
11-25-2014

Building China's Intellectual Property Regime: Adapting and Transforming to Global Demands

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Recommended Citation

Francis, Xavier Joseph Jhomel (2014) "Building China's Intellectual Property Regime: Adapting and Transforming to Global Demands," *Undergraduate Journal of Global Citizenship*: Vol. 2 : Iss. 1 , Article 3. Available at: <https://digitalcommons.fairfield.edu/jogc/vol2/iss1/3>

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Introduction

The political and economic reform that began in 1978 paved the way that led to the establishment of an Intellectual Property (IP) regime in China, helping legitimize China's presence in the international market and satisfying foreign pressure that often demanded that China conform to international IP standards. China's engagement within the Western construct of IP¹ rights is specifically aligned with China's international trade interests. It was the desire to become a member of the World Trade Organization (WTO) and fully integrate into the world economy that contributed to the Chinese regime's adoption of IP rights that aligned with the World Trade Organization Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS)².

The practicality of enforcing IP rights in China has not only been challenging and frustrating for IP rights holders, but has also been incompatible with local domestic interests. The causes of IP infringement in China do not stem from one single source—as many would assume—but instead must be attributed to a number of critical factors that come into play from different angles. The induction of an IP regime in China illustrates the imposition that globalization exerts on developing countries in adopting and enforcing policies that originate from dominant exogenous pressure. It also illustrates China's goal to become modernized and integrated into the global economy. Although China's entry into the WTO has substantially harmonized its IP laws with international standards, China's IP regime remains weak given the lack of rigid administrative enforcement. A comprehensive look at China's IP system since 1978 and its development over the past thirty-five years helps to explain why IP remains a contemporary issue in China today.

Background

Two epochs in Chinese history carry fundamentally different viewpoints of Intellectual Property Rights (IPR). The Maoist era³, which lasted from 1949-1976, imposed the socialist ideals and the Confucian tradition of morality that placed an "emphasis on the collective". This translated into the state's ownership of IP rights, which belonged to the community, not the individual⁴. This belief can be traced back to Confucianism in ancient China, which was widely accepted as the orthodoxy of the time⁵.

After Mao Zedong's death in 1976, China began a process of transformation and evolution. This was known as the "Open Door Policy" because China began a process of

¹ This is based on Western traditions of viewing IP rights as an exclusive individual right to own something as opposed to having something collectively owned. Stoianoff, Naalie. "The Influence of the WTO over China's IP Regime ." *Sydney Law Review*. no. 1 (2012): 67-68 <http://www.law.usyd.edu.au/slr/> (accessed September 18, 2013).

² The Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement created by the WTO that sets down the minimum standards for many forms of IP regulation (WTO Overview of TRIPS).

³ The Maoist era was led by Mao Zedong, the founding father of the People's Republic of China (PRC), in 1948. Mao achieved complete leadership both within the party and the state which gave him tremendous constitutional power. Mao ruled the PRC until his death in 1976. Source: "Mao Zedong", David Delia, p 52

⁴ Stoianoff, Naalie. "The Influence of the WTO over China's IP Regime ." *Sydney Law Review*. no. 1 (2012): 67-68 <http://www.law.usyd.edu.au/slr/> (accessed September 18, 2013).

⁵ Liwei Wang, "The Chinese traditions inimical to the Patent Law," *Northwestern Journal of International Law & Business*, 14, no. 1 (1993): 23

integration into the global community⁶. If China were to become a more globally integrated nation, it had to open itself to the rest of the world. This meant opening its economy to global market and becoming a more competitive nation. The Open Door Policy era completely reshaped how IPR were to be constructed by the state. During the Open Door Policy, China sought to fund the development of science and technology. In order to accomplish this, the state sought help from developed, western countries that were more technologically advanced. Western countries have long possessed an integrated system of IPR within technological advancement that has historically granted patents and other type of IP rights for inventions⁷. Therefore, embracing an all encompassing (western orientated) IP regime was a part of Deng Xiaoping's four modernizations movement which sought to engage China with the rest of the world.⁸

The transition from a collective to an individualist construct of IP rights, however, has been a continuous challenge for the Chinese state given that many of the laws and international agreements have been difficult to administer and enforce. After the induction of the Open Door Policy, many Chinese people were still deeply entrenched within the ideas and practices of their previous leadership, such as the collectivist doctrine of IP. It would not belong until the Chinese state received tremendous exogenous pressure to better align its IP laws with international law.

From the late 1970s up until the mid 1990s, the measures introduced to combat issues such as copyright and piracy were seen as weak by countries like the US. Although the state had already created patent, copyright, and trademark law, they were not aligned with the TRIPS Agreement. The laws were seen as deficient and China was blocked from entering the WTO until it began to revise its laws. It was not until 1997 when more effective measures were executed and after the US listed China in the Special 301 report. From 1999-2001, China agreed to the TRIPS Agreement and "harmonized" its patent, copyright, and trademark laws with the TRIPS Agreement and at the end of 2001, China was allowed to join the WTO⁹.

Intellectual Property

The World Intellectual Property Organization (WIPO) defines IP as "creations of the mind" (WIPO). Intellectual Property can be anything (product, service etc.) tangible or intangible that has been created by an inventor for a specified purpose, whether it is for entertainment, academic and non-academic, industrial, scientific, business purposes etc. Intellectual Property is subdivided into three main areas: copyrights, patents, and trademarks. In China, a patent secures an idea or an invention that "can be obtained for a new product or process or for an improvement to a new product or process"¹⁰. Whenever someone creates an invention or an idea, they may secure this asset from being used by others. A patent functions to secure its inventor's right to his/her product or technology from being used by others and

⁶ Stoianoff, Naalie. "The Influence of the WTO over China's IP Regime ." *Sydney Law Review*. no. 1 (2012): 69 <http://www.law.usyd.edu.au/slr/> (accessed September 18, 2013).

⁷ Naigen, Zhang. "Intellectual Property Law in China: Basic Policy and New Developments." *Annual Survey of International and Comparative Law*. no. 1 (1997): 3. <http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1028&context=annlsurvey> (accessed October 28, 2013).

⁸ The four modernizations focused on transforming four sectors of China's society: industry, agriculture, national defense and science and technology (Stoianoff 2012: 69)

⁹ Stoianoff, Naalie. "The Influence of the WTO over China's IP Regime ." *Sydney Law Review*. no. 1 (2012): 78 <http://www.law.usyd.edu.au/slr/> (accessed September 18, 2013).

