

Ad blocker: A new right for users or a threat for the internet?

Relevance & State of the Law in Asia



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WARNING!

**MOST JURISDICTIONS IN ASIA DON'T YET
HAVE SPECIFIC LEGISLATION IN PLACE TO
ADDRESS AD-BLOCKING SOFTWARE!**

**Attorneys in Asia legal systems have not detected
very many specific litigation cases.**

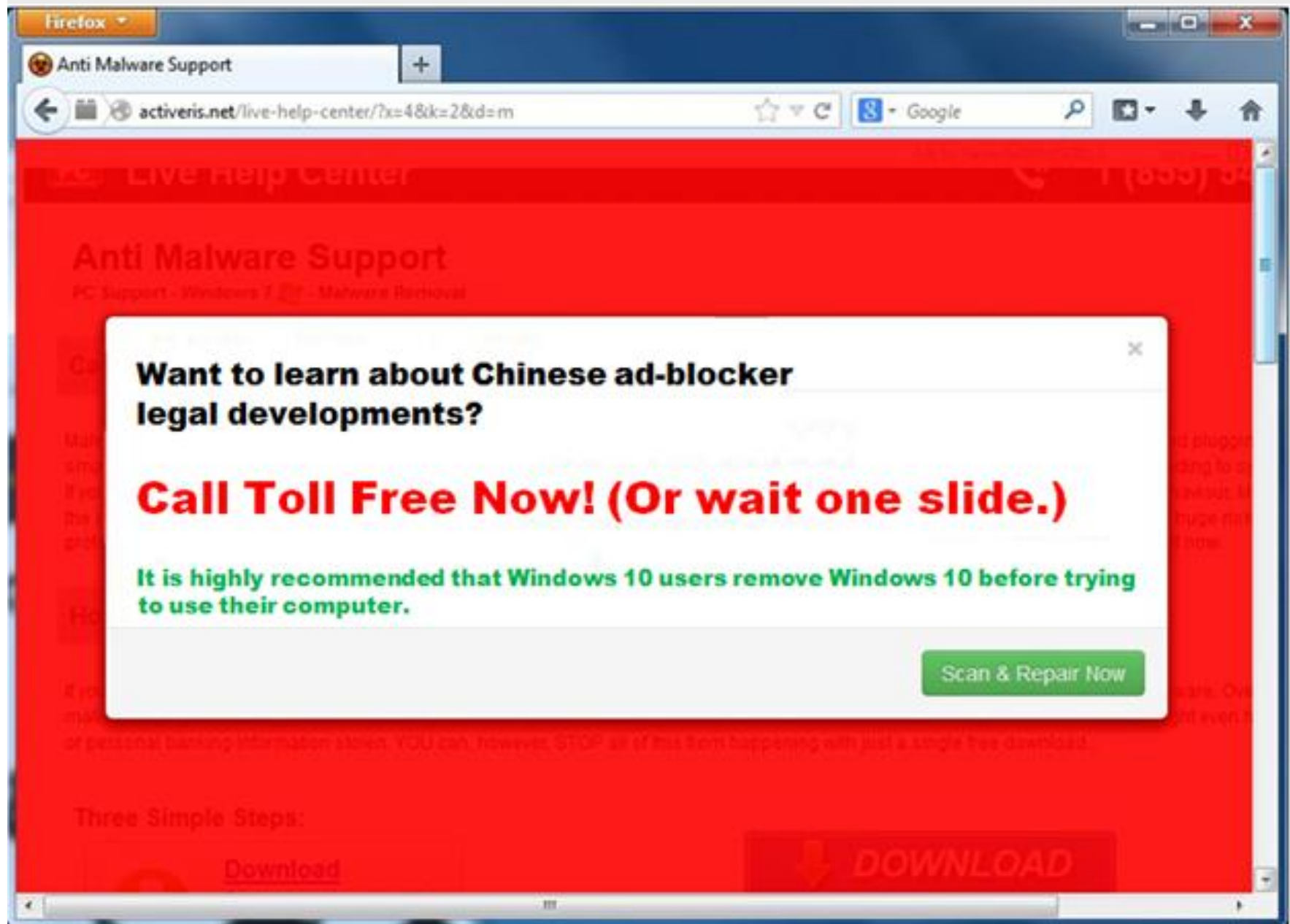
However the cases will likely start to come!

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People's Republic of China:

1. No explicit prohibition on ad blocking software in any Chinese legal or regulatory clauses.
1. In Aug. 2011, there was an Industrial Self-Discipline Convention on Internet Software Service signed and published by the Internet Society of China, comprising all internet software companies. Art. 19 of the Convention provided that while blocking of “malicious advertising” (e.g., pop-up ads, floating ads, etc.) is allowed, they shall not block other parties’ “legal information.”
1. Many options for ad blocking software in China; many local browser brands carry adblocking widgets when released to customers but most only block pop-up ads.

