

SOUTH KOREA

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Fighting online piracy in Asia through multinational strategies



By Nicholas Park and Joseph DeMarco

Online theft of digital copyright material is continuing to escalate, and many companies are increasingly discovering that their intellectual property is being sold and distributed illegally by criminals located in countries outside their territory. Daunted at the prospect of trying to identify and stop this unlawful conduct in an unfamiliar foreign jurisdiction, many companies often choose not to pursue any action to protect their interests.

But there is no reason why copyright owners must feel helpless in the face of this threat. In fact, a multinational strategy that employs international court systems and international law enforcement can be quite effective in protecting copyrighted works. An example of this approach is a recent enforcement action initiated on behalf of Elsevier and Thieme Publishers – two of the world’s leading publishers of scientific and medical journals – against an international piracy scheme involving the unlawful copying, sale, and distribution of their publications.

The publishers became aware that, without their authority, numerous unsolicited e-mail advertisements had been sent to university professors informing them that digital versions of their journals were available for sale on the Internet at deep discounts of up to 90 percent off the regular prices. These e-mail advertisements were made to look as if they originated from the publishers and were sent through US-based third-party providers such as Gmail and Hotmail.

Working in conjunction with US, Korean and international investigators, a civil lawsuit was filed in a US federal court on behalf of the publishers. Using information acquired through that litigation from the Internet service providers and others, a copyright infringer was identified as an entrepreneur living in Vietnam. The investigation revealed that the infringer had orchestrated an elaborate scheme involving the sale of copyrighted journals around the world, including to individuals in Botswana, Ethiopia, France, Germany, Japan, New Zealand, Norway, Spain, the United States, and Vietnam. Furthermore, the infringer went to elaborate lengths to conceal his identity: he created a fake website designed to process payments that pulled content from another

legitimate science-related website (creating an air of academic legitimacy), and registered generic e-mail addresses and domain names using false names and addresses. The infringer also worked with several confederates in furtherance of the scheme, including a Vietnamese national located in Europe who helped process payments and an employee at the Vietnamese postal service who ensured delivery of the materials without detection.

Based on that information and working in conjunction with local counsel and investigators in Asia, a complaint was filed with the Vietnamese Ministry of Information and Communication, which promptly formed a task force to handle the matter. The task force engaged the assistance of local law-enforcement and regulatory officials who decided to prosecute the action. As a result, within weeks of filing the complaint with the Ministry, Vietnamese authorities identified the infringer, searched his home, and froze his bank account. Upon his apprehension, the infringer confessed to the illicit scheme and agreed to stop all piracy activities and to pay a substantial fine, including repayment of illegal profits garnered from the sales as well as penalties for copyright infringement under Vietnamese law.

The apprehension, confession, and fining of the infringer is just one example of how lawyers can leverage investigators, domestic courts, and international law enforcement in order to root out copyright theft in Asia and elsewhere around the world. While this multi-pronged strategy can be challenging – and may not always succeed – it is a significant and often better alternative to the legal paralysis or protracted civil alternatives that some corporations experience when faced with overseas violations of their intellectual property.

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