¹⁰ Ordish, Rebecca and Alan Adcock. 2008. *China Intellectual Property - Challenges & Solutions : An Essential Business Guide*. Singapore: John Wiley & Sons (Asia): 103,106

provides the patentee with the right to be the exclusive user, producer, seller, or importer of his/her product¹¹. A patent is similar to a piece of physical/tangible property given in that it can be "bought, sold, mortgaged, licensed or charged"¹². In China, the rights to own a patent often come with territorial privilege—the right to own that patent within the area in which it was licensed. A patent that has been registered in China, for example, will only provide its owner with rights within China and nowhere else, with the exception that the patent is registered elsewhere.

Copyright refers to the "expression of an idea". It functions to protect the integrity of a "literary or artistic work" from any form of modifications that may alter its characteristics. Copyright intends to keep the work in its original form even if it has been bought and sold to a new owner. For example, the author of a published book has the exclusive rights to make copies, license and exploit a literary, musical, or artistic work. Copyrights can be extended to anything that has an audio, video or printed quality. In other words, it protects tangible objects.¹³

Trademark is the subcategory of IP constructed to safeguard logos, designs, marks, names or any physically commercial asset owned by individuals. Trademark protects the asset that "is a symbol or other identifier that conveys information about the product"¹⁴. The owner has the exclusive right to own and receive compensation for his/her trademark. Trademarks practically market a company's name or brand. If a company's trademark has a popular reputation, it is obvious that that company would prefer to hold the exclusive rights to that design and prevent any commercial duplication.

Prior to the TRIPs Agreement, there existed no defined regulation under international law. IP law was domestically regulated and incorporated, "a patchwork of international treaties and conventions"¹⁵. Since the TRIPs Agreement came into effect on January 1, 1995, its intention was to be comprehensive by continuing to enforce specific standards from previous international conventions and treaties such as the World Intellectual Property Organization, the Paris Convention for the Protection of Industrial Property, and the Berne Convention for the Protection of Literary and Artistic Works. The TRIPs Agreement not only incorporates policy from these agreements but it also adds new enforcement provisions that were necessary for maintaining IP protection¹⁶.

¹¹ Mertha, Andrew. "Policy Enforcement Markets: How Bureaucratic Redundancy Contributes to Effective Intellectual Property Implementation in China." *Comparative Politics*. no. 3 (2006): p. 17. <http://www.jstor.org/stable/20433999> . (accessed October 28, 2013).

¹² Ordish, Rebecca and Alan Adcock. 2008. *China Intellectual Property - Challenges & Solutions : An Essential Business Guide*. Singapore: John Wiley & Sons (Asia): 106

¹³ Mertha, Andrew. "Policy Enforcement Markets: How Bureaucratic Redundancy Contributes to Effective Intellectual Property Implementation in China." *Comparative Politics*. no. 3 (2006): p. 18. <http://www.jstor.org/stable/20433999> . (accessed October 28, 2013).

¹⁴ Ibid

¹⁵ White, Marlaine. "Intellectual Property Regulation under International Law." *The International Studies Encyclopedia*. Denmark, Robert A. Blackwell Publishing, 2010. Blackwell Reference Online. 14 September 2013 http://www.isacompendium.com/subscriber/tocnode.html?id=g9781444336597_yr2011_chunk_g9781444336597_11_ss1-11

¹⁶ World Trade Organization , "Overview: the TRIPs Agreement." Accessed September 18, 2013. http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm.

The TRIPS agreement covers several main issues: applying general principles of International Trade and other IP arrangements; providing sufficient protection of IP rights which include Copyright, Trademark, Geographical indicators, Patents, and Trade secrets; defining the ways by which countries should enforce IP within borders; and ways of settling disputes on IP between members of WTO. The purpose of this agreement is to protect IP across international borders and unify the way in which IP laws are to be written and enforced within countries.¹⁷ Several scholars have written extensively about IP within different theoretical contexts which may be linked to China's history and experience.

Literature Review

Gary Schaub writes about deterrence and compellence, two international relations theories that can be used to understand how international pressure led China to construct an IP regime. Deterrence and compellence are two theories of coercion. According to Schaub, what both theories have in common is their dependence on threats used to lead the adversary to acquiesce to the coercer's demands. However, what distinguishes them is the nature of the demands. Schaub distinguished the two by stating that:

Deterrence links a demand that the adversary refrain from undertaking a particular action to threat to use force if it does not comply, where as compellence couples a demand that the adversary undertake a particular action to threat to use of force if it does not comply¹⁸

Andrew Mertha makes the argument that in the case of the Chinese IP regime, compellence is the preferred type of coercion used by countries, particularly the US, in pressuring the state to establish an intellectual property regime that is compatible with international intellectual property law¹⁹. Sanctions in this case are not militarily motivated, but instead economic. China's accession into the WTO was contingent on synchronizing its domestic IP laws with international standards²⁰. Accession into the WTO would deepen China's integration into the global market and international trade.

Transplant theory refers to the introduction of a set of laws, institutions, regulations, principles, and ideas from one country, location, or distinct place to another. Deming Liu looks at the transplant effect of Chinese Patent Law. Liu argues that there are several factors that can prevent a transplanted law from working. These include "suitable machinery for implementation" that lacks effective enforcement, lack of noncompliance among the general public, and set of transplanted laws that are incompatible with the cultural norms of that country (Liu 738).

¹⁷ World Trade Organization, "Intellectual property: protection and enforcement." Accessed September 18, 2013. http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm.

¹⁸ Gary Schaub Jr., "Deterrence, Compellence, and Prospect Theory," *International Society of Political Psychology*, 25, no. 3 (2004): 389-411

¹⁹ Mertha, Andrew. "Policy Enforcement Markets: How Bureaucratic Redundancy Contributes to Effective Intellectual Property Implementation in China." *Comparative Politics*. no. 3 (2006): p. 6 <http://www.jstor.org/stable/20433999>. (accessed October 28, 2013).

²⁰ Shoukang, Guo; Xiaodong, Zuo, Are Chinese Intellectual property laws consistent with the Trips Agreement?, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): p 16.

