Submission No 3

Inquiry into Australia's relationship with India as an emerging world power

Organisation: **Wilcom International Pty Ltd**

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TO:

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SUBJECT: Submission regarding the Inquiry into Australia – India relations

Date: 25 May 2006

Dear Sirs,

SUMMARY:

The Submission is about the lack of Intellectual Property Rights protection in India. Wilcom International is a software developer exporting special industrial software to India. The company suffers an estimated USD 1.5M loss per year to software piracy in India. The submission provides background and details below.

In our view an important condition of the successful development of the Australia – India political, trade and cultural relations including a future Free Trade Agreement is that the Indian Government takes concrete actions for the regular and systematic enforcement of Intellectual Property Rights.

In this process the Australian Government through the Department of Foreign Affairs and Trade could take a positive role in the bilateral relationship by voicing concerns about IP rights as well as creating a framework with the Indian Government in which the various Indian institutions and methodology for enforcing IP rights can be implemented at a faster rate.

BACKGROUND

1. Wilcom Profile

Wilcom is an Australian company. It was established in 1979 and introduced the first Graphics based CED (Computer Embroidery Design) software in the world in 1981.

Over the years Wilcom has become the world leader in this field and today we develop design systems, embroidery production and business management software and training tools as well as embroidery machine controllers and Carpet Tufting machines and Carpet Design software. We have customers in about 75 countries, offices in the USA, UK, Japan, Germany, China and Hungary. Our company is a medium size organisation employing around 150 people world wide.

Wilcom is a strongly export focused company; 90% of our income comes from overseas sales. Wilcom had received the "NSW Exporter of the year Award" for small business several times in the mid 1980s.

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Page 1 of 4

2. Wilcom in India
We started to sell our Embroidery Design systems in India from the early 1990s, first through two leading Japanese embroidery machine manufacturers (packaging software with machines).

From 1994 we started direct sales and appointed IIGM (India Industrial Garment Machines), the largest apparel manufacturing equipment importer company in India as our exclusive agents. Today IIGM has 8 offices in India and they employ about 250 people about 15 being involved with Wilcom business.

Wilcom is a market leader in both relative and absolute terms in the Indian embroidery industry. This is partially a result of good products and business development work and partially result of the wide spread software piracy especially reaching pandemic proportions in the past 3 years.

3. The Indian Embroidery industry
In this brief we will only focus on basic information about the industry.

There is no Indian national and accurate statistical data but various estimates put the number of embroidery companies (including Apparel companies) around 12,000. This is a very fast growing industry.

Another way to estimate the industry: it may have about 50,000 embroidery machines and use 6-8,000 embroidery design systems. Out of these software systems only about 400 are legal.

Last year sales data indicates a rapid growth of the industry: companies purchased about 2,500 new embroidery machines and less than a hundred design systems. In financial terms, last year the industry invested about USD60,000,000 into embroidery machines and only about USD300,000 into embroidery software. Without piracy we estimate that the market should spend about USD1,800,000 on embroidery software. Therefore the loss to the embroidery software industry is about USD1.5 Million per year.

4. Wilcom's Position in the Embroidery Software Market
Currently there are about 5 embroidery software developers in the world who are considered to have "global presence" that, in our terms, means continuous sales in more than one continent. Even without software piracy Wilcom is leading the World market with over 50,000 embroidery users. Our closest competitor, a Canadian company has only about 15,000 users.

The Wilcom software is considered a leader because of its accurate and high stitching quality on the embroidery machine and because of its very user friendly GUI (Graphical User Interface).

Based on the above it is fair to state that Wilcom suffers most from embroidery software piracy amongst all international competitors.

5. Embroidery Software Piracy in India
In India the pirate copies of all major embroidery software are illegally available, practically free of charge. When users have a free choice they typically choose Wilcom software. For this reason and based on various surveys we believe that in India there are at least 6,000 illegal Wilcom design systems in operation and hence we have close to 100% market share in the design market.

Note that India is not unique in software piracy - we estimate that the total number of pirate Wilcom systems in Asia is around 15-20,000. We also work in China, Pakistan, Sri Lanka, Thailand, UAE and the Gulf Countries on various anti-piracy projects and to lesser extent we monitor the situation in Bangladesh, Indonesia, Myanmar, Cambodia and the Philippines. We also have taken legal actions in the USA, Australia, New Zealand, Hungary and there are actions in progress in other non-Asian countries. We are actively policing internet piracy offers and have managed to shut down WEB sites in the USA, Egypt, Russia, etc. with many others in progress.

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Page 2 of 4

6. Anti piracy Activities in India

Our anti-piracy plan in India can be shown in a complex matrix with various time-lines but for this brief we would like to highlight only the main projects.

