is fair use for Fansub Group for the following reasons: on one hand, the production and spreading of output subtitle file is helpful to the cultural communication, and also be helpful to the balance between public cultural interests and interests of copyright holders, which is in line with the intention of copyright law; on the other hand, the subtitle file is free for the netizens, without any commercial intention. At the same time, if any copyright holders declare the prohibition on the copy of his or her works, or any commercial intention occurs, we would exclude that exception." "On the one hand, the relevant departments have attached great importance to crack down infringement, resulting in the shaping of a sound copyright protection environment.

On the other hand, the domestic online video websites spent heavily on copyright of foreign TV dramas, which are available to watch instantly.

For such reasons, it is more and more difficult for Fansub Group to survive," said Zhan Yi.

Sources from a press conference held by the Information Office of the State Council said that, in recent years, in a bid to crack down infringement and counterfeiting goods, the relevant departments have been facilitating to establish a long-term mechanism. "Since 2005, China's Internet copyright protection environment has been improved when the National Copyright Administration (NCA) has joining hands with other departments to wage a campaign against online infringement and piracy in network literature, music, video, game, cartoon and software." said the Director of Copyright Management Department of NAC. (by Jiang Xu)

本报记者 姜旭

近日,中国知名影视剧字幕翻译网站射手网站长沈晟,在其网站首页发布《断·舍·离》公告,宣布射手网正式关闭。同日,知名美剧字幕翻译网



站人人影视也宣布正式关闭人人网中国区网站。对于这两家网站宣布关闭,不少网友纷纷表示惋惜。有关专家认为,两家字幕网站的主动关闭,反映出相关人员已经意识到版权问题的严重性,这对于保护权利人合法权益和改善版权环境而言,均是利好消息,这也体现出相关部门加大打击侵权盗版有了显著成效。

记者在采访中了解到,这两家网站主动关闭主要是因为存在版权隐患。字幕组大多由一些具有共同爱好的人员自发组成,其翻译行为也大多未获得原始权利人许可,这就导致这类字幕组一直游走于法律的灰色地带。那么,字幕组的翻译行为会涉及哪些法律问题?上海科汇律师事务所执行主任、中国法学会会员詹毅表示,这涉及两方面问题,即字幕组翻译制

视听作品(以电影为例)外文对白的中文字幕文件,是否需要先征求视听作品权利人的同意;字幕组将上述字幕在互联网上公开传播是否侵权。

对此,詹毅表示,“字幕组如果仅对外文电影翻译制作中文字幕,且不构成商用,并不违法。当然,出现商业行为的除外。”在他看来,字幕组制作传播客观上对文化交流有利,有助于公众文化利益与著作权人利益的平衡,符合著作法的精神。另一方面,字幕文件的传播对于外语电影的商业模式并无损害,且这些字幕文件都是免费的,并无商业目的。当然,如果权利人声明禁止的,或者出现商业行为等情况的除外。

詹毅说:“一方面由于相关部门加大查处力度,一些游走于法律灰色

地带的人及时止步,所以版权环境正在逐步变好。另一方面,由于国内视频网站斥巨资购买国外影视剧版权,网友可在这些视频网站上几乎能同步观看到国外热播剧,且配有中文字幕,如此以来,字幕组的存在空间越来越有限。”

据介绍,近年来,中国加大了版权保护力度。记者不久前在国务院新闻办举行的发布会上了解到,近年来,针对侵权假冒问题,各有关部门持续开展专项整治,推动长效机制建设,查处了一批大案要案,促进了版权环境的改善。国家版权局有关负责人表示,自2005年起,国家版权局联合其他部门针对网络文学、音乐、视频、游戏、动漫、软件等重点领域,集中强化对网络侵权盗版行为的打击力度,互联网版权保护环境得到明显改善。

China's report on Internet innovation reflects a raising IP awareness

报告显示:

中国互联网企业知识产权意识不断增强

Recently, an innovation development report on China's Internet industry (2014) was jointly released by Internet Law Center, Peking University Law School and China Law Association on Science and Technology.

The report selected 7 Internet areas including real-time communications, online payment, online game, social network, search engine, network security and cloud computing as analysis objects. In real-time communication areas, as of November 20, 2014, the report retrieved 4,140 Chinese patents. Tencent Company ranked the top with 501 patents, followed by Microsoft, Huawei, Shanghai Liangming Technology and IMB. Among the 3,721 patents in online payment area, 189 and 129 of which were obtained by Huawei and ZTE. In terms of online game area, Tencent, Huawei and KONAMI ranked the first three places in patent holding.

"The number of patent obtained by Chinese Internet companies in real-time communications, online payment and other areas has on a par with or exceed such foreign companies in Chinese market. Chinese Internet company will play a more and more important role in global innovation map in the future," said Zhang Ping, Executive Vice President of Peking University Intellectual Property Law School.

