

# THE SWEET AND SOUR STORY OF CHINESE INTELLECTUAL PROPERTY RIGHTS

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## **Introduction**

In the late 1980s and early 1990s, the United States lost about \$2 billion of revenues annually due to rampant piracy in China.<sup>1</sup> To protect its businesses, the U.S. government adopted a coercive policy, threatening China repeatedly with economic sanctions, trade wars, non-renewal of most-favored-nation status, and opposition to China's entry into the World Trade Organization (WTO).<sup>2</sup> As a result of these "external pushes," the Chinese government established a new intellectual property regime and an institutional infrastructure that sought to protect and enforce intellectual property rights.<sup>3</sup> Intellectual property soon appeared at the forefront of the U.S.-China bilateral trade agenda, and Chinese leaders began to show interest in implementing domestic legal reforms. Meanwhile, the Chinese people also have acquired a better understanding and heightened awareness of intellectual property rights.

This Chapter traces the development of intellectual property rights in China since the mid-nineteenth century and discusses the repeated attempts by the U.S. government to transplant intellectual property laws in the country. The Chapter then describes how, and explains why, intellectual property protection has improved significantly in China even after the U.S. government backed away from its coercive tactics. The Chapter concludes by making two observations on intellectual property law developments in China. The first observation challenges the cultural explanation of intellectual property piracy and counterfeiting problems in general. The second observation maintains that the extensive mp3 piracy problem on the Internet necessitates a critical reexamination of the piracy and counterfeiting problems in China.

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## **Early Historical Traces of Intellectual Property Concepts in China**

Although China has more than 4000 years of history and was the first to invent paper and the printing press, the country had not developed any notion of intellectual property rights. As Professor William Alford pointed out in his seminal work, *To Steal a Book Is an Elegant Offense*, the earliest effort to regulate publication and reproduction was through an edict issued by Emperor Wenzong of the Tang dynasty in A.D. 835. This edict “prohibited the unauthorized reproduction by persons of calendars, almanacs, and related items that might be used for prognostication.”<sup>4</sup> Because the Chinese considered the emperor to be the link between human and natural events, this prohibition was needed to protect the emperor against findings that would have undermined the dynasty or predicted its downfall. By the end of the Tang dynasty, the edict was further expanded to “prohibit[] the unauthorized copying and distribution of state legal pronouncements and official histories, and the reproduction, distribution, or possession of ‘devilish books and talks’ (*yaoshu yaoyan*) and most works on Buddhism and Daoism.”<sup>5</sup> Rather than fostering creation and promoting authorship, this edict was designed to sustain imperial power.

The Song dynasty expanded this portion of the Tang Code to include prepublication review and registration by “order[ing] private printers to submit works they would publish to local officials.”<sup>6</sup> The principal goal of this institution was “to halt the private reproduction of materials that were either subject to exclusive state control or heterodox.”<sup>7</sup> In addition to works covered by the Tang edict, prohibited materials included authorized versions of the classics, model answers to imperial service examinations, maps, materials concerning the inner workings of government, politics, and military affairs, pornography, and writings using the names of members or ancestors of the imperial family in “inappropriate” literary styles or in writings that were “not beneficial to scholars.”<sup>8</sup> Like the British Stationers’ Company, this review and registration system was mainly instituted to control the dissemination of ideas.<sup>9</sup>

In the trademark context, the dynastic codes “restrict[ed] the use of certain symbols associated with either the imperial family (such as the five-clawed dragon) or officialdom.”<sup>10</sup> They also “barred the imitation of marks used by the ceramists of Jingdezhen and others making goods for exclusive imperial use” and forbid certain craftspersons from exporting their works.<sup>11</sup> In addition, guild regulations, clan rules, and local laws protected producers of tea, silk, cloth, paper, and medicines by registering their brand names and symbols they had developed.<sup>12</sup> Tight family control and screening of employees also were used to protect the confidentiality of vital manufacturing processes.<sup>13</sup> Nonetheless, the dynastic codes and the various regulations and control efforts did not result in any formal, centralized intellectual property protection.<sup>14</sup>

## **The First Coming of Intellectual Property Rights**

Intellectual property rights first came to China “with such inventions and novel ideas as the gunboat, opium, ‘most favoured nation’ trading status, and extraterritoriality” in the early twentieth century, when China opened its coastal ports to Western trade after the Opium War.<sup>15</sup> In the 1840s, “there was little foreign investment in China, and trade was confined to items such as opium, tea, and raw silk, sold as bulk commodities, rather than under brand names.”<sup>16</sup> While “there were periodic allegations of inferior grades of tea being passed off as their more costly counterparts,”<sup>17</sup> substantial problems of intellectual property piracy did not arise until decades

later. By the turn of the twentieth century, foreign imports and investment had increased substantially, and intellectual property piracy had become a serious problem.

To protect the intellectual property rights of its nationals, the United States, which had recently acceded to the Paris Convention for the Protection of Industrial Property<sup>18</sup> and had enacted the Chace Act to provide formal intellectual property protection to foreigners,<sup>19</sup> used its military and economic strengths to induce China to sign a commercial treaty in 1903, which granted copyright, patent, and trademark protection to Americans in return for reciprocal protection to the Chinese.<sup>20</sup> Despite this treaty and similar commercial treaties with Britain and Japan, China did not introduce a substantive copyright law until 1910, a substantive patent law until 1912, and a substantive trademark law until 1923.<sup>21</sup> Although these laws appeared on paper, they offered foreigners very limited intellectual property protection. In fact, due to increasing industrialization, the growth of the urban elite, and the spread of literacy, the piracy problem worsened despite the introduction of these new laws.<sup>22</sup>