A transplanted law should also be compatible with the legal culture of the transplant country. Legal culture is defined as “those parts of the general culture—customs, opinions, ways of doing and thinking—that bend social forces towards or away from the law in particular ways”. The notion of legal culture is divided into what is known as “lay legal culture” which refers to the attitude of the general public towards the law and “internal legal culture” which refers to the attitude of legal professionals towards the law²¹. As a transplanted society, China possess some of the disparities that would illustrate the degree to which the transplanted laws produced friction with domestic enforcement and the general attitude of the Chinese public towards IPR.

Rami Olwan's analysis of international IP rights and developing countries relates to this line of analysis. He details a comprehensive framework for grasping the idea of the role and impact of IP on development. According to Olwan, although establishing a successful IP regime is necessary for the future of developing countries, its implementation has failed due to the “one size fits all” approach²².

There are two important issues to take into account whenever evaluating the success of an IP system within developing countries. Firstly, IP laws that do not fulfill the needs of developing countries and do not contribute to society, will most likely be limited. IP laws must be aligned with developed countries' national development strategies and policies. The crafting of IP laws that foster the aspect of “cultural diversity” is also critical to the chain of analysis. Olwan believes that, “A cultural approach to [IP] recognizes existing disparities in cultural capabilities resulting from economic, social and cultural inequalities and seeks IP laws that accommodate difference”²³. China, as a developing country, crafted its own IP laws to harmonize with its socialist development policies. However, foreign pressure changed the course of its domestic laws to align with international standards. This strengthened, instead of weakened, China's IP regime by making its domestic law more compatible with international law. The notion of cultural diversity within Chinese IP development is incompatible with the global market and international trade, given China's traditional emphasis on the collective ownership of IP. China thus clearly illustrates a case in which international IP laws have been imposed on a developing nation.

The Adoption of IP Laws

China constructed an IP regime to harmonize with its national development policies and its desire to become a globalized nation. The four modernizations were indicative of China's economic reform from the Maoist era into one, which was conducive to economic prosperity and China's full integration into the global economy. In order to attract foreign investment and foreign technology the state created IP laws²⁴.

²¹ Liu Deming , "The Transplant Effect of Chinese Patent Law," *Chinese Journal of International Law*, 05, no. 3 (2006): 738

²² Olwan, Rami M. *Intellectual Property and Development : Theory and Practice*. Dordrecht: Springer, 2012. <http://fairfield.ebib.com.libdb.fairfield.edu/patron/FullRecord.aspx?p=1082434> (accessed September 25, 2013): 16

²³ Olwan, Rami M. *Intellectual Property and Development : Theory and Practice*. Dordrecht: Springer, 2012. <http://fairfield.ebib.com.libdb.fairfield.edu/patron/FullRecord.aspx?p=1082434> (accessed September 25, 2013): 10

²⁴ Stoianoff, Natalie. "The Influence of the WTO over China's IP Regime ." *Sydney Law Review*. no. 1 (2012): 69 <http://www.law.usyd.edu.au/slr/> (accessed September 18, 2013).

The 1982 constitution was a product of China's political reform and erased many of the policies adopted during the Maoist era²⁵. During the Maoist era, the *Regulations on Awards for Inventions* came into effect by the communist party in 1963 and stipulated that "all inventions are property of the state"²⁶. Since IP law was non-existent during this period, it was the responsibility of the state to build a system in which it could be developed and sustained.

The table below illustrates many of the steps taken by the communist party to craft new IP laws. These laws were different in that they were more aligned with the western tradition of IP while still preserving the socialist ideal of the state such as the 1984 patent law and the 1990 copyright law. It also illustrates foreign pressure coming from the US towards China as a result of dissatisfaction with China's IP regime.

1978	Political and Economic Reform started; Regulations on awards for inventions
1979	Sino-US bilateral trade agreement
1980	China joins World IP Organization
1982	Constitution of PRC – Fostered IP laws; Trademark law adopted
1984	Implementing regulations for trademark law; Patent law adopted
1985	Implementing regulations for Patent law adopted
1990	Copyright law adopted
1991	Implementing regulations for copyright law adopted; The US added China to list of countries allowing piracy; US opened special 301 report investigation of IPR in China

Table 1, The development of Chinese IP, 1978-1991(Ksherti: 156 and Staionaff: 70-2)

China created a grounded regime for IP law with the Constitution of 1982, which crafted a completely new legal system that was suitable for the Open Door Policy era and, in which, IPR may be incorporated and set in stone. This meant that judicial, legislative, and administrative institutions were geared towards achieving the creation and enforcement of IP Law²⁷.

In the years following the constitution, the state focused on the three subcategories of IP law. Trademark law was the first IP law to be adopted by the state in 1982, patent law in 1985, and copyright in 1990. The purpose of the 1984 Patent Law was:

To protect patent rights for inventions-creations, to encourage creation-invention, to foster the spreading and application of invention-creation and to promote the development and innovation of science and technology for meeting the needs of the construction of socialist modernization²⁸

Similarly, the copyright law of 1990 stipulated that the purpose of the law is intended for:

Creation and dissemination of works, which would contribute to the construction of the socialist spiritual and material civilization and of

²⁵ Long, Weiqiu. "Intellectual Property in China." *St. Mary Law Journal*. (1999): 63-98.

<http://go.galegroup.com/ps/i.do?id=GALE|A58938049&v=2.1&u=a04fu&it=r&p=LT&sw=w> (accessed September 18, 2013).

²⁶ Stoianoff, Natalie. "The Influence of the WTO over China's IP Regime ." *Sydney Law Review*. no. 1 (2012): 69

<http://www.law.usyd.edu.au/slr/> (accessed September 18, 2013).

²⁷ Long, Weiqiu. "Intellectual Property in China." *St. Mary Law Journal*. (1999): pp 3.

<http://go.galegroup.com/ps/i.do?id=GALE|A58938049&v=2.1&u=a04fu&it=r&p=LT&sw=w> (accessed September 18, 2013).

²⁸ Stoianoff, Naalie. "The Influence of the WTO over China's IP Regime ." *Sydney Law Review*. no. 1 (2012): 70

<http://www.law.usyd.edu.au/slr/> (accessed September 18, 2013).

promoting the development and prosperity of the socialist culture and science.²⁹

What makes these laws similar is their language, which emphasizes the importance of “socialist modernization”; a key objective of China’s national development. In addition to protecting the rights of property owners, the legal language of these laws was specifically crafted to align with China’s socialist ideals and economic developmental strategy³⁰. However, this created friction with international standards with respect to the enforcement and protection of IP. The apex of tension between the US and China concerning Chinese IP laws transpired during most of the 1990s. During this time, the US actively blocked China from entering the WTO until China revised its IP laws and streamlined them with the TRIPS Agreement³¹.