In fact, the report also reveals the difficulties and challenges faced by such companies. According to the report, Chinese Internet companies still need to improve their innovation capability. "Some advanced Internet companies should consider investments in cutting-edge technology, and accumulate competition capital through innovation. This facilitates the construction of market order in China's Internet industry." Zhang

Ping adds. (by Wang Kang)

本报讯 日前,由北京大学法学院互联网法律中心和科学技术法学会联合发布的《中国互联网技术创新观察报告(2014)》(下称《报告》)揭晓了中国互联网企业的创新状况。有关专家表示,随着互联网技术的迅猛发展,技术的更新速度加快,中国互联网企业在大部分技术领域的专利申请量呈现明显增长趋势,互联网企业知识产权意识不断增强。

数据显示,《报告》主要选取即时通讯、互联网支付、网络游戏、社交网络、搜索引擎、网络安全和云计算7大领域进行综合分析。在即时通讯领域,截至2014年11月20日,共检索出中国专利4140件,其中,腾讯公司在该领域具有较为明显的优势,共拥有501件专利,紧跟其后的是微软公司、华为公司、上海量明科技、IBM等公司,其拥有的专利均在100件以上。在互联网支付领域的3721件专利中,华为公司与中兴通讯两家公司拥有的专利分别为189件和129件,在该领域显示出强劲的竞争优势。而在网络游戏领域,专利拥有量排名前3位的企业分别是腾讯公司、华为公司和科乐美。

北京大学知识产权学院常务副院长、《报告》主要执笔人张平在接受中国知识产权报记者采访时表示,目前国内互联网企业在即时通讯、互联网支付等领域所积累的专利数量在中国市场中已经可以比肩甚至赶超同领域的国外企业。未来,中国互联网企业将在全球互联网领域的创新格局中占据越来越重要的位置。

同时,《报告》也显示出了,中国企业创新实力的持续性仍有待提升。张平表示,企业竞争力的增强需要通过有计划的持续创新研发和合作研发获得,部分有实力的互联网企业应当考虑对前沿技术的投入,以技术创新优势积累市场竞争资本,这样有利于推动我国互联网市场良好竞争秩序的构建。

(王康)

Omega fails in trademark battle with OMEIKA

“欧米茄”异议“欧美卡”未果

The world's famous watch-maker Omega recently argues with the OMEIKA trademark which was applied for registration in grinder (hand tools). Dissatisfied with the Trademark Review and Adjudication Board (TRAB) under the State Administration for Industry and Commerce's ruling, Omega Company filed an administrative lawsuit to Beijing No.1 Intermediate People's Court. The court affirmed the TRAB's original adjudication, which maintained the registration of omeika trademark.

The trademark in question is NO.6144042 欧美卡 OMEIKA trademark, which was filed by Guangdong Jinda Hardware Company in July, 2007. The trademark was certified to be used on Class 8 grinder goods. Within the legal time limit, Omega Company filed a dispute application, asking for revoked the trademark, but it was failed.

It is said that the OMEGA, 欧米茄和奥米加 were applied and registered by Omega Company in watch and jewelry forging tools, including NO.723799 OMEGA and its figure, NO.636659 OMEGA SAPPHETTE, NO.172606 奥米加 and No.1162186

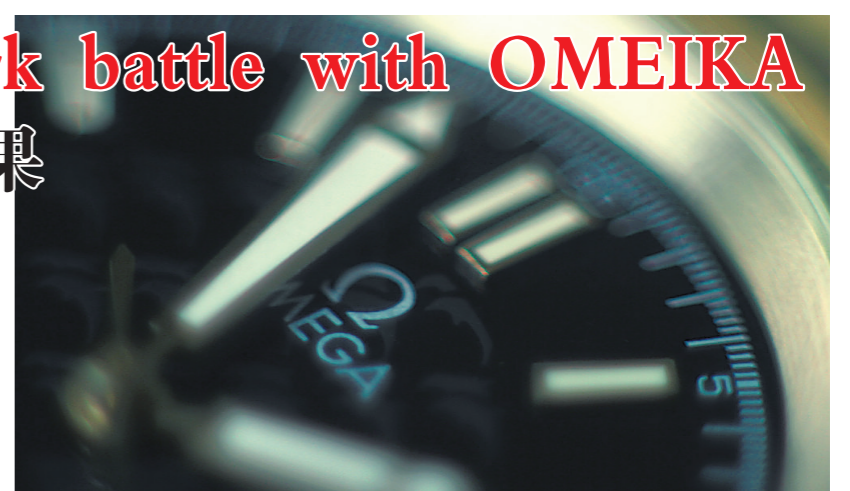
欧米茄 trademark.

Omega Company held that, the trademark in question and cited trademark are similar trademarks on same or similar goods. The OMEIKA trademark is similar with OMEGA in symbols, sound and implication.

The court held that there were large differences between OMEIKA and OMEGA in function, distribution channels and consumption target. Similarity was not constituted. Besides, compared the OMEGA and 欧米茄 trademark with 欧美卡 OMEIKA, the difference exists in symbol, the number of letters, sound and visual effects. So the court made the decision above. (by Mao Ligu)

本报讯 拥有百年历史的国际著名制表企业瑞士欧米茄有限公司(下称欧米茄公司),不满他人将“欧米茄”等商品上申请注册“欧美卡 OMEIKA”商标而提出异议。在中国国家工商行政管理总局商标评审委员会(下称商评委)裁定被异议商标予以核准注册后,欧米茄公司向北京市第一中级人民法院提起行政诉讼。日前,法院一审判决维持了商评委被诉裁定。

被异议商标为第6144042号“欧美卡 OMEIKA”商标,由广东金达五金制



品有限公司(下称广东金达公司)于2007年7月提出注册申请,指定使用在第8类磨具(手工具)等商品上。法定期限内,欧米茄公司针对被异议商标提出异议申请,但并未获得支持。随后,欧米茄公司向商评委申请复审。

据了解,欧米茄公司在钟表及首饰制造工具等商品上申请注册了多件“OMEGA”“欧米茄”“奥米加”商标,其中包括第723799号“OMEGA及图”商标、第636659号“OMEGA SAPPHETTE”商标、第172606号“奥米加”商标、第1162186号“欧米茄”商标(下统称引证商标)。

在商评委裁定被异议商标予以核准注册后,欧米茄公司向北京市第一中级人民法院提起行政诉讼。

欧米茄公司诉称,被异议商标与引证商标构成使用在相同或类似商品上的近似商标;被异议商标中的英文“OMEIKA”为其显著识别部分,与

其引证商标的显著部分“OMEGA”在字形、读音、含义上构成近似,被异议商标与引证商标构成使用在相同或类似商品上的近似商标。

法院经审理认为,首先,被异议商标指定使用的磨具(手工具)等商品与引证商标核定使用的钟表及首饰制造工具等商品相比,在功能用途、生产销售渠道、消费对象等方面存在较大差异,二者不属于相同或者类似商品。其次,被异议商标“欧美卡 OMEIKA”与引证商标“OMEGA”“欧米茄”相比,在文字构成、字母数量、字母呼叫方式、整体视觉效果等方面存在一定差异,故被异议商标与引证商标不构成使用在相同或类似商品上的近似商标。故法院作出上述判决。(毛立国)



The year of 2015 is a year of historic importance for China IP Court. The court should develop an investigating judges system with Chinese characteristic, improve IPR evidence system. Besides, problems need to be solved or explored in future such as how to prevent law delay and increase efficiency due to a dual mode.

Tao Kaiyuan, the Vice President of the Supreme People's Court said during her visit to Beijing IP Court.

明年将是中国知识产权审判工作具有历史意义的重要一年。知识产权法院要探索实行中国特色技术

调查官制度,探索完善知识产权证据制度,探索解决因民事侵权和行政无效二元分立制造成的诉讼拖延和效率不高等问题。

——中国最高人民法院副院长陶凯元在北京知识产权法院调研时表示。

Of all the Chinese netizens, the number of mobile subscribers used their mobile phones to access the Internet has increased from 78.5% in 2013 to 83.4%. More than 25% users have paid for mobile apps, increased by 10% over last year. This date shows that Chinese Internet users have had the habit of paying. For internet products who first gains the benefits of IPR who pays for IPR.

Peng Bo, the Deputy Director of the State Internet Information Office said at the 7th China Annual Copyright Meeting. 中国网民中使用手机上网的人

群已经由2013年的78.5%提升到了83.4%,其中有超过25%的人付费购买过手机应用,较去年同期增长了10%。这个数据说明,中国的移动互联网用户的付费习惯正在形成,谁率先为知识产权买单,谁就能率先收获知识产权的红利。

——中国国家互联网信息办公室副主任彭波在第七届中国版权年会上发言,指出知识产权保护已成为中国互联网发展的关键。

China has made outstanding achievements in IP protection. But it still need to understand that, IP protection is a long-term task, and is also a project to pay constant attention. Therefore, China should demonstrate its determination in IP protection by stepping up IP enforcement in some vital areas, further promoting the legitimization of software and cracking down IP infringement.

Xu Chuming, the Vice Director of Shanghai University Law School, said in an interview.

中国在知识产权保护上已经取得了公认的成就,但还应当清醒地认识到,知识产权保护是一项长期而艰巨的基础性工作,需要常抓不懈。因此,中国应加强重点领域的知识产权执法,进一步推进软件正版化,形成打击知识产权侵权行为的高压态势,显示知识产权保护的执行力和威慑。

——上海大学知识产权学院常务副院长许春明在解读11月5日国务院常务会议精神时认为,加大保护力度是知识产权制度功能实现的保障。

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