People's Republic of China:

360 vs. Tencent case: Situation started in 2010 but developments continued through to early 2014.

Background:

1. Tencent is one of China's largest IT companies, famous for its online messaging tools, including its QQ instant messenger app.
2. Qihoo is a Chinese IT company known for its internet security products, 360 Safeguard and 360 Browser
3. In Oct. 2010, Qihoo released a product called "360 Koukou Safeguard" that had the function of helping users scan installed QQ instant messages and block advertisements on QQ, claiming to protect QQ users' privacy and security (re: trojan viruses)

People's Republic of China:

The Dispute: Starting from 2010 and continuing through to a Supreme Court decision released in February 2014, the companies got into a wide-ranging set of legal disputes ranging from unfair competition, infringement of IP, defamation, monopoly and abuse of market dominance, etc.

1. **Tencent** started the case at the Guangdong High Court in 2010, accusing 360 of defaming its products, blocking its advertisements and thus engaging in unfair competition under the PRC Law Against Unfair Competition. Tencent emphasized that the 360 product:
 - a. targeted the Tencent QQ product, intervening in the product and damaging its completeness;
 - b. caused economic loss by blocking the ads; and
 - c. defamed its product by releasing biased scan reports of QQ.

People's Republic of China:

2. 360 replied, arguing that

- a. QQ always had a bad reputation for security problems and not through 360s marketing;
- b. the 360 product helped QQ users improve their customer experience; and
- c. ad blocking software is a common type of product, citing to MSNLite, MSNshell, AdBlocking, etc. as examples.

Result? Most of Tencent's arguments were approved by the Guangdong High Court and the Supreme Court, which ruled that:

1. The 360 product targeted QQ by stopping some of QQ's plug-ins from running effectively, damaging the product.
2. It's current common practice for internet companies to provide free services/information but to make profits via sending ads.

People's Republic of China:

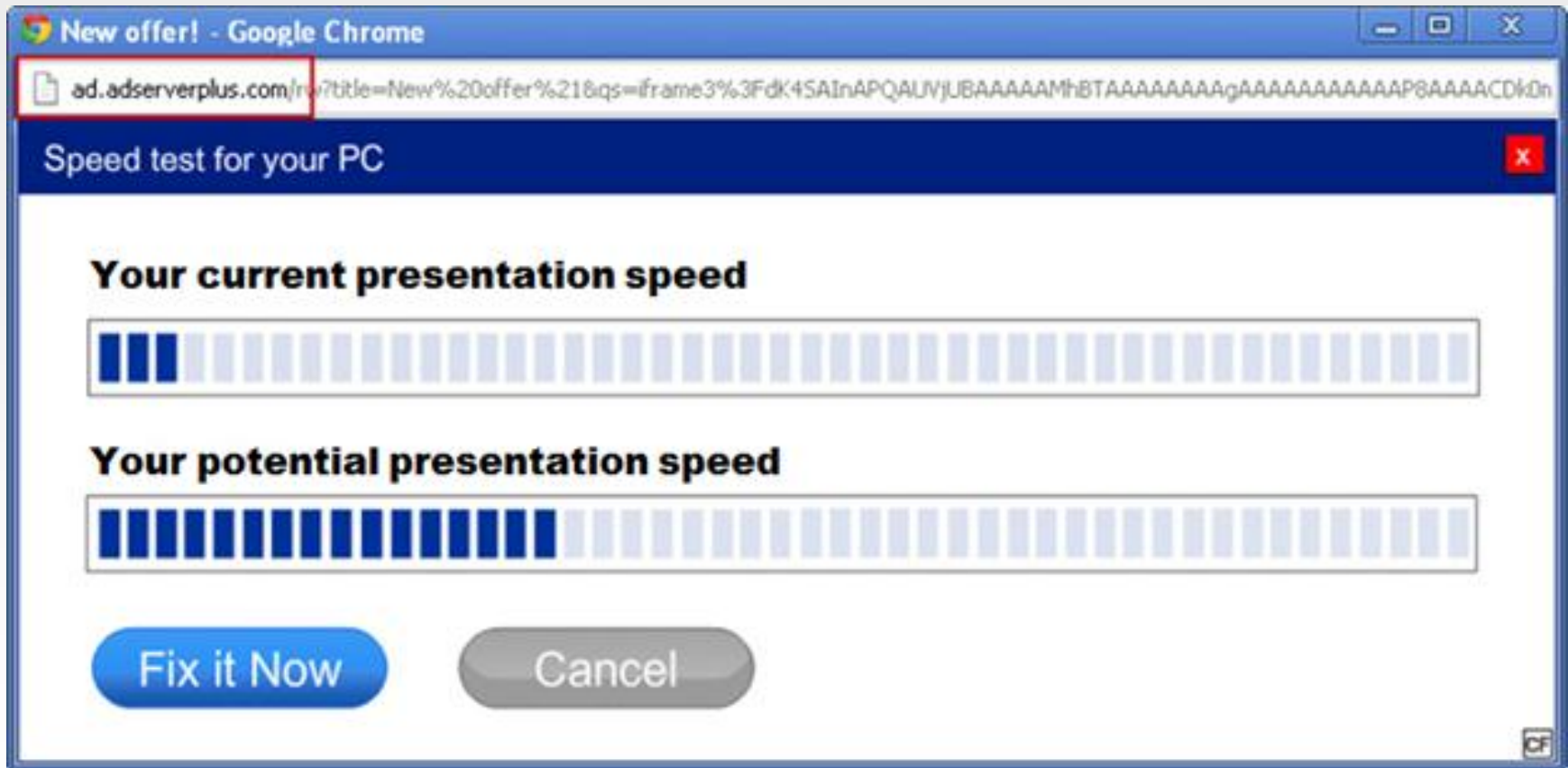
3. The Supreme Court cited Article 2 of the Unfair Competition Law that a company shall “observe the generally recognized business ethics” and shall not “infringe upon the lawful rights and interests of another business operator.” Because advertisements are not inherently unlawful and is considered ethical, then 360’s action infringed Tencent’s interests.

