


**Copywritten**

The quarterly newsletter of the ACC

**Inside this issue:**

Legal News	2
Around the ACC	2
Membership	1

**Special points of interest:**

- U.S. files IPR claim against China
- New Associate Director at the ACC
- ACC and The Fine Art Trade Guild join Forces
- Update on Orphan Works Bill.

**China Under the Microscope: U.S. files IPR claim against China in the WTO**

The ACC as part of the China Copyright Alliance (CCA), since October 2006, has been actively following the recent IPR claim filed against China in the WTO.

We have been working closely with CCA counsel and recently participated in a meeting to provide some insight on copyright infringement in the art industry in China and transmitted many of the concerns that our members have expressed about the rampant art piracy in China.

The following article contains the latest developments regarding the China WTO IPR claim:

On April 7, 2007 an inevitable and awaited event took place: The United States finally filed an IPR case against China in the WTO. One of the main goals of the WTO action is to encourage changes in China's lax IP laws that stand in the way of effective protection and enforcement of IP rights.

The United States is currently requesting formal

WTO consultations over China's inadequate protection of copyrights and trademarks. This consultation rests on three basic points. First, it targets the thresholds set out under Chinese laws for the lowest level of piracy that can potentially lead to criminal prosecution. Recently, as a result of the current WTO action, China has lowered the threshold from 1,000 copies to 500 copies, however, lowering the threshold does not solve the fundamental problem. Pirates will always find a way to come in just below the thresholds when police in China raid a business suspected of distributing infringing works.

In other words, the thresholds create a safety harbor for pirates. These thresholds also block good faith efforts by China's police to take action against pirates and counterfeiters. As a result, enforcement is left in the hands of administrative agencies who typically hand out small fines that

are somewhat equivalent to a parking ticket. This approach does little to deter the massive amount of copyright infringement in China. Therefore, China's high enforcement thresholds make it impossible as a matter of law to prosecute many commercial infringers of IP rights.

Second, the United States seeks consultations on China's IP enforcement at the border. It is not permitted under WTO rules to release infringing goods in the stream of commerce after removing the label or other infringing marks after custom authorities seize infringing goods. But the rule in China is just the opposite. After seizing the infringing goods, the label or other infringing mark are removed and the product is then sold in commerce.

**Continued on pg. 3...**

## New Associate Director at the ACC

Rhina Cardenal is the ACC's new associate director. Rhina's background is very diverse, ranging from working as an associate attorney at an Intellectual Property law firm to volunteering as a legal intern at the Embassy of the Republic of El Salvador in Washington, D.C. She looks forward to working closely with each and every member of the ACC, as one of her main goals is to bring ACC members closer together in the fight against infringements.

Rhina is currently following

### ACC's Mandatory Mediation and Arbitration Dispute Resolution Mechanism

As a condition of membership, all ACC members have agreed to mediate and arbitrate any disputes that arise between them. This mechanism offers an excellent and exclusive form of redress that members have against one another in the area of copyright infringement.

The ACC has established a simple and very straightforward procedure for solving these disputes. First, the ACC's Board of Directors

the China-WTO case closely and is collaborating with the China Copyright Alliance providing insight on copyright infringement in the art industry.

Rhina received her Law degree (2005) from Universidad Dr. José Matias Delgado in El Salvador, and her Masters of Laws degree in Intellectual Property (2007) from The George Washington University Law School in Washington, DC .



One of Rhina's main goals is to provide more exposure for the ACC, and what it is doing to combat copyright infringement.

appoints a committee on "Mediation and Arbitration." This committee is in charge of setting forth the procedures for the non-binding mediation between our members as the first level of dispute resolution.

In the event of unsuccessful mediation, the parties are then subject to binding arbitration. The parties then must agree amongst themselves on a forum for arbitration. If the parties fail to do so, the initial forum for

resolution is New York, New York.

With this intra-member mechanism, ACC members save both time and money waiving exorbitant legal fees while at the same time solving their copyright disputes in an amicable manner.

## ACC and The Fine Art Trade Guild join forces

The Art Copyright Coalition and the Fine Art Trade Guild have joined forces through a reciprocal membership agreement.

The Fine Art Trade Guild is a worldwide representative of the art and framing community setting and maintaining industry standards for its

members and their customers.

The ACC hopes that the reciprocal membership privileges will provide greater exposure to the ACC and its combating rampant infringements. Among the advantages of this agreement is that the Guild will have a direct link to the ACC's website and

will also relay the ACC's infringement alerts to all its members.

The ACC looks forward to establishing a long and prosperous relationship between its members and the members of the Guild.

## Continued...China Under the Microscope

Third, the U.S. seeks consultations on the fact that China's copyright law denies protection to works while they are waiting for censorship approval. Before censorship approval, Chinese copyright laws give no right to bring a claim of copyright infringement. This creates a gap in copyright protection as pirates will not wait for this approval and mass produce infringing copies. As a result, a major IPR enforcement tool is missing for works that require censorship ap-

proval.

The consultations period lasts 60 days and is expected to end in mid June. So far, Mexico, Japan, the European Union and Canada have joined the IPR case as third parties. Australia has yet not joined the IPR case, but U.S. Trade Representatives have indicated that Australia seemed more open to joining if the case goes to panel.

After consultations, if the U.S.

and China do not reach an understanding, the case will go to a WTO panel where the parties will be able to file legal briefs and participate in hearings.

Joshua Kaufman, our General Counsel, recently attended the annual United States Copyright Society Meeting. While at the meeting, Josh prepared a presentation for more than 100 copyright attorneys on the shortfalls of passing the Orphan Works Bill for the art community.

Everyone at the conference was impressed by the presentation. Joshua even managed to set up an appointment with congressional staffers at the Hill next week to discuss the short-

comings of the Orphan Works Bill.

Joshua is very optimistic about this meeting and expects to provide a voice for the art community on this controversial issue. Stay tuned to our next newsletter for an update on Joshua's meeting.





## **Art Copyright Coalition**

575 7th Street, NW  
Washington, DC 20004

Phone: 202.344.8500  
Fax: 202-344.8505  
Email: [info@artcc.org](mailto:info@artcc.org)

**We're on the web!**  
**[www.artcc.org](http://www.artcc.org)**

The ACC is an International, Washington D.C. based, non-profit organization that comprises of artists, publishers, authorized artist agents, artist's estates, exclusive licensee or others who have contractually obtained the right from the copyright owner to enforce their copyrights. The ACC was formed as a result of discussions between those who felt a strong need to unite in their fight against infringements of their works. Some of the largest art publishers in the country, representing some of the most well-known artists, founded the ACC. The ACC was formed in September 2002 and has continued to grow with over 30 members.