Enforcement

China’s IP regime is highly bureaucratic and incorporates various enforcement bodies. These include administrative enforcement via various agencies, criminal enforcement, civil enforcement by courts, and border enforcement through custom officials. Moreover, IP enforcement in China takes the form of both private and public enforcement. Private enforcement is conducted by parties that take action via civil courts while the latter is conducted via various government administrations³². The main difference between private enforcement and public enforcement, according to Clarke, is that it is the “IPR owners, not government officials who decide whether or not to bring the mechanism into play, and it is the parties to the proceedings, not the state, that bear all the costs” associated with the case.³³ The three main subcategories of IP—trademarks, copyrights, and patents—are the main focus here. Each subcategory is operated by different state-owned administrations that possess specific powers, responsibilities, and purposes. There are also visible strengths and weaknesses within these various administrations.

Trademark protection is enforced by the Association of Industry and Commerce (AIC). The AIC is set up at the provincial level, city level, and district level across the country. It has *ex-officio* power³⁴. Some of the official powers and responsibilities of the AIC include interviewing the parties concerned in the dispute, which includes the alleged violator and the trademark owner; reviewing parties’ material relating to the violations such as contracts, materials, invoices; executing raids and investigations of alleged locations where trademark violations take place; and checking articles relating to the infringement³⁵. The AIC cooperates with other administrative agencies like customs, provincial, and national agencies. Provincial conflicts and political motivations affect whether or not an AIC office takes a case or not. Court

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Kristie Thomas, *The Fight Against Piracy: Working within the Administrative Enforcement System in China*, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar) 86

³³ Clarke, Donald. "Private Enforcement of Intellectual Property Rights in China." *National Bureau of Asian Research*. : 33-34.

³⁴ This is the right of an administration to initiate enforcement actions whenever deemed necessary. It does not have to wait until a complaint is received (Ellis: 33).

³⁵ Kristie Thomas, *The Fight Against Piracy: Working within the Administrative Enforcement System in China*, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar) 92

awards for damages in trademark cases are no greater than Renminbi (RMB) 1million. Damage awards should include the profits that the infringer made, and legal and court expenses³⁶.

The appropriate authority for copyright protection is the National Copyright Administration (NCA). This body is also located at provincial and local levels and has the power to: intervene in cases of infringement, order cessation of infringements, impose fines and confiscate products, initiate *ex-officio* power. The weakness of the NCA is its low quality service in the less developed areas of China, such as in the Western provinces. In these areas, authorities lack adequate and experienced staff. Moreover, fines cannot exceed RMB 100,000 (USD \$16,670).³⁷

The State Intellectual Property for Patent Enforcement (SIPO) is responsible for patent administration and enforcement. Unlike the AIC and the NCA, the SIPO does not hold *ex-officio* power to regulate infringement cases³⁸. Thus, enforcement must be activated by the patentee or interested party. Also, in order to initiate a patent, a written request must be made for investigation by the holder. The infringer will be notified about the patentee's request for action which eliminates any type of hope of catching the perpetrator by surprise. These reasons make patent enforcement a less attractive and effective option for IPR holders.

From the 1970s up to when China became a member of the WTO in 2001, the state's intellectual property laws went through a process of continuous revision and transformation. The crafting of laws to fall in sync with the country's national development goals was intercepted by exogenous pressure that sought to align them with international standards. This case not only illustrates the *transplant effect* on Chinese IP law, it also displays the strength of *compellence* as a form of coercion that led China to amend many of its IP laws. If China wanted to enter the WTO, it had to align the inconsistencies of its laws to fit within those of the TRIPS Agreement. Given the limitations of foreign pressure in enforcing IPR beyond the central government, the state confirmed that it would ensure that the governments at the provincial and local levels would observe the obligations under the WTO's agreement³⁹. China's commitment to comply with the TRIPS Agreement led to legislative reforms in the Patent Law, Copyright Law, and Trademark Law⁴⁰. Article 41 of the TRIPS Agreement stipulates that all:

Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which

³⁶ Devonshire-Ellis, Chris; Scott, Andy; Woollard, Sam. Intellectual Property Rights in China. Dordrecht: Springer, 2011. <http://fairfield.ebib.com.libdb.fairfield.edu/patron/FullRecord.aspx?p=993785> (accessed September 25, 2013): 33

³⁷ Ibid.

³⁸ Ibid.

³⁹ Wang, Guiguo. Radiating Impact of WTO on Its Members' Legal System: The Chinese Perspective. Leiden: BRILL, 2011. <http://fairfield.ebib.com.libdb.fairfield.edu/patron/FullRecord.aspx?p=1112700> (accessed September 24, 2013): 158

⁴⁰ Kristie Thomas, The Fight Against Piracy: Working within the Administrative Enforcement System in China, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar) 100

constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.⁴¹

China's patent law underwent two stages of revision and amendment since its induction on April, 1985. It was drafted on the principles of the Paris Convention—such as the right of priority and independence of patents—while being crafted to be made “compatible with the Chinese situation”. China's patent law was first amended during the process of China regaining membership at the General Agreement on Tariffs and Trade (GATT). The scope of protection by the amended patent law extended to the protection of goods such as food, drinks, and spices. It extended the duration of protection to 20 years for invention patents and 10 years for utility models and industrial designs⁴². The law was amended once more in August of 2000 to address the inconsistencies of the 1992 patent law and the TRIPs. A key provision added to the amended patent law is the opportunity for requesting judicial review of final administrative decisions. Article 41 (4) stipulates:

Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case.⁴³

Judicial review is done by the People's Court of China, a separate body from the administrative agencies. This law helps to mitigate the corruption and local protectionism that often transpires within the administrative system. Previously, rights holders could not appeal administrative decisions to the people's court. This acts as a system of check and balances, ensuring that the decisions local officials make are not arbitrary or unscrupulous.