4. The Supreme Court further pointed out that advertisements in exchange for low-cost internet services is the necessary time-cost that consumers have to accept. If a company doesn’t like this business model, then they can create their own new business to compete without accusing others of sending too many ads or claiming they can help customers by damaging the other’s product.

People's Republic of China:

4. The Guangdong High Court cited to the Industrial Self-Discipline Convention on Internet Software, but it was not used as a source of law and was only signed by parties in 2011.

5. Both courts ruled Tencent won the case and that 360 should stop blocking QQs advertisements. The 360 Koukou Safeguard product was withdrawn from the market after the case.



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Taiwan:

1. No directly applicable law or cases yet.
2. Most regulation is on obligations of the advertiser.
3. Likely issues will arise in the mobile sector
4. White-listing could be a problem under the catch-basin provision of Taiwan's Fair Trade Act Art. 25.

Hong Kong:

1. No directly applicable law or cases yet.
2. Reportedly there were issues regarding blocking of ads from the Hong Kong Democracy Movement on Google, but more political than legal issue.

Singapore:

1. No directly applicable law or cases yet.
2. If user-installed, it is not illegal in Singapore and is widely deployed in corporate settings.

Japan:

1. No laws or regulations that prohibit ad blocking software, and no cases yet.
2. Despite internet publishers and ad agencies being aware of the threat, there has been no movement to make laws that would restrict this.

Korea:

1. No laws or regulations that prohibit ad blocking software, and no cases yet.
2. However, there has been one civil suit involving an ad-replacing program developed by a local company called Internet Channel 21. The program at issue blocked the original ads on domestic portal sites such as Naver and Daum and replaced them with other ads. Naver successfully sued Internet Channel 21 for violations of Korean fair trade laws.

Vietnam:

1. No laws or regulations that prohibit ad blocking software, and no cases yet.
2. Potential causes of action based on anti-competition and intellectual property laws.

Indonesia:

1. No laws or regulations prohibiting ad blocking software.
2. Possible that a publisher/website could take action pursuant to the “Terms of Use” should the Terms specifically state a prohibition on the use of ad-blocking software.
3. Still expected to be rather difficult to enforce in the current legal framework of Indonesia.

Thailand:

1. No laws, regulations or cases to date directly addressing the issue.
2. Several possible routes for action suggested:
 - a. Copyright Act B.E. 2537 (1994): Online publisher may attempt to claim the software infringes the copyright by creating an “adaptation” of the web page. Unclear if this can be used, and advertisements will likely not be considered the original content of the publishers. (Not strong.)
 - a. Computer Crime Act B.E. 2550 (2007): Claim that ad blockers illegally damage, destroy, correct, change or amend his computer data in violation of this law. Or a claim that the ad blockers are liable for illegally causing the working of a computer system to be suspended, delayed, hindered, or disrupted to the extent that the computer system fails to operate normally.

Thailand:

c. Violation of Website Terms & Conditions: A website that explicitly states in its terms and conditions that a user must disable ad-blocking software may have a claim against a user for violating that condition. However, such a claim will likely not be enforceable against the creator of ad-blocking software because it is the individual user who chooses to view the site.

d. Consumer Protection Act, B.E. 2522 (1979): If an advertisement is considered annoying, ad blockers may be protected under the Consumer Protection Act, which states that advertisements may not be harmful or annoying. Not clear if this can be used as a defense if they block all ads, not merely annoying or harmful ones.



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