The failure of the 1903 treaty can be attributed to several factors. First, the United States failed to consider the relevance of its intellectual property model to China and premised the new regime on registration.<sup>23</sup> Hampered by problems that were uniquely Chinese, such as geographical difficulties, high corruption, and strong regional protectionism, the registration system turned out to be substantially ineffective, rendering the new intellectual property laws virtually unenforceable. Second, the United States was unable to convince the Chinese government why intellectual property laws could benefit China.<sup>24</sup> Indeed, most Chinese officials, including the very powerful Empress Dowager, were skeptical of the need for legal reforms. To these officials, law reforms were merely “an unfortunate short-term expedient needed to calm the restive masses and appease the treaty powers before Qing power could be reasserted in its proper form.”<sup>25</sup> Finally, the United States did not rally the support of Chinese holders of intellectual property rights behind the new intellectual property regime.<sup>26</sup> The United States also failed to train Chinese officials with responsibilities in the field and to educate the Chinese populace about the importance of, and rationales behind, intellectual property rights.<sup>27</sup>

Instead, the United States “presumed that foreign pressure would suffice to induce ready adoption and widespread adhesion to [the new intellectual property] laws.”<sup>28</sup> In the beginning, China was willing to comply with the treaty because it naïvely assumed that introducing intellectual property laws would put an end to the unequal treaties signed in the latter half of the nineteenth century, in particular the extraterritoriality provisions,<sup>29</sup> which allowed foreigners accused of crimes against Chinese subjects to be tried in China according to their own laws by the representatives of their home government. Once the Chinese government realized that legal reforms would not affect China’s semi-colonial status, it lost interest in pursuing those reforms. In fact, the Chinese government took advantage of the Western position and used legal reforms to provide leverage against the treaty powers.<sup>30</sup>

## **The Second Coming of Intellectual Property Rights**

After the fall of the Qing dynasty, China experienced “decades of wars, famines and revolutions,”<sup>31</sup> and intellectual property rights did not return until the Chinese Communist Party reopened the country to the international community in the late 1970s. Unlike Mao Zedong, Deng Xiaoping saw economic wealth as the foundation of China’s power and realized that China

could not modernize in isolation without the benefits of foreign science, technology, capital, and management skills.<sup>32</sup> Thus, Deng and his fellow leaders vigorously pushed for the renewal of diplomatic and commercial ties with the United States, Japan, and other Western developed countries. Among the earliest treaties signed shortly after China's reopening was the Agreement on Trade Relations Between the United States of America and the People's Republic of China, which called for copyright, patent, and trademark protection to the nationals of the other party.<sup>33</sup> As a result of this Agreement, "China assumed an international legal obligation for intellectual property rights protection [even] before it had established a domestic intellectual property protection system."<sup>34</sup>

Shortly after signing the agreement, China became a member of the World Intellectual Property Organization (WIPO). China also promulgated a new trademark law in 1982, a new patent statute in 1984, and joined the Paris Convention in 1985. Notwithstanding these new laws and multilateral agreements, China afforded authors and inventors very limited protection. After all, Chinese leaders at that time remained very reluctant to introduce private property, as they were concerned about the conflict intellectual property rights would create within the socialist economic system.<sup>35</sup> Thus, instead of creating new rights to protect individual authorship and inventions, the new intellectual property statutes were drafted primarily to rehabilitate authors, inventors, and scientists by enhancing their position through legal recognition while promoting "socialist legality with Chinese characteristics."<sup>36</sup> Although the trademark and patent laws granted individuals rights in their marks and inventions, these statutes included so many limits that the original grants became insignificant.

Concerned about the lack of protection in China, U.S. businesses began to lobby their government heavily for stronger pressure on China. In the late 1980s and early 1990s, the U.S. government repeatedly threatened China with a series of economic sanctions, trade wars, non-renewal of most-favored-nation status, and opposition to China's entry into the WTO.<sup>37</sup> Such threats eventually led to the signing of the Memorandum of Understanding Between China (PRC) and the United States on the Protection of Intellectual Property ("1992 MOU") in 1992,<sup>38</sup> the Agreement Regarding Intellectual Property Rights ("1995 Agreement") in 1995,<sup>39</sup> and an accord that reiterated China's commitment to intellectual property protection in 1996.<sup>40</sup>

In retrospect, the 1992 MOU was effective in revamping China's intellectual property system. Pursuant to the 1992 MOU, China acceded to the Berne Convention for the Protection of Literary and Artistic Works<sup>41</sup> and ratified the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.<sup>42</sup> China also amended the 1990 Copyright Law, issued new implementing regulations, and adopted a new unfair competition law that provided trade secret protection.

Likewise, the 1995 Agreement was effective in helping China create an institutional infrastructure that was conducive to protecting and enforcing rights created under the new intellectual property regime. The Agreement introduced the State Council Working Conference on Intellectual Property Rights and the Enforcement Task Forces. To protect CDs, laser discs, and CD-ROMs, the Agreement also established a unique copyright verification system, proposing to punish by administrative and judicial means any manufacturer of audiovisual products who failed to comply with the identifier requirement. In addition, the Agreement called for title registration of foreign audiovisual products and computer software in CD-ROM format

with the National Copyright Administration and local copyright authorities. The Agreement also required customs offices to intensify border protection for all imports and exports of CDs, laser discs, CD-ROMS, and trademarked goods. Finally, the Agreement stipulated that relevant authorities would conduct training and education on intellectual property protection throughout China. The Agreement further provided that the Working Conference would develop a transparent legal system while compiling and publishing guidelines regarding application and protection in various areas of intellectual property law.

Notwithstanding these two agreements, piracy remained rampant in China, and the United States lost about \$2 billion of revenues annually due to rampant piracy in China in the late 1980s and early 1990s.<sup>43</sup> Consider computer software, for example. According to one industry estimate, 99% of all computer software in China was pirated in the late 1990s.<sup>44</sup> Because of this enormous piracy, some commentators labeled China a “one copy” country, implying that a single copy of computer software would satisfy the demand of the entire country through unlimited reproduction.<sup>45</sup> Although Chinese authorities firmly denied the 99% figure, a market survey conducted by *China ComputerWorld* in April 1998 indicated that “63 per cent of CD-ROMS used by users with college degrees were pirated, though the piracy rate was lower for users from other education backgrounds.”<sup>46</sup>

### **The About Turn in the Mid-1990s**

Since the mid-1990s, China has introduced many new intellectual property statutes and regulations and has entered into various international treaties. In 1996, China issued the Regulations on the Certification and Protection of Famous Trademarks and the Regulations on the Protection of New Plant Varieties while amending its Criminal Law to include a section on intellectual property crimes.<sup>47</sup> In April 2000, China became a member of the International Union for the Protection of New Varieties of Plants<sup>48</sup> and offered protection to trademark holders against cybersquatters.<sup>49</sup>

