



Business

More IP suits await Baidu after Nasdaq

Sherman So
August 3, 2005

Baidu, China's leading Internet search engine, might face more copyright infringement lawsuits as it prepares for an US\$80 million (HK\$624 million) initial share sale on Nasdaq.

Two intellectual property cases are listed in its prospectus, with a ruling on both pending in Chinese courts.

Baidu's cases so far involve only Chinese firms suing for illegal downloads in China. Copyright owners may take Baidu to a US court after its listing, Shanghai-based lawyer Hugo Muller, of Holthuis International Lawyers, said.

Shanghai Busheng Music Culture Media sued Baidu on June 20, claiming unauthorized downloads of 53 songs. Beijing New Picture Film, copyright owner of House of Flying Daggers, filed suit on June 28, claiming Baidu users could download the movie.

Baidu's movie download service, which was free until July, charges users 30 yuan (HK\$28.78) per month for viewing movies online. It partners with a number of movie download sites in China to offer the service.

The download sites, which are subsidiaries of CCTV, China Telecom and China Netcom, are legitimate, said Kelly Huang, vice president of Chinese market research firm iResearch.

Beijing New Picture's lawyer Ye Zhijian of Hangzhou-based T&C Law Firm disagrees. House of Flying Daggers was offered for online viewing in March through Baidu's movie service from a site run by the Hangzhou branch of Zhejiang Telecommunication. It was withdrawn from the site in early July. Beijing New Picture has never granted rights for online viewing, Ye said.

Copyright infringement law in China is still incomplete, according to Huang of iResearch. Most rulings result in only small compensation awards for the copyright owners. Ye cited several cases that resulted in compensation ranging from 80,000 to 200,000 yuan.

Beijing New Picture is seeking a total of 166,000 yuan for damages and expenses. Busheng Music is asking for 560,000 yuan for allegedly illegal downloads of 53 songs. "The cost of violating copyright laws in China is small in comparison with the business opportunities it brings," Ye said.

But the cost of litigation and the damages it created might increase dramatically after Baidu is listed in the United States. The legal standards for determining indirect liability for copyright infringement have recently been strengthened by the US Supreme Court in the decision of the case "MGM against Grokster."

The implication of the Grokster decision is increased risk of legal liability for search engine services such as Baidu.

"The American courts have a very broad view on where American laws apply," said Muller of Holthuis International.

Muller cited a case involving a Russian oil company. All parties involved were in Russia, but because one of the Russian company's subsidiaries is in America, legal proceedings took place in a US court.

Dick Wei, China Internet analyst at JPMorgan, based in Hong Kong, thought the impact of the copyright cases on Baidu's overall business would be small.

"Although MP3 [music downloads] accounts for 20 percent of Baidu's traffic, it accounts for only 4 percent of its revenue. Revenue is even less for the movie service," Wei said.

"The company's policy is to take the links out, once it finds that there might be an copyright issue," he said.

sherman.so@singtaonewscorp.com