Trademark law also underwent similar amendments since it entered into force in March 1983. Ten years later, it was amended to add provisions that extended protection of the rights holder and the enforcement process. In 2001, it was amended to comply with the TRIPs as a prerequisite for WTO accession⁴⁴. Similar to patent law, there were many different amendments to the old law (many technical in detail), including the right to judicial review of administrative decisions was implemented⁴⁵. Copyright also had its own share of amendments in order to comply with the TRIPs and gain China's accession into the WTO. After it came into effect in 1990, the copyright law was revised in October of 2001 in accordance with the stipulations of the TRIPs⁴⁶.

China's IP protection has been through a constant process of revision and amendment that has implemented provisions and international standards transplanted from the WTO. Compellence has been harnessed by the international community, primarily the US, to bring

⁴¹ World Trade Organization , "Trade-Related Aspects of Intellectual Property Rights." Last modified 04 15, 1994. Accessed October 28, 2013. http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm.

⁴² Shoukang, Guo; Xaiodong, Zuo, Are Chinese Intellectual property laws consistent with the Trips Agreement?, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): p 12.

⁴³ Ibid.

⁴⁴ Shoukang, Guo; Xaiodong, Zuo, Are Chinese Intellectual property laws consistent with the Trips Agreement?, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): p 16

⁴⁵ p 18

⁴⁶ p 20

China into the international IPR regime in order to become a member of the WTO and thus fully legitimize its practice of international trade⁴⁷. The country's IP enforcement system has made structural improvements due to China's compliance with the TRIPs agreement. However, the application of the law is often different from how it is written and this represents the limitations of foreign pressure. Many enforcement problems remain within China's IP regime. Foreign pressure is largely limited to the central government and often fails to penetrate to the provincial and local authorities that represent the enforcement mechanism for IP enforcement. The table below illustrates the number of cases taken by administrative and judicial enforcement in 2004.

Table 2: Reported cases of IPR violations taken to administrative and judicial bodies⁴⁸

Copyright	Trademark	Patent	Judicial	Judicial
Administration enforcement	administration enforcement	administration enforcement	enforcement (criminal cases)	enforcement (civil cases)
9691	51,851	1455	385	8332

According to a 2004 study, trademark actions of enforcement are the most popular and effective in China and account for "more than 80 percent of the administrative cases handled" in 2004. These cases are proposed to the AIC that then decides whether or not to pursue new cases. Copyright infringement has the second highest number in 2004. The appropriate authority for this category is the National Copyright Administration (NCA). Patent enforcement had the second lowest number of reported cases in 2004⁴⁹.

Administrative enforcement is recognized as the most popular and effective type of enforcement strategy used by rights holders because they find it to be more pragmatic and less costly than private enforcement—through civil procedure in courts—which can take years to be resolved. While it may take years for civil procedures to be settled, some estimates report that it can take between two to three days for administrative agencies to take action while an entire case may be solved and disposed of in two to three months⁵⁰. Administrative enforcement is thus a faster and more sought after option for IP rights owners who generally prefer more rapid forms of action.

⁴⁷ Cha-Yueh Liao, Jessica. "China's Response to the global IPR Regime: Compliance or Resistance?." *Issues and Studies*. no. 04 (2006): 181. <https://fairfield.illiad.oclc.org/illiad/illiad.dll?Action=10&Form=75&Value=32912> (accessed October 31, 2013): p 181

⁴⁸ Jingzhou Tao, Problems and new developments in the enforcement of Intellectual Property Rights in China, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): 88

⁴⁹ Kristie Thomas, The Fight Against Piracy: Working within the Administrative Enforcement System in China, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): p 89-90

⁵⁰ Kristie Thomas, The Fight Against Piracy: Working within the Administrative Enforcement System in China, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): p 86,94

The overwhelming disadvantage of using administrative enforcement is handling the bureaucratic corruption within these administrations. The party seeking administrative enforcement will most likely have to deal with unofficial costs necessary to compel officials to start a new case. For example, it is known that local authorities often expect luxuries such as include pre-raid and post-raid meals provided by rights holders⁵¹.

The official costs of taking administrative enforcement are overwhelming and the AIC is a suitable example of such a case. For example, a foreign trademark owner is expected to pay a fee of USD \$1,000-\$5,000 per complaint. Some cases have cost as much as US \$6,000 (RMB100 000), depending on the number of charges⁵². Since it is the responsibility of the rights holder to collect all preliminary evidence of IP infringement before coming to the AIC, cost may also include hiring private investigation and legal counsel⁵³. Furthermore, the financial rewards are miniscule given that court awards for damages in trademark cases are no greater than RMB 1million or US \$167,000.⁵⁴ Therefore, companies that have lost millions of US dollars in sales due to IP violations receive only a fraction of the amount of profit lost to counterfeit goods. Given these circumstances, administrative enforcement can be a costly, unattractive and financially burdensome process.

Penalties in fines do not constitute any real "economic disincentive to intellectual property infringement"⁵⁵. There are two reasons explaining this: Chinese law does not set a minimum limit on fines and officials have tremendous freedom of judgment when determining the amount to be fined⁵⁶. Issuing the maximum penalty and ordering criminal imprisonment are rare.

Another problem impeding effective administrative enforcement in China is local protectionism. This involves the securing of local economic interests of infringers by administrative authorities to the disadvantage of trademark holders⁵⁷. The language within the TRIPS Agreement, Part III Article 1, explicitly forbids this practice when it states:

Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.⁵⁸

Local protectionism is a form of state supported safeguard that looks out for IPR infringers. The parties involved in this relationship are local authorities and those involved in infringement. Local protectionism is sustained through bribes, ties to local authority, and the prioritizing of local interests over national laws by local officials. The last point is critical to

⁵¹ p 93

⁵² p 93

⁵³ p 96

⁵⁴ Devonshire-Ellis, Chris; Scott, Andy; Woollard, Sam. *Intellectual Property Rights in China*. Dordrecht: Springer, 2011. <http://fairfield.ebib.com.libdb.fairfield.edu/patron/FullRecord.aspx?p=993785> (accessed September 25, 2013): 33

⁵⁵ Jingzhou Tao, *Problems and new developments in the enforcement of Intellectual Property Rights in China*, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): p 110

⁵⁶ Shoukang, Guo; Xiaidong, Zuo, *Are Chinese Intellectual property laws consistent with the Trips Agreement?*, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): p 11

⁵⁷ Kristie Thomas, *The Fight Against Piracy: Working within the Administrative Enforcement System in China*, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): p 95

⁵⁸ World Trade Organization, "Trade-Related Aspects of Intellectual Property Rights." Last modified 04 15, 1994. Accessed October 28, 2013. http://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm.

many local authorities who see IP enforcement as a threat to the growth of their local economies.⁵⁹ This is especially true for provinces in which counterfeit trade is prevalent to the point where the local economy greatly depends on it for continued growth. Local protectionism disrupts the enforcement process, giving agencies flexibility to pick some cases and ignore the ones to which they are illegally protecting.⁶⁰ It also determines whether or not officials respond to a particular case given the mix of interests involved. In some cases officials are known to have provided infringers with insider information in advance, giving them ample time to relocate or dispose of their counterfeit goods⁶¹. It also involves local officials who confiscate goods and later return them to the infringers.⁶² Challenges like these illustrate the limitations of foreign pressure on IPR on local and provincial levels in China.