- Market intelligence - continuous collection of data on pirate users and distributors.
- Creating Awareness with the Pirate users: we have been continuously educating the industry by explaining the legal (and ethical) issues with IP right s and software piracy.
- Creating Awareness with the Industry leaders: we are seeking connections with Industry organisations for example the Apparel Export Promotion Council which has 6,000 members and also with Influential leaders of the industry. We need these people and organisations to speak up against the practice.
- Creating Legal foundation: we appointed our attorneys in India who are in the process of establishing local Copyright registration and send our Legal Warnings to offenders.
- Creating basis for police raids: we appointed a private detective agency (Fraud consultants) who investigate piracy claims and work with the police branches for organising police visits. This is just starting.
- Introducing Amnesty offers: discounted software prices for people who come forward and legalise the software with us.
- Working with government agencies and ministries. This is the topic of this submission where we need government support in both countries.

7. Law enforcement in India

We have studied the Indian IP rights laws and they are correct, thorough, international, transparent, comply with both the WTO rules and the Madrid System.

Based on our experience the problem areas are:

- The Indian government only advocates the enforcement of the law in general terms but has no action plan (or even understanding) on how to implement the enforcement at the lower (state government and suburban) levels. It seems that the problem is not with the willingness but with the lack of understanding of what it requires to enforce the law, the lack of investment into expert consultants and mostly: a formalised and systematic approach to the software piracy at government level.
- The institutional background of the software piracy is not worked out (as part of the implementation). One can go to the Police Economy Unit and they are more or less prepared for this work but they have more understanding on Trade Mark issues of physical items (DVDs, CDs, fake fashion items, etc.,) and less understanding on software Copyright. It may be justified to create an Indian ministerial level body for IP right protection considering that the Indian IT industry this year will turn over US36 Billion.
- As a result most success stories on IP rights enforcement are results of manually-driven government campaigns, "window" cases to impress foreign governments and the public or "lucky hits" by individual companies but there is no genuine and systematic enforcement of the law.

8. Advisory bodies – industrial organisations

We have been working with NASSCOM (National Association of Software & Service Companies) for almost three years they are very helpful in both practical and strategic advice. They are similar to the AIIA (Australian Information Industry Association) representing the major Indian software manufacturers. Their role is crucial to advise the Indian government on the practical implementation of anti-piracy measures and other IT-related legislative processes.

Recently the anti-piracy functions have been transferred from NASSCOM to the BSA. The BSA has quite different member profile from our company this is why we believe that we need government help not just working with professional and industry organizations.

We recently started to work with the Australia India Business Council. Through the Council we plan to seek to access various government and private organizations both in India and Australia and create further awareness and alliances. It needs to be recognized that Wilcom is not a unique case.

RECOMMENDATIONS:

We believe that in order to achieve mutually successful trade relations between Australia and India both governments have to facilitate a fair trading environment for all participants. Currently Wilcom, an Australian high technology export company is disadvantaged because of the lack of such environment in India. Other Australian companies exporting products with Intellectual Property contents are in the same disadvantaged situation. The Australian Government has the ability and opportunity to work with the Indian Government and find solution for the better enforcement of the IP Rights Laws.

Australia has a leading role in the Asia-Pacific region in tertiary and business education and our country is perceived to be a leader in applying and teaching the latest management practices, procedures. It seems to be reasonable for Australia to take a leading role in IP Rights protection methodology, developing institutions and export organizations and advise, influence partner countries.

Further, it may be a good opportunity to create cooperation and exchange programs between law enforcement agencies in the two countries not just in IP Rights but in other high technology and white collar crimes as well. Especially with outsourcing Australian customer services and call centre tasks it is important that the privacy laws and their implementation are synchronized between the two countries. These tasks are closely related to the IP Rights and their interpretation.

E-government and banking systems application development are likely the fastest growing areas between the IT industries of India and Australia. Clarifying and ensuring the copyright and privacy protection is an essential part of further development and may call for establishing some kind of joint committee between the two governments to coordinate compliance.

Many Australian retail companies outsource their clothing production to India and other countries. Many of these garments are then imported back to Australia with embroidery or screen printing on them. Based on the above information over 90% of such embroidery is designed by pirated software. It would be beneficial if a law existed to prohibit the outsourcing of production to or importation of such good from companies who cannot show legal license of any software involved with the design and production process.

Submitted by:

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Janos Horvath has been working with the Indian market since 1994 in Sales, Marketing and Business Development role and currently he leads and coordinates Wilcom's anti-piracy activities in India and some other Asian countries.