In addition, China made various institutional reforms to strengthen protection and enforcement of intellectual property rights. In April 1998, China upgraded the State Patent Bureau to the State Intellectual Property Office (SIPO), a ministry-level branch of the State Council that replaced the State Council Working Conference on Intellectual Property Rights established by the 1995 Agreement.<sup>50</sup> China also developed training programs that facilitate research and training in the intellectual property field.<sup>51</sup> To meet the increasing demand for expertise in intellectual property laws, Chinese universities began to offer courses, degrees, and departments in intellectual property law,<sup>52</sup>

As China prepared to enter the WTO, it revamped its entire intellectual property system, amending copyright, patent, and trademark laws while adopting a new regulation on the protection of layout designs of integrated circuits.<sup>53</sup> Taken as a whole, these amendments aligned the existing intellectual property regime with China’s changing socialist market economy. The amendments also strengthened protection, simplified procedures, and harmonized the regime with the TRIPs Agreements and other international treaties.<sup>54</sup>

In November 2001, the WTO member states finally approved China’s accession to the international trading body after more than fifteen years of exhaustive negotiations.<sup>55</sup> Shortly

after its accession, China issued regulations for copyright and trademark laws, as well as implementing rules concerning integrated circuits, computer software, and pharmaceuticals.<sup>56</sup> In addition, the State Council, the State Administration of Industry and Commerce, and the National Copyright Administration issued measures to improve China's intellectual property regime.<sup>57</sup>

Moreover, the Chinese government has made major improvements on the enforcement front. From time to time, the Chinese authorities have launched large-scale crackdowns on pirated and counterfeit products. For example, they launched an anti-counterfeiting campaign in November 2000 and followed it up a few months later with a major crackdown on counterfeit products that posed health and safety risks, such as food, drugs, medical supplies, and agricultural products.<sup>58</sup> In 2002, the Chinese government initiated a new anti-counterfeiting and anti-piracy campaign, which in turn resulted in high numbers of seizures of infringing products.

In addition, the Chinese leaders, through speeches and position papers, have emphasized the importance of intellectual property as an economic strategy.<sup>59</sup> Taking the lead from their leaders, books, television talk shows, media articles, and government and academic reports have highlighted the importance of intellectual property protection to China's economic development. Most recently, the Chinese government appointed Vice Premier Wu Yi to head a new leading group on intellectual property issues. Because Vice Premier Wu was heavily involved in the negotiation of China's intellectual property agreements with the United States in the early 1990s, this appointment signaled the Chinese leaders' recognition of the need for more focused and sustained efforts to tackle intellectual property enforcement problems and their concern that inadequate intellectual property protection would impede trade, foreign investment, and the development of a knowledge-based economy.

Notwithstanding these efforts by the Chinese authorities, significant problems still exist with enforcement of intellectual property laws, especially at the grassroots level and in rural areas. As the recent National Trade Estimate Report noted:

In 2003, IPR infringement in China continued to affect products, brands and technologies from a wide range of industries, including films, music, publishing, software, pharmaceuticals, chemicals, information technology, consumer goods, electrical equipment, automotive parts and industrial products, among many others. According to a July 2003 report by the State Council's Development Research Center, the market value of counterfeit goods in China is between \$19 billion and \$24 billion, which translates into enormous losses for IPR rights holders. Various U.S. copyright holders report that inadequate enforcement has resulted in piracy levels in China that have remained at 90 percent or above in 2003 for all copyright sectors, and that estimated U.S. losses due to the piracy of copyrighted materials continues to exceed \$1.8 billion annually.<sup>60</sup>

These problems were further exacerbated by the "lack of coordination among Chinese government ministries and agencies, local protectionism and corruption, high thresholds for initiating investigations and prosecuting cases, lack of training and inadequate administrative penalties."<sup>61</sup> Even worse, the increasing use of the Internet and the rapid proliferation of new communications technologies might exacerbate the existing problems, as piracy activities are no longer limited to commercial pirates and members of organized crimes, but individuals who sit at home or cyber cafés swapping copyrighted music or movies via peer-to-peer networks.<sup>62</sup>

## Why Has China Changed?

In light of these recent developments, one therefore might wonder why intellectual property protection in China has improved even though the U.S. government and American businesses backed away from their earlier coercive tactics. After all, the logic behind these tactics was that the Chinese intellectual property regime could not sustain itself and, therefore, required foreign pushes to rejuvenate the system. While these foreign pushes were undoubtedly helpful in establishing the Chinese intellectual property system in the early 1990s, recent improvements in intellectual property protection in China can be largely attributed to three other factors.

First, although foreign companies and governments were generally reluctant to take any substantial effort to promote awareness of intellectual property rights among the Chinese people and to communicate to them why better protection would be in their interest,<sup>63</sup> foreign and local businesses, trade associations, and industry groups have been very active in promoting awareness and understanding among the Chinese people. A case in point is the joint effort by the Business Software Alliance and the Chinese Software Alliance to promote the use of original software in China.<sup>64</sup> Thanks to these efforts, the Chinese have become increasingly aware of the basic functions of, and the rationales behind, intellectual property rights. To many Chinese, these rights are no longer alien, abstract, and incomprehensible. Rather, they are closely related to their daily lives and the country's domestic growth and international reputation.