The bureaucratic redundancy caused by the overlapping of administrative jurisdiction poses another weakness of administrative enforcement. Redundancy within the policy enforcement markets often includes trademarks and copyrights. In some instances the overlapping between 2 bureaucracies over a single jurisdiction may occur.⁶³ For example, the AIC and the departments responsible for product quality (TSBs) are both responsible for cases in which trademark infringement and counterfeiting cases exist.⁶⁴ This overlapping between different administrative bodies has resulted in “poor coordination and poor cooperation among the various governmental agencies”.⁶⁵

Level of Public Awareness

The challenges presented above represent two major points: the weakness and limitations of exogenous pressure in penetrating its influence onto the local and provincial levels and the paradoxical nature of the central government which is authoritative but at the same time unable to ensure that IPR are properly enforced on the administrative level. The administrative drawbacks of IP enforcement in China act as an impediment to the overall goals of the TRIPS agreement. However, this cannot be determined to be the only contributor to IP infringement. A low level of public awareness of IP also represents a complex and widespread impediment to effective and sustainable IP enforcement, given that the country’s culture is rooted in certain traditional beliefs. The concept of IP rights remains “culturally unfamiliar” to many Chinese

⁵⁹ Jingzhou Tao, Problems and new developments in the enforcement of Intellectual Property Rights in China, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): 109

⁶⁰ Kristie Thomas, The Fight Against Piracy: Working within the Administrative Enforcement System in China, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): 97

⁶¹ Jingzhou Tao, Problems and new developments in the enforcement of Intellectual Property Rights in China, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): 109

⁶² Kristie Thomas, The Fight Against Piracy: Working within the Administrative Enforcement System in China, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): 95

⁶³ Mertha, Andrew. 2005. *The Politics of Piracy : Intellectual Property in Contemporary China*. Ithaca: Cornell University Press: 298

⁶⁴ Jingzhou Tao, Problems and new developments in the enforcement of Intellectual Property Rights in China, Editor. Torremans, Paul; Shawn, Hailing; Erauw, Johan (UK: Edward Elgar): 108

⁶⁵ The public Security Bureaus (PSBs) and judicial investigative organs share similar responsibilities in IP cases involving criminal actions. These bodies are known to be plagued by the same administrative redundancy that often results in poor coordination and lack of cooperation between governmental bureaucracy (Torremans: 108).

people who struggle to see the moral wrong in counterfeit trade and IP violations.⁶⁶ While the traditional western concept of IP fosters the exclusive rights of individual ownership, traditional Chinese culture embraces community ownership.

Globalization has tremendously transformed China, forcing it to adapt to the modern world and thus changing “its perception of self, culture and cultural identity”⁶⁷. However, there exist a fundamental disconnect between ancient Chinese culture and the idea of intellectual property rights. Gisclair explains that China faces a “cultural and intellectual dissonance when it comes to IPR”.⁶⁸ China’s philosophical underpinning according to Confucian doctrine stipulates that all forms of creativity belong to the “community”, not the individual.⁶⁹ China’s current relationship with IP suggests that this cultural disconnect still exists today at least to a certain extent.

While western legal morality would repudiate any form of imitation or unauthorized copying, the Chinese Confucian doctrine believes that these are acceptable practices that honor—instead of disregard—the creator and illustrates acceptance in his/her artistic creation.⁷⁰ These ideas thrived for centuries in China, especially during the Maoist era, until the Open Door Policy era reshaped how IPR would be built into China’s modernization efforts. The extent to which people in contemporary China embrace this tradition would be difficult to measure; however, when examining the magnitude and popularity of piracy, the effects of this traditional belief still permeate among the public. The public’s awareness of IPR will have to be continuously uprooted in order to erase centuries of tradition and ethical beliefs.⁷¹

Liu would agree and also add that the “lay legal culture” of China is incompatible with the western conception of IPR. Therefore, Chinese customs, opinions, ways of doing and thinking have not fully accustomed to a different conception of IPR.⁷² Furthermore, as a recipient of transplanted laws, China possesses some of the disparities that illustrate the degree to which transplanted laws produced friction with domestic enforcement and the general attitude of the Chinese public towards IPR.

Foreign Companies Sourcing in China

Issues with administrative enforcement and the level of public awareness are two significant problems that limit the level of success that China’s IP regime acquires. Not only do they illustrate the paradox of China’s authoritative bureaucracy, they also represent the limitations of exogenous pressure in securing their IP interests in China. These, however, are not

⁶⁶ Liang, M. (2010). A three-pronged approach: How the United States can use WTO disclosure requirements to curb intellectual property infringement in china. *Chicago Journal of International Law*, 11(1), 285-319. Retrieved from <http://search.proquest.com/docview/747485339?accountid=10796> : p 292

⁶⁷ Gisclair, Jessica. "The Dissonance Between Culture and Intellectual Property in China." *Southeast Review of Asian Studies*. (2008): 182

⁶⁸ p. 183

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Gisclair, Jessica. "The Dissonance Between Culture and Intellectual Property in China." *Southeast Review of Asian Studies*. (2008): 184

⁷² Liu Deming , "The Transplant Effect of Chinese Patent Law," *Chinese Journal of International Law*, 05, no. 3 (2006): 738

the only contributing factors to the perpetuation of IP violations given the countless mistakes made by foreign companies that are not familiar with sourcing their products in China.

