

**Testimony of
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**Before the U.S. China Economic and Security Review Commission
*Hearing on China's Intellectual Property Rights and Indigenous Innovation Policy***

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The Software & Information Industry Association appreciates the opportunity to speak today on two issues of significant concern to the U.S. technology industry: the protection of intellectual property rights in China, and what has been referred to as China's Indigenous Innovation Policy. My oral comments will focus on the intellectual property issues, but this written statement is intended to address both issues.

Intellectual Property Issues

On December 29, 2010, SIIA, along with our partner trade associations that are part of the United States Information Technology Office, or USITO, met with MIIT's Deputy Director General Chen Ying to discuss the importance of intellectual property protection in China, especially to curb the rampant piracy of computer software. In that meeting, Deputy Director Chen agreed that software piracy is an important issue for American companies and for the entire U.S. – China trade relationship. Following the meeting, we outlined several concrete steps that should be taken. Those comments, listed below, are as valid today as they were several months ago.

SIIA supports the Chinese government's efforts to fight software piracy through sound policies and effective enforcement. Software piracy is an issue of great concern, not only to the software and

computer hardware industries, but also to the semiconductor industry, as manufacture of products which include used semiconductor devices necessarily results in the illegal copying of software which is required to make the used devices fully functional. As such, ongoing efforts to combat software piracy require close coordination between government and all different segments of the ICT industry.

SIIA recognizes that some PCs pre-loaded with free operating systems are ultimately reconfigured with pirated versions of commercial operating systems. We therefore support MIIT's consideration of operating system pre-installation policies designed to curb such illegal activity. We further recognize the complexity of balancing market demand with effective regulation to protect intellectual property and support continued innovation.

SIIA supports the Chinese government taking tougher enforcement and penalties against piracy in sales and distribution channels, which is in line with the objectives set out in the State Council's October 2010 IP Initiative to promote software legalization and "strengthen enforcement," including by imposing "severe scrutiny and severe punishments" on companies that make or sell illegal copies of software.

SIIA advocates sustainable, long-term policies that support anti-piracy efforts. We support the current special IP campaign, but we also believe enforcement of IP must be strengthened and sustained to bring about the change in IP culture necessary to foster innovation in China. Short-term initiatives can, by definition, only have limited impact.

We also observe that anti-piracy and software legalization programs, policies, and enforcement measures cannot be effective in the absence of greater enforcement resources, stiff penalties, and, for the government's own software use, sufficient software budget and implementation of effective software asset management systems to break the cycle of piracy.

Indigenous Innovation Issues

China's indigenous innovation policies have been instituted by the Central Government and carried out by local government to help support local companies through government procurement. SIIA is very concerned that these government procurement practices, despite President Hu Jintao's verbal commitment to de-link government procurement from innovation policies, discriminate against foreign companies. Currently, China has yet to release its official national indigenous innovation policy law from 2010, and no official statements about the law have been made thus far in 2011. We strongly urge China to implement a formal regulation supporting President Hu Jintao's verbal commitment in January 2011.

Specifically, SIIA believes there are alternatives to the Indigenous Innovation Policies that are being pursued by the Chinese Government. Among suggested alternatives are:

Adopt Alternative Innovation Policies. US industry respectfully discourages the Chinese Government from continuing to promote an indigenous innovation policy by publishing product catalogues. We urge China to adopt global approaches to successful innovation policies, and encourage the Chinese government to advance its science and technology goals and promote innovation through fair, transparent, and technology-neutral processes that reflect international best practices. SIIA and its members want to underscore that tax incentives on R&D investments and other similar incentives are more universally beneficial, transparent forms of innovation policy.

Avoid National Indigenous Innovation Catalogues. SIIA and its members strongly believe that an Indigenous Innovation Catalogue will not serve its purpose of accelerating innovation. An annually published catalogue will not keep pace with ICT industry product development and fail to maximize the innovative capability of this sector. The catalogue might satisfy China's stated need to regulate government procurement practices but it will have a deeply adverse effect on innovative ICT companies. In order to foster a thriving and innovative ICT industry, China should consider other means besides product catalogues which, by nature, limit innovation instead of promoting it.

Avoid Local Indigenous Innovation Catalogues. At a meeting on November 19, 2010, ICT industry members and Chinese ministry representatives each acknowledged the existence of a number of local indigenous innovation catalogues. Such catalogues block foreign technology products from entering the Chinese market; they also hinder makers of local brands from conducting business in different regions of China which might create an adversarial inter-industry environment. For example, local regulations requiring local registration, local production, local IPR, or local brand ownership are vague and subject to arbitrary local interpretation, and should thus be abandoned. Despite MOST's and MOF's claims that they lack jurisdiction over local catalogues, we believe the ministries should work together and use their influence over local governments to enact policies that encourage innovation, not hinder it.

Ensure Transparency and Fairness in Innovation Evaluation. SIIA and its members remain concerned about the transparency and fairness of China's national innovation policies. First, we are interested in how an indigenous innovation accreditation specialist team would be selected to ensure non-discrimination between domestic and non-domestic product innovation evaluation. Second, we cannot identify any mechanism for companies to submit comments or complaints about innovation evaluation decisions (for example, resolving potential confusion and confirming that foreign companies adopting OEM production models are qualified applicants). Third, there is no mechanism for resolving disputes between companies and/or government evaluators when products fail to be listed in a catalogue.

- To do so most effectively, we respectfully urge the Chinese government not to publish any indigenous innovation product list and not carry forward this program or any other program which unfairly promotes certain products over others based on origin of IP.
- We also encourage China to continue ongoing dialogue with U.S. and other industry stakeholders on best policies, and practices that promote innovation; and avoid creating market access barriers for foreign companies to compete fairly in the Chinese market.

- In that regard, as an essential first step, the Chinese government should undertake an immediate review of all indigenous innovation policies to ensure they do not discriminate between foreign and domestic suppliers.

In summary, SIIA supports Chinese government efforts to implement effective policy measures in a transparent and fair manner, and seeks more opportunity for direct communication to share perspectives and expertise to ensure promulgation of anti-piracy regulations and innovation policies that reflect global best practices and create fair and transparent opportunities for collaboration with the US ICT industry.