Furthermore, by the late 1990s, the Chinese—perhaps influenced by the developments in the United States and the European Union—have begun to realize the importance of a well-developed information economy. All of a sudden, the phrase “knowledge economy” has become a catchphrase frequently seen in major Chinese newspapers, such as *Guangming Daily* and *The People's Daily*, and heard in presentations made by government officials.<sup>65</sup> Chinese businesses also quickly adopted words like “e-commerce” and “e-business” to enhance public recognition and stock market value.<sup>66</sup> In 2000, the National People's Congress unveiled a five-year plan that includes information technology among the major goals of China's long-term economic development.<sup>67</sup>

Second, the Chinese, in particular their leaders, have begun to notice the benefits of protecting intellectual property rights. In April 1997, the Chinese government provided assistance to set up special intellectual property affairs departments, create intellectual property protection networks, and build a self-protection system in enterprises and institutes to which intellectual property rights are particularly important.<sup>68</sup> These enterprises and institutes included major oil and chemical corporations, computer companies, and prestigious universities and scientific research institutes.<sup>69</sup> The Ministry of Information Industry also was determined “to create 30 large software companies with an annual revenue of RMB10 billion, and ten larger companies with an annual revenue of RMB 30 billion.”<sup>70</sup> Unlike what they did in the past, the Chinese leaders no longer consider intellectual property rights exploitative devices that help protect the West's dominant position. Rather, they have begun to see how these tools can help promote national growth.

Third, and most important of all, many Chinese have become stakeholders or potential stakeholders. Intellectual property therefore matters to them. Since the mid-1990s, China's

software industry has experienced a tremendous growth.<sup>71</sup> By 1997, the value of the software market had doubled from RMB 6.8 billion in 1995 to RMB 12.6 billion.<sup>72</sup> The Chinese government also has been active in developing the local software industry, establishing software bases in Liaoning, Hunan, Shandong, and Sichuan Provinces and in Beijing, Shanghai and Zhuhai districts.<sup>73</sup>

While the software industry was growing, the Internet population exploded. In October 1997, there were only 299,000 computers connected to the Internet, and 620,000 Internet users. Today, based on the July 2004 survey by the China Internet Network Information Center (CNNIC), there are 36.3 million computers connected to the Internet, and 87 million Internet users.<sup>74</sup> Although the growth in the Chinese Internet user community recently slowed down, China already has surpassed all the major developed countries except the United States and now boasts the second largest Internet population in the world, ahead of Japan, Germany, and the United Kingdom.<sup>75</sup>

Moreover, the Chinese have begun to perceive themselves as passive stakeholders. In other words, they now understand the danger of inadequate intellectual property protection and how the lack thereof could impair the well-being of their country while slowing down its development.<sup>76</sup> They also realized the damage the lack of intellectual property protection could inflict upon the country's international reputation. Because intellectual property protection remains a key issue in the WTO accession negotiation, the Chinese understand that the stakes for the lack of intellectual property protection extend beyond the intellectual property arena, covering almost every other area that implicates international trade, including agriculture, banking, electronics, insurance, professional services, securities, telecommunications, and textiles.

In November 2001, China finally became a member of the WTO. Although the accession process was complicated and involved many different factors, it would not be too far-fetched to argue that China might still remain outside the WTO had it not strengthened its protection of intellectual property rights. Indeed, some commentators considered the WTO membership a major impetus for China's recent improvements in intellectual property protection. As two leading commentators in Chinese intellectual property law explained:

In general, China's entry to the WTO significantly influenced the speed and scope of the development of the Chinese IP law system. It is interesting to note that IP rights reforms kept pace with Chinese WTO negotiations. When the negotiations encountered obstacles, the IP rights reform slowed down; when the negotiations reached agreements to promote the accession process, the IP rights reform accelerated noticeably. Since China has become a member of the WTO, Chinese IP law reform has also peaked.<sup>77</sup>

### **What Can We Learn from Intellectual Property Law Developments in China?**

When one compares the history of intellectual property law developments in China with that of other countries and the recent developments on the Internet today, one can make at least two interesting observations. First, despite what many commentators have argued, intellectual property piracy and counterfeiting is not a cultural phenomenon, even if China is concerned. Culture has always been a powerful explanation for extensive intellectual property piracy. For example, commentators discussed at length the classic Greek and Roman beliefs that works were



created through “inspiration by the muses,”<sup>78</sup> the Confucian underpinnings of Chinese society,<sup>79</sup> the familial and community values embodied in Islam laws,<sup>80</sup> and the hacker culture that paves the way to widespread MP3 piracy.<sup>81</sup> However, if examined carefully, this cultural explanation is as unconvincing as the argument that extensive MP3 piracy occurs in Western societies because of the communitarian underpinnings in Judeo-Christian teachings. Communitarian philosophies were (and are) not unique to the Greek and Roman republics, China, the Middle East, or hackers. They are found in civilizations around the world.

Undeniably, cultural barriers might make it difficult for intellectual property laws to emerge or develop. A culture-based analysis also might provide insight into a community of which the public has limited understanding. However, a different, or even pro-copying, culture does not necessarily result in extensive intellectual property piracy and counterfeiting. As Professor William Alford pointed out in his book, the Confucian culture militated against copyright protection in so far as it did not allow intellectual property protection to take root by itself.<sup>82</sup> This non-Western culture, however, had not prevented intellectual property protection from functioning in Chinese society once it was introduced—in this case by the United States and its European neighbors.<sup>83</sup> Indeed, there is strong compatibility between intellectual property rights and Confucianism,<sup>84</sup> just as there is between Western human rights and Confucianism.<sup>85</sup>

Moreover, piracy and counterfeiting are not unique to China. Many less developed countries, including the United States in the eighteenth century<sup>86</sup> and many newly emerged industrialized countries (such as Singapore and South Korea<sup>87</sup>), have experienced extensive piracy and counterfeiting before they implemented intellectual property law reforms. In fact, as many commentators have pointed out, the United States was one of the biggest pirating nations in the world in the late eighteenth and early nineteenth centuries.<sup>88</sup> Section 5 of the 1790 Copyright Act, the country’s first copyright statute, stated explicitly that

nothing in this act shall be construed to extend to prohibit the importation or vending, reprinting or publishing within the United States, of any map, chart, book or books, written, printed, or published *by any person not a citizen of the United States, in foreign parts or places without the jurisdiction of the United States.*<sup>89</sup>

It was not until more than a century later that Congress extended copyright protection to foreign authors from countries that the President proclaimed had offered Americans reciprocal copyright protection.<sup>90</sup> As the former Register of Copyrights Barbara Ringer summarized succinctly: “Until the Second World War the United States had little reason to take pride in its international copyright relations; in fact, it had a great deal to be ashamed of. With few exceptions its role in international copyright was marked by intellectual shortsightedness, political isolationism, and narrow economic self-interest.”<sup>91</sup>