China has a large resource endowment of labor that can be efficiently mobilized for the manufacturing process. The fact that China is the most populous country in the world with cheap labor standards makes it an economic magnet for foreign companies looking to source their product. In fact, it makes economic sense that any company would want to minimize expenditure while at the same time maximizing profit. In spite of this, many companies have jumped into the trap of attractive sourcing costs without considering the nature of China's IP and economic environment.

There exists in China a large market of counterfeit trade on which many local economies thrive. China is identified as the biggest source and exporter of counterfeit products. China is responsible for 79% of all cases of IPR violations worldwide, China is the leading exporter of counterfeit goods when compared to more than 10 other countries; and goods coming from China are most often seized by US border protection services.⁷³

A critical factor that contributes to the ongoing problem of IP violations in China is the ignorance of foreign companies that manufacture products in China. There are many companies that suffer from losses in sales of their goods. One of the causes of this may be attributed to process of sourcing within China and the risk of losing products from the supply chain.

Most companies sourcing their products in China are unaware of the conditions and locations where their products are being manufactured. China is viewed as a "sourcing center rather than a business opportunity" meaning that companies did not take the necessary precautionary measures to protect their IP.⁷⁴ As a result, a number of unforeseeable infringements, contract agreements violations, and challenges emerge such as the selling of unauthorized products out the backdoor of factories. A major cause of this is factories that seek supplementary income by selling excess products outside the authorized supply chain. These include waste products, sub-quality products and overruns in production.⁷⁵ Managers or even employees sometimes steal these parts and later circulate them into the local market by selling them to merchants for a fee in exchange. Whenever companies hire factories to manufacture their product, some factories surreptitiously sub-contract the production of these products to low-scale and unreliable factories that often ignore IPR.⁷⁶ Factories are also guilty of outsourcing supplementary materials to 3rd parties without confidentiality agreements or IP assignment agreements⁷⁷.

Comparing China Globally

This year (2013) the US and China have executed a joint operation at their respective borders to crack down on counterfeit goods. Over 243,000 fake electronics were seized at both the US and Chinese borders which includes brands such as apple, Dr. Dre Beats, Blackberry and

⁷³ Chaudhry, Peggy E.; Zimmerman, Alan. *The Economics of Counterfeit Trade*. Dordrecht : Springer, 2009. <http://fairfield.ebib.com.libdb.fairfield.edu/patron/FullRecord.aspx?p=429001>: p 27-8

⁷⁴ Ordish, Rebecca and Alan Adcock. 2008. *China Intellectual Property - Challenges & Solutions : An Essential Business Guide*. Singapore: John Wiley & Sons (Asia): p 71

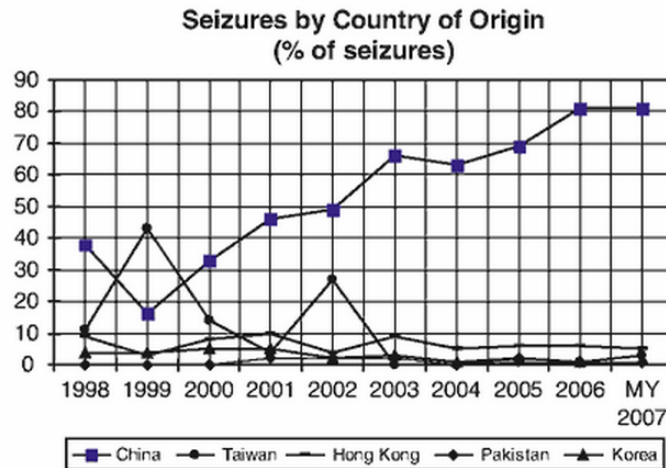
⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ A confidentiality agreement is a contract that sets out the expectations and obligations of the parties involved in business (Ordish: 71).

Samsung smart phones. The operation took place at North American ports located in Los Angeles, Cincinnati, Newark, and Anchorage and the Chinese cities of Beijing, Shanghai, Shenzhen, and Guangzhou (Reuters: U.S. China Team up to Seize Counterfeit Goods in Joint Operation). The statistical data below illustrate that China suffers from an unparalleled level of counterfeit trade when compared to other leading nations.

Chart 1: Illustrating seizures by top sources of IP infringement (Chaudry: 30)



Seizures by country of origin. Source: US Customs and Border Protection, L.A. Strategic Trade Center

Chart 1 illustrates that China accounted for 80% of seizures counterfeit goods acquired by the US customs and border protection in 2004. Counterfeit goods coming out of Taiwan, Hong Kong, Pakistan and South Korea have significantly lower rates of seizure at North American borders than goods leaving China. China's accession into the WTO in 2001 did not decrease the rate of confiscation. This is a discouraging figure given the increase in counterfeit seizures since China's compliance with the TRIPs and subsequent accession to the WTO. Table 3 below illustrates North America's top trading partners for IPR Seizures in 2006. China tops the list of countries, responsible for 81 percent of all seizures with a US domestic value of \$125 million. Not even the values of counterfeit good leaving all of these countries combined could surpass China's counterfeit domestic value.

Table 3: Top Trading Partners for IPR seizures, 2006⁷⁸

⁷⁸ Chaudry, Peggy E.; Zimmerman, Alan. *The Economics of Counterfeit Trade*. Dordrecht : Springer, 2009.
<http://fairfield.ebib.com.libdb.fairfield.edu/patron/FullRecord.aspx?p=429001> : p 30

Trading partner	Domestic value (\$)	Percent of total
China	125,595,844	81
Hong Kong	9,389,464	6
Taiwan	1,843,764	1
Pakistan	1,838,815	1
Korea	1,810,140	1
Singapore	1,198,735	Less than 1
Malaysia	1,174,071	Less than 1
Indonesia	983,425	Less than 1
India	832,541	Less than 1
Mexico	535,826	Less than 1
All others	10,166,611	7

Source: United States Customs and Border Protection (2007)

Table 4 illustrates the origins of counterfeit goods seized by the European Union (EU). Once again, China ranks first, having the highest percentage of counterfeit goods flooding the European Market.

Table 4: Origin of counterfeit goods seized in EU⁷⁹

Country	Percent of goods seized
China	79
UAE	5
India	1
Algeria	1
Hong Kong	1
Egypt	1
Turkey	1
Iran	1
Others	10

Source: Summary of community customs activities on counterfeit and piracy, 2006, p. 4

IPR infringement costs U.S. businesses US \$320 billion every year, equivalent to annual value of US exports to Asia (Reuters). This is a significantly high cost, especially since the entire global community is not taken into account. These figures illustrate that China is a global source and leader of counterfeit trade, even after its accession into the WTO.

Conclusion

China's modern IP regime has been through a process of transformation and involvement ever since the induction of the political and economic reforms of 1978. There was

⁷⁹ Chaudry, Peggy E.; Zimmerman, Alan. *The Economics of Counterfeit Trade*. Dordrecht : Springer, 2009. <http://fairfield.ebib.com.libdb.fairfield.edu/patron/FullRecord.aspx?p=429001> : p 27

the desire to shift away from the previous regime and propel the country into a modernized era in which China evolved into a more integrated and powerful nation. The creation of its first set of IP laws introduced the Western conception of exclusivity and individual ownership which is fundamentally different from its previous laws that were rooted in state possession. However, these laws lacked key provisions that were seen as necessary by the international community for China to improve and strengthen its IP regime. After amending its laws and subsequently accessing the WTO, IP violations continued to increase in China. Administrative corruption can cripple the mobilization of enforcement and prevent rights owners from identifying infringers and receiving compensation for their losses. Chinese lay legal culture remains inclined towards engaging in IP infringement, whether or not those who engaged in this activity are entrepreneurs or customers. Moreover, inexperienced foreign companies worsen the situation by overlooking critical factors when sourcing their goods in China. Today, China still remains the country from which more than three-fourths of counterfeit goods are imported and seized by US customs and Border Services.

Examining IP in China has shed light on two key points: firstly, foreign pressure is weak and limited in penetrating the central government in advancing its IPR interests. Local and provincial authorities have tremendous amount of power to enforce and control how different administrative agencies handle cases. Secondly, IP in China represents a paradoxical quality of the central government, which is authoritative but simultaneously unable to ensure that IPR are properly enforced by those on the local level. As a result, IP enforcement in China remains weak. China's weak enforcement system can negatively affect its popularity and attractiveness to overseas businesses and companies given that many of them lose billions of dollars a year to the sale of counterfeit goods. This indirectly impacts the aggregate success of international business and trade as two phenomena that play an integral role in our global economy. As responsible global citizens, it is imperative to remain cognizant of the economic impacts of counterfeit trade and to recognize the negative effects that it imposes on the global economy.

Appendix

Copyright Infringement: A Personal Account

During my five month study-abroad travel to Beijing, I witnessed countless copyright and trademark infringements at electronic and apparel markets and photocopying stores. Beijing is known as a magnet of economic interests for IPR infringement. Most of these businesses exist within large establishments that are obviously too conspicuous not to be identified by the government or local officials. These include the infamous *Silk Street market*, *Quangzhao Daidao* sports specialist shops and *Hongquiao Market*⁸⁰. Hongquiao Market otherwise known as the Pearl Market is a well-known apparel and electronic market located in 9 Tiantan Rd, Dongcheng, Beijing. A large portion of the counterfeit goods sold in this market are electronics such as CDs, DVDs, headphones, cell phones and various apple products. The pictures below were collected during the spring semester of 2013 and illustrate the types of goods that were purchased at Hongquiao Market.

⁸⁰ Cheung, Gordon C.K. INTELLECTUAL PROPERTY RIGHTS IN CHINA. Hoboken: Taylor and Francis, 2009. <http://fairfield.ebib.com/patron/FullRecord.aspx?p=425480> : p46



Figure 1 Trademark Infringement on Ray Band, Wayfarer Syle Sun Glasses.

Cost: RMB 30 (US \$3.30)

The lowest price listed on Ray Ban’s website for a pair Wayfarer style sunglasses cost US\$ \$150.00. The pair of glasses in the picture above was sold at a significantly lower cost than the official pair. The counterfeit Ray Band Glasses above would be appropriately categorized as an infringement of Ray Ban’s trademark rights given that the company’s signature logo has been used to identify the product. The quality and price both indicate that the product is not authentic.⁸¹

Collection of Rosetta Stone Language CDs (Chinese Mandarin and Spanish) RMB 35, each (US \$5.80, each)



The market price for a collection of Rosetta Stone Spanish (Level 1-5) set is currently US \$499.00.⁸² The set purchased at Hongquiao market cost US \$5.80 for each language collection. The counterfeit prices are tremendously attractive to foreigners and Chinese people who shop at this market. This collection of Rosetta Stone CDs may be appropriately identified as a violation of Rosetta Stone’s trademark rights and copyrights. The company’s signature logo is used along with the content in the CD.

Integrated Chinese, Text Book. Cost: RMB 20 (US \$3.30)

⁸¹ The salesperson started the price at RMB 120 (US \$20), which was later negotiated to RMB 40.

⁸² See: <http://www.rosettastone.com/learn-spanish-spain>

The picture below illustrates another copyright infringement. The book was photocopied at a small photocopying shop in Cahoyang, Beijing. Photocopying is affordable and widely popular among foreign and Chinese students who prefer to purchase a photocopy instead of buying the original copy which would cost US \$57.99.⁸³

Many local businesses in China, like Hongquiao market, depend on counterfeit trade for employment survival⁸⁴. It helps explain why local protectionism is so prevalent in local economies given that many local officials depend on these businesses to contribute to their local economic growth.

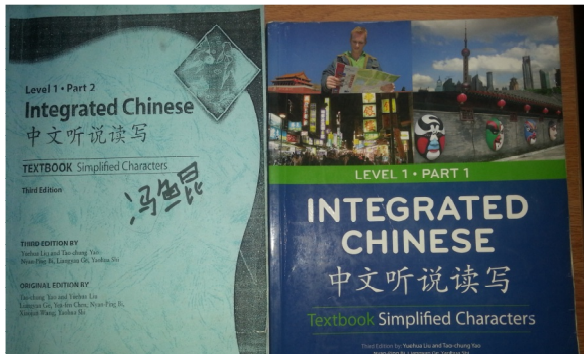


Figure 3 Textbook Copyright Infringement

⁸³ See: http://www.cheng-tsui.com/store/products/integrated_chinese

⁸⁴ Pang, Laikwan. 2012. *Creativity and its Discontents : China's Creative Industries and Intellectual Property Rights Offenses*. Durham, NC: Duke University Press : p100