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New rules on payouts in IPR cases

By Xie Chuanjiao (China Daily)
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The Supreme People's Court (SPC) has ordered courts at all levels to adhere to a "full-compensation" principle when dealing with intellectual property rights (IPR) cases.

"Courts should fully apply logical reasoning and everyday life experiences, and comprehensively and objectively examine the evidence for calculating the amount of compensation," SPC vice-president Cao Jianming told a national work conference on IPR trials in Jinan on Wednesday.

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"Courts should avoid applying simple methods of legal compensation when handling IPR infringement cases.

"Instead, they should try to guide parties involved to calculate the amount, using methods of infringement damages and infringement gains."

In a typical case handled in June of last year, the SPC awarded Japan's Yamaha Motor Co record damages of 8.3 million yuan (\$1.16 million) for a trademark infringement involving a foreign investor, against Zhejiang Huatian, one of the country's largest motorcycle makers.

The Japanese firm and legal experts called the verdict "epoch-making". The damages were said to be based on all evidence gathered for the lawsuit under a principle of "preponderance of evidence".

Jiang Zhipei, chief justice of the SPC IPR Tribunal, told China Daily: "If it were handled simply according to legal compensation regulations, because of being unable to reach a clear compensation amount, the figure would have been about 500,000 yuan.

"But the fact was the plaintiff did lose millions according to the evidence," he said.

Cao said the conclusion of such compensations should be reasonable and compelling.

He asked judges to be prudent when dealing with copyright infringements related to cultural products.

"Courts should consider fully the actual transaction circumstances, including online business behavior, and properly present full market values," Cao said.

He encouraged courts to introduce specialists such as auditors and accountants to assist in calculating infringement compensation, especially in cases of copyright royalties, losses and illegal gains.

Chinese courts have reportedly been exploring ways to have specialist agencies access IPR infringement compensation, so as to establish an infringement compensation affirmation system.

Covering all IPR legal areas, Chinese courts last year accepted and concluded more than 17,800 and 17,300 IPR cases of first instance, up 26 and 24 percent, respectively, on 2006.

In addition, the conclusion rate of first trials has also improved, rising from 73 percent in 2001 to nearly 80 percent last year.

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