Second, with the advent of the Internet and new communications technologies, piracy and counterfeiting have resurfaced in countries that traditionally have strong intellectual property protection, such as Canada, the United States, and many European Countries. This recent development therefore necessitates a critical reexamination of the piracy and counterfeiting problems in China. Consider, for example, the extensive mp3 piracy problem in the United States in recent years.<sup>92</sup> Since September 2003, the recording industry has filed several rounds of lawsuits, suing more than two thousand individuals suspected of swapping music illegally via peer-to-peer networks.<sup>93</sup> The recording industry’s action was understandable. After all, global

CD sales have dropped dramatically in the past three years.<sup>94</sup> As the International Federation of the Phonographic Industry (IFPI) pointed out recently, music piracy had threatened 600,000 jobs in the European music industry.<sup>95</sup> If piracy continued at the current level, it would not be surprising to find a similar number of—or even more—American jobs jeopardized.

Unfortunately, the strategies used by the Recording Industry Association of America (RIAA) are ill-advised, hurried, disorganized, costly, and ultimately ineffective. These strategies also have raised major concerns among legal commentators, consumer advocates, and civil libertarians and threaten to backfire on the constituents the trade group was charged to protect—record companies, musicians, artists, songwriters, engineers, producers, retailers, and truck drivers. Even worse, instead of coercing pirates into submission, the industry's lawsuits are likely to drive pirates underground, forcing file-swappers to turn to proxy servers, offshore and mirror Web sites, and encrypted peer-to-peer systems.<sup>96</sup> Indeed, a large variety of anonymizing technologies already exist. For instance, Freenet software allows file-swappers to encrypt download requests by passing the requests from one computer to another without disclosing how and where the user obtains the files.<sup>97</sup> Programs like Red Rover, Publius, and Red Haven also provide attractive alternatives for file-swappers to remain anonymous, thus avoiding censorship and recrimination.<sup>98</sup>

To some extent, the RIAA's recent efforts resemble the ineffective tactics used by the Chinese government to control the dissemination of unwanted information over the Internet. There is no doubt that the Chinese authorities have created a significant deterrent by cracking down repeatedly on cyber cafés, handing out heavy jail sentences to online dissidents, and implementing new and restrictive laws and regulations.<sup>99</sup> However, the heavy-handed tactics used by the Chinese authorities also have heightened the cautiousness and sophistication of Chinese netizens. As a result, anti-monitoring technologies proliferated, and Chinese users increasingly rely on proxy servers, offshore and mirror Web sites, and encrypted peer-to-peer systems to avoid detection.

## Conclusion

The history of intellectual property law developments in China has been filled with love and hate, hope and illusion, aspiration and skepticism. While China has been slow in reforming its intellectual property regime, recent developments have been promising. With the recent accession to the WTO, intellectual property protection in China can only improve, although the country might initially suffer from a short transitional period of political and socio-economic setbacks.<sup>100</sup> Notwithstanding these improvements, many commentators—including the public media—continue to use cultural differences to account for the piracy and counterfeiting problems in China. If cultural differences are unavoidable, perhaps commentators should at least focus on the “sweet and sour” nature of intellectual property law developments in the country in the past century.

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<sup>1</sup> See Seth Faison, *China Turns Blind Eye to Pirated Disks*, N.Y. TIMES, Mar. 28, 1998, at D1.

<sup>2</sup> See Peter K. Yu, *From Pirates to Partners: Protecting Intellectual Property in China in the Twenty-first Century*, 50 AM. U. L. REV. 131, 140-51 (2000) [hereinafter Yu, *From Pirates to Partners*] (describing the United States' use of section 301 sanctions and various trade threats to induce China to protect intellectual property rights).

<sup>3</sup> See, e.g., Memorandum of Understanding Between China (PRC) and the United States on the Protection of Intellectual Property, Jan. 17, 1992, P.R.C.-U.S., 34 I.L.M. 677 (1995) [hereinafter 1992 MOU]; Agreement Regarding Intellectual Property Rights, Feb. 26, 1995, P.R.C.-U.S., 34 I.L.M. 881 (1995) [hereinafter 1995 Agreement].

<sup>4</sup> WILLIAM P. ALFORD, *TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION* 13 (1995). Article 110 of the Tang Code stated: “All cases of possession of astronomical instruments, maps of the heavens, esoteric books, military books, books on the seven days, the *Methods of the Great Monad*, or the *Methods of the God of Thunder* by private persons punish violators by two years of penal servitude.” 2 THE TANG CODE 78 (Wallace Johnson trans., Princeton Univ. Press 1997). The Tang Code was significant for two reasons. First, it was the oldest surviving code in China today. Although comprehensive legal codes were enacted in the Qin and Han dynasties, most of these codes have been lost except through scattered quotations found in other works. Second, the Tang Code was the basis on which the later codes of the Song, Yuan, Ming, and Qing dynasties were developed. See ALBERT H.Y. CHEN, *AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE’S REPUBLIC OF CHINA* 12 (1998) (discussing the significance of the Tang Code).

<sup>5</sup> ALFORD, *supra* note 4, at 13 (footnote omitted).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 13-14.

<sup>9</sup> For comprehensive discussions of the British Star Chamber and the Stationers’ Company, see generally AUGUSTINE BIRRELL, *SEVEN LECTURES ON THE LAW AND HISTORY OF COPYRIGHT IN BOOKS* (1899); CYPRIAN BLAGDEN, *THE STATIONERS’ COMPANY: A HISTORY, 1403-1959* (1960); MARCI A. HAMILTON, *THE HISTORICAL AND PHILOSOPHICAL UNDERPINNINGS OF THE COPYRIGHT CLAUSE 4-8* (Benjamin N. Cardozo School of Law Occasional Papers in Intellectual Property No. 5, 1999).

<sup>10</sup> ALFORD, *supra* note 4, at 15.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 15.

<sup>15</sup> PETER FENG, *INTELLECTUAL PROPERTY IN CHINA* 3 (1997).

<sup>16</sup> ALFORD, *supra* note 4, at 33-34.

<sup>17</sup> *Id.* at 34.

<sup>18</sup> Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, *as last revised at Stockholm*, July 14, 1967, 21 U.S.T. 1538, 828 U.N.T.S. 305.

<sup>19</sup> International Copyright Act of March 3, 1891, ch. 565, 26 Stat. 1106 [hereinafter Chace Act]. Under the Chace Act, foreign authors received copyright protection when the President proclaimed that the foreign country provided American citizens with “the benefit of copyright on substantially the same basis as its own citizens” or that the country was a party to an international agreement that provided reciprocal protection to its members and to which “the United States may, at its pleasure, become a party.” *Id.* § 13.

<sup>20</sup> See Treaty for Extension of the Commercial Relations Between [China and the United States], *reprinted in TREATIES AND AGREEMENTS WITH AND CONCERNING CHINA 1894-1919* (J.V.A. MacMurray ed., 1921). This treaty represented “one of the first efforts by the United States anywhere to use its strength bilaterally to bring about greater intellectual property protection.” William P. Alford, *Making the World Safe for What? Intellectual Property Rights, Human Rights and Foreign Economic Policy in the Post-European Cold War World*, 29 N.Y.U. J. INT’L L. & POL. 135, 138 (1997).

<sup>21</sup> ALFORD, *supra* note 4, at 37, 41-42.

<sup>22</sup> *Id.* at 43.

<sup>23</sup> *Id.* at 2.

<sup>24</sup> *Id.* at 49.

<sup>25</sup> *Id.* at 47; see also IMMANUEL C.Y. HSÜ, *THE RISE OF MODERN CHINA* 411 (6th ed. 2000) (contending that the late Qing reforms were “a shrewd effort on the part of the dowager to disguise her shame over her role in the Boxer catastrophe”).

<sup>26</sup> ALFORD, *supra* note 4, at 49.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 2.

<sup>29</sup> While China was negotiating the commercial treaties with Britain, Japan, and the United States, the treaty powers hinted that they might relinquish extraterritoriality if they were satisfied with the state of the Chinese law and the arrangement for its administration. *Id.* at 36.

<sup>30</sup> *Id.* at 49.

<sup>31</sup> FENG, *supra* note 15, at 3.

<sup>32</sup> HSÜ, *supra* note 25, at 858.

<sup>33</sup> Agreement on Trade Relations Between the United States of America and the People’s Republic of China, July 7, 1979, U.S.-P.R.C., 31 U.S.T. 4652. The Agreement provided that “each Party shall seek, under its laws and with due regard to international practice, to ensure to legal or natural persons of the other Party protection of patents and trademarks equivalent to the patent and trademark protection correspondingly accorded by the other Party.” The Agreement also provided that “each Party shall take appropriate measures, under its laws and regulations and with due regard to international practice, to ensure to legal or natural persons of the other Party protection of copyrights equivalent to the copyright protection correspondingly accorded by the other Party.”

<sup>34</sup> HONG XUE & CHENGSI ZHENG, *SOFTWARE PROTECTION IN CHINA: A COMPLETE GUIDE* 5 (1999).

<sup>35</sup> See ALFORD, *supra* note 4, at 70.

<sup>36</sup> *Id.* Indeed, the State Council noted in a White Paper released in 1994 that intellectual property laws aim “to rapidly develop social productive forces, promote overall social progress, meet the needs of developing a socialist market economy and expedite China’s entry

into the world economy.” INFORMATION OFFICE, STATE COUNCIL OF THE PEOPLE’S REPUBLIC OF CHINA, INTELLECTUAL PROPERTY PROTECTION IN CHINA (1994), *translated in BBC SUMMARY OF WORLD BROADCASTS*, June 20, 1994, *available at* LEXIS, News Library, BBCSWB File.

<sup>37</sup> See Yu, *From Pirates to Partners*, *supra* note 2, at 140-51 (describing the United States’ use of section 301 sanctions and various trade threats to induce China to protect intellectual property rights).

<sup>38</sup> 1992 MOU, *supra* note 3.

<sup>39</sup> 1995 Agreement, *supra* note 3.

<sup>40</sup> China Implementation of the 1995 Intellectual Property Rights Agreement, June 17, 1996, P.R.C.-U.S., *available at* <http://www.mac.doc.gov/TCC/DATA/index.html>.

<sup>41</sup> Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, *as last revised at Paris*, July 24, 1971, 828 U.N.T.S. 221.

<sup>42</sup> Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Oct. 29, 1971, 25 U.S.T. 309.

<sup>43</sup> See Faison, *supra* note 1.

<sup>44</sup> XUE & ZHENG, SOFTWARE PROTECTION IN CHINA, *supra* note 34, at 15.

<sup>45</sup> See, e.g., KENNETH HO, A STUDY IN THE PROBLEM OF SOFTWARE PIRACY IN HONG KONG AND CHINA ¶ 2.6 (1995), *available at* [http://info.gov.hk/ipd/eng/information/studyaids/piracy\\_hk\\_china.htm](http://info.gov.hk/ipd/eng/information/studyaids/piracy_hk_china.htm).

<sup>46</sup> XUE & ZHENG, SOFTWARE PROTECTION IN CHINA, *supra* note 34, at 15 (citing *Subdivision Market Research of CD-ROM Publications*, CHINA COMPUTERWORLD, Apr. 13, 1998, at C15).

<sup>47</sup> *China: Laws Being Promulgated to Protect IPR*, CHINA DAILY, Nov. 10, 1997, *available at* 1997 WL 13647865.

<sup>48</sup> Shoukang Guo, *China: Status Report on the Protection of New Varieties of Plants in the PRC*, Pat. Trademark & Copyright L. Daily (BNA), at D5 (Sept. 1, 2000); *see also* Lester Ross & Libin Zhang, *Agricultural Development and Intellectual Property Protection for Plant Varieties: China Joins the UPOV*, 17 UCLA PAC. BASIN L.J. 226 (2000).

<sup>49</sup> Noah Smith, *China: New Chinese Law Protects Trademarks from Internet Squatters; Patent Law Revised*, Pat. Trademark & Copyright L. Daily (BNA), at D2 (Aug. 29, 2000).

<sup>50</sup> XUE & ZHENG, SOFTWARE PROTECTION IN CHINA, *supra* note 34, at 21-22.

<sup>51</sup> See, e.g., *China: First IPR Protection Personnel Center Opens in Beijing*, CHINA BUS. INFO. NETWORK, Apr. 17, 1998, *available at* 1998 WL 7561463; *China: Training Centre to Help Strengthen IPR Protection*, CHINA BUS. INFO. NETWORK, Jan. 17, 1997, *available at* 1997 WL 9840723.

<sup>52</sup> Jianyang Yu, *Protection of Intellectual Property in the P.R.C.: Progress Problems, and Proposals*, 13 UCLA PAC. BASIN L.J. 140, 149 (1994); Liangjun Xie, *New School Starts on Rights Track*, CHINA DAILY, Dec. 16, 1993, *available at* 1993 WL 10866676; *Shanghai Protects Intellectual Property*, AGENCE FRANCE PRESSE, Oct. 31, 1994, *available at* LEXIS, News Library, ALLNWS File.

<sup>53</sup> The English versions of these statutes are available on the website of the State Intellectual Property Office at <http://www.sipo.gov.cn>.

<sup>54</sup> See Louis S. Sorell, *A Comparative Analysis of Selected Aspects of Patent Law in China and the United States*, 11 PAC. RIM L. & POL’Y 319, 323 (2002).

<sup>55</sup> Paul Blustein & Clay Chandler, *WTO Approves China’s Entry*, WASH. POST, Nov. 11, 2001, at A47. For discussions of China’s entry into the WTO, *see generally* GORDON G. CHANG, *THE COMING COLLAPSE OF CHINA* (2001); NICHOLAS R. LARDY, *INTEGRATING CHINA INTO THE GLOBAL ECONOMY* (2002); SUPACHAI PANITCHPAKDI & MARK CLIFFORD, *CHINA AND THE WTO: CHANGING CHINA, CHANGING WORLD TRADE* (2002); Symposium, *China and the WTO: Progress, Perils, and Prospects*, 17 COLUM. J. ASIAN L. 1 (2003) [hereinafter *China and the WTO*].

<sup>56</sup> OFFICE OF USTR, 2004 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 72-73 (2004) [hereinafter 2004 NTE REPORT].

<sup>57</sup> *Id.* at 73.

<sup>58</sup> OFFICE OF USTR, 2002 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 58-59 (2002).

<sup>59</sup> *Id.* at 57.

<sup>60</sup> 2004 NTE REPORT, *supra* note 56, at 73.

<sup>61</sup> *Id.*

<sup>62</sup> See, e.g., Brian Buchanan, *Move with the TV Times*, GUARDIAN (London), May 1, 2003, at 19; Laura M. Holson, *Studios Moving to Block Piracy of Films Online*, N.Y. TIMES, Sept. 25, 2003, at A1; Mark Landler, *For Music Industry, U.S. Is Only the Tip of a Piracy Iceberg*, N.Y. TIMES, Sept. 26, 2003, at A1.

<sup>63</sup> Alford, *supra* note 20, at 142 (noting that “[f]or all its much ballyhooed expressions of concern, neither the U.S. government nor many of the companies driving [the American foreign intellectual property] policy . . . have made any substantial attempt . . . to communicate to the Chinese why better intellectual property protection would be in their interest.”); Daniel C.K. Chow, *Counterfeiting in the People’s Republic of China*, 78 WASH. U. L.Q. 1, 46 (2000) (noting that “brand owners are reluctant to commit the amount of resources necessary to achieve these goals or to risk seriously offending the Chinese government”); *see also* Patrick H. Hu, “Mickey Mouse” in China: *Legal and Cultural Implications in Protecting U.S. Copyrights*, 14 B.U. INT’L L.J. 81, 111 (1996) (noting that “active involvement by U.S. companies and lawyers, for example through special seminars, exchange programs, mock proceedings, and other assistance to the Chinese media, will expedite the training process”); Eric M. Griffin, Note, *Stop Relying on Uncle Sam!—A Proactive Approach to Copyright Protection in the People’s Republic of China*, 6 TEX. INTELL. PROP. L.J. 169, 190 (1998) (arguing that “U.S. Companies must take a proactive stance and not be content to rely on government for help”).

<sup>64</sup> *China: First IPR Protection Personnel Center Opens in Beijing*, CHINA BUS. INFO. NETWORK, Apr. 17, 1998, *available at* 1998 WL 7561463.

<sup>65</sup> XUE & ZHENG, SOFTWARE PROTECTION IN CHINA, *supra* note 34, at 7 (noting that “[t]he Chinese government has become enthusiastic about information-based economic development because it has become aware that the value of the global information industry is more than US\$1,000 billion, and that this will be the ‘first industry’ in the next century.”).

<sup>66</sup> HONG XUE & CHENGSI ZHENG, CHINESE INTELLECTUAL PROPERTY LAW IN THE 21ST CENTURY, at xl (2002).

<sup>67</sup> XUE & ZHENG, SOFTWARE PROTECTION IN CHINA, *supra* note 34, at 7.

<sup>68</sup> See *China: New Measure Will Be Taken to Protect IPR*, CHINA BUS. INFO. NETWORK, Apr. 4, 1997, available at 1997 WL 9842657; see also *China Introduces Anti-Piracy Technology*, CHINA BUS. INFO. NETWORK, Mar. 15, 1999, available at 1999 WL 5618404 (reporting the efforts of the China Software Association to introduce new anti-piracy technology to local software producers).

<sup>69</sup> *China: New Measure Will Be Taken to Protect IPR*, *supra* note 68.

<sup>70</sup> XUE & ZHENG, SOFTWARE PROTECTION IN CHINA, *supra* note 34, at 9.

<sup>71</sup> For discussions of the blossoming software industry in China and the leaders’ eagerness to develop science and technology parks, see generally *China: Guangzhou to Establish “Silicon Valley,”* CHINA BUS. INFO. NETWORK, Dec. 4, 1998, available at 1998 WL 22707603 (reporting the municipal government’s intention to develop an international science and technology park); *China: Sales of Software Stay Strong Despite Fakes*, ASIAINFO DAILY CHINA NEWS, June 20, 2000, available at Lexis, News Library, ASINFO File (“Despite the damage done by piracy, China’s software industry is still moving ahead with sales in 1999 hitting 17.6 billion RMB yuan (US\$ 2.13 billion), an increase of 27.5 percent over 1998.”); *China: Software Industry Booms in China*, CHINA BUS. INFO. NETWORK, Oct. 30, 1997, available at 1997 WL 12878806 (reporting a 50% annual growth rate in the software industry over the past several years).

<sup>72</sup> XUE & ZHENG, SOFTWARE PROTECTION IN CHINA, *supra* note 34, at 8 (citing *PC World China*, Mar. 9, 1998, at 15).

<sup>73</sup> *Id.* at 9.

<sup>74</sup> CNNIC, 14TH STATISTICAL SURVEY REPORT ON THE INTERNET DEVELOPMENT IN CHINA 5 (2004), available at <http://www.cnnic.cn/download/2004/2004072003.pdf>.

<sup>75</sup> Nielsen//Netratings Announces China Has World’s Second Largest Internet Population—56 Mln, CHINA IT & TELECOM REPORT, Apr. 26, 2002, available at LEXIS, News Library, ALLNWS File.

<sup>76</sup> See Yu, *From Pirates to Partners*, *supra* note 2, at 189-90; Peter K. Yu, *Piracy, Prejudice, and Perspectives: An Attempt to Use Shakespeare to Reconfigure the U.S.-China Intellectual Property Debate*, 19 B.U. INT’L L.J. 1, 61 (2001) [hereinafter Yu, *Piracy, Prejudice, and Perspectives*].

For example, adulterated drugs and counterfeit products will lead to illness, extended injuries, and unnecessary deaths. Emerging entrepreneurs, authors, and creative artists will be unable to capture the benefits of their inventions, innovations, and creative endeavors. To make up for the potential infringement of their fellow citizens and organizations, businesses and educational centers will have to pay more for the needed foreign technologies and materials. Consumers who receive worse products despite paying the same price will be reluctant to consume in the open market. Foreign entities will be wary of investing in China because of widespread intellectual property piracy. And worst of all, “the best and brightest from [China will] feel compelled to leave their home country for the more remunerative systems in developed nations.”

Yu, *From Pirates to Partners*, *supra* note 2, at 194-95 (footnotes omitted).

<sup>77</sup> XUE & ZHENG, CHINESE INTELLECTUAL PROPERTY LAW, *supra* note 66, at xxxix.

<sup>78</sup> WALTER BAPPERT, *WEGE ZUM URHEBERRECHT* 26-39 (1962) (positing that the classic Greeks and Romans, with pagan theories of inspiration by the muses, could not conceive of rights based on individual authorship), quoted in Paul Edward Geller, *Copyright History and the Future: What’s Culture Got to Do with It?*, 47 J. COPYRIGHT SOC’Y U.S.A. 209, 213 n.19 (2000).

<sup>79</sup> See generally ALFORD, *supra* note 4; ASSAFA ENDESHAW, *INTELLECTUAL PROPERTY IN CHINA: THE ROOTS OF THE PROBLEM OF ENFORCEMENT* (1996); PETER K. YU, *THE SECOND COMING OF INTELLECTUAL PROPERTY RIGHTS IN CHINA* (Benjamin N. Cardozo School of Law Occasional Papers in Intellectual Property No. 11, 2002); Alford, *supra* note 20; Jeffrey W. Berkman, *Intellectual Property Rights in the P.R.C.: Impediments to Protection and the Need for the Rule of Law*, 15 UCLA PAC. BASIN L.J. 1 (1996); Glenn R. Buttertton, *Pirates, Dragons and U.S. Intellectual Property Rights in China: Problems and Prospects of Chinese Enforcement*, 38 ARIZ. L. REV. 1081 (1996); Hu, *supra* note 63; Susan Tiefenbrun, *Piracy of Intellectual Property in China and the Former Soviet Union and Its Effects upon International Trade: A Comparison*, 46 BUFF. L. REV. 1, 40 (1998); Yu, *From Pirates to Partners*, *supra* note 2; Yu, *Piracy, Prejudice, and Perspectives*, *supra* note 76.

<sup>80</sup> See Richard E. Vaughan, *Defining Terms in the Intellectual Property Protection Debate: Are the North and South Arguing Past Each Other When We Say “Property”?* A Lockean, Confucian, and Islamic Comparison, 2 ILSA J. INT’L & COMP. L. 307, 345 (1996); see also PERSPECTIVES ON PLAGIARISM AND INTELLECTUAL PROPERTY IN A POSTMODERN WORLD 66 (Lise Buranen & Alice M. Roy ed., 1999) (discussing how some teachers attribute plagiarism by Middle Eastern students to the emphasis of community and family values in Middle Eastern cultures).

<sup>81</sup> See generally PEKKA HIMANEN, *THE HACKER ETHIC AND THE SPIRIT OF THE INFORMATION AGE* (2001); STEVEN LEVY, *HACKERS: HEROES OF THE COMPUTER REVOLUTION* (1984).

<sup>82</sup> See generally ALFORD, *supra* note 4.

<sup>83</sup> See YU, *supra* note 79, at 4-7 (discussing the importation of intellectual property rights into China by Western countries); Edmund W. Kitch, *The Patent Policy of Developing Countries*, 13 UCLA PAC. BASIN L.J. 166, 178 (1994) (noting that “[o]utsiders can play a constructive role by insisting that the [intellectual property] issues be addressed within a larger and principled framework.”).

<sup>84</sup> See Yu, *From Pirates to Partners*, *supra* note 2, at 224-25 (discussing the compatibility between the Chinese culture and Western intellectual property notions); Yu, *Piracy, Prejudice, and Perspectives*, *supra* note 76, at 76-77 (same). Compare XIANFA art. 20 (1982) (amended Mar. 29, 1993) (“The state promotes the development of natural and social sciences, disseminates knowledge of science and technology, