

The Intellectual Property Protection of Piracy and Counterfeiting on E-Commerce Platforms



E-commerce is the activity of buying and selling of goods or services using the internet, and the transfer of money and data to execute these transactions. It can also refer to any kind of commercial transaction through the internet. E-commerce makes products easier to discover and purchase through online retailers and marketplaces. It enables products and services to sell at a scale that was not possible traditionally. Small businesses, and large corporations and Individuals are benefited with e-commerce. Most importantly, the e-commerce platform has built a new, transparent and secure trading system for people and enables people to look through products online, and complete transactions between buyers and sellers with the help of a fast and safe distribution system and a convenient and secure fund settlement system. The "Internet + e-commerce" business model has been continuously deepened since more and more people get used to shopping online. It is anticipated in 2020, a unified large-scale e-commerce market will be established and is going to develop in the future.



E-commerce has been growing rapidly since the 1990s. With the world's largest population, China has the largest number of consumers to develop various kinds of business. Since the Chinese economic reform, people have accumulated purchasing power for various products and services. China has great advantages to promote e-commerce with the same language, similar background, cultures, and the common market. Most Chinese are using the same social media which makes everyone become “self-media”. Under this circumstance, people will not only buy some products they plan to shop but also the products showed in social media, which encourages people to buy more than they planned to. Amazon, Best Buy, Taobao, and other well-known large-scale e-commerce companies make the circulation of goods more convenient, efficient, and cheaper. E-commerce has changed the situation of asymmetric information between buyers and sellers. In the market competition, merchants have launched different forms of sales policies in order to attract customers by improving product and service quality, which is good for the development of the entire industry. For customers, the e-commerce platforms show prices directly without any bargains with merchants, which improves transaction efficiency and promote online trading. At the same time, the problems of piracy and counterfeiting remains a serious problem in e-commerce. To tackle with the problem effectively, China and the United States should strengthen their cooperation in combating infringement and counterfeiting in the e-commerce market.

On January 16, 2020, China and the United States signed the first phase of the Economic and Trade Agreement between the Government of the People's Republic of China and the Government of the United States of America ("the Agreement"). The agreement regulates privacy and counterfeiting on e-commerce platforms. On one hand, it provides combating online infringement. Both countries should provide enforcement procedures that permit effective and expeditious action by right holders against infringement that occurs in the online environment, including an effective notice and takedown system to address infringement. (a) require expeditious takedowns; (b) eliminate liability for erroneous takedown notices submitted in good faith; (c) extend to 20 working days the deadline for right holders to file a judicial or administrative complaint after receipt of a counter-notification; and (d) ensure validity of takedown notices and counter-notifications, by requiring relevant information for notices and counter-notifications and penalizing notices and counter-notifications submitted in bad faith. On the other hand, the agreement also illustrates infringements on



major e-commerce platforms. (a) Effective actions are required to combat counterfeit or counterfeit products on the major e-commerce platforms that fail to take necessary supervision. (b) E-commerce platforms that have repeatedly failed to curb the sale of counterfeit or pirated goods may be revoked from their operation licenses. If the e-commerce platform seriously fails repeatedly to curb counterfeit or pirated sales, it may be subject to administrative punishment which means its operation license may be revoked.

Counterfeiting and piracy have an adverse impact on e-commerce, especially for the cross-border e-commerce economy. The new transaction methods require substantive measures to protect the legitimate rights and interests of intellectual property rights. The rapid development of the e-commerce economy in China and the United States urgently requires good and standardized laws to strengthen protection.

China implemented the "E-commerce Law of the People's Republic of China" ("E-Commerce Law") on January 16, 2019, in order to protect the legitimate rights and interests of all parties in e-commerce and regulate the behaviours of e-commerce. Article 41 of the Electronic Commerce Law clearly stipulates the principles of intellectual property protection which means an operator of an e-commerce platform shall establish rules on the protection of intellectual property rights and strengthen its cooperation with intellectual property right owners, so as to protect intellectual property rights in accordance with the law. First of all, the law established that an intellectual property right owner shall have the right to send a notice to the operator of the e-commerce platform concerned if he believes that its intellectual property right has been infringed. The intellectual property right owner could require the platforms to take necessary measures to delete or block relevant information, disable relevant links and terminate transactions and services. Then, the operator of the e-commerce platform has the responsibility to take necessary measures in a timely manner and forward the notice to operators on its platform. There are three types of liability for the operators of e-commerce platforms. (a) Where the notice issued is unreal and thus causes damage to the operators on the platform, civil liability shall be borne according to the law. (b) Where an unreal notice is issued maliciously, which causes losses to the operators on the platform, the compensation liability shall be doubled. (c) If the operators of e-commerce platforms fail to take necessary



measures in due time, it will be held jointly liable with the concerned operators on its platform for the increased part of the damage. China's e-commerce law attaches great importance to the protection of intellectual property rights and provides domestic legal protection for China and the United States to strengthen cooperation in the protection of intellectual property rights in electronic commerce.

The effectiveness of law is inseparable from a comprehensive legal enforcement system. China, with abundant labour resources and broad market, shall increase financial support, maintain fair competition, encourage research and innovation, and effectively protect the rights and interests of intellectual property rights owners. China shall accelerate the construction of legal protection systems for domestic and cross-border e-commerce; study and establish a mutual recognition mechanism between China and internationally recognized organizations; and strive for the initiative to formulate international e-commerce regulations and the right in the development of cross-border e-commerce. It may promote the development of international trade and help Chinese companies achieve more success in the world.

* The picture in this article is from <http://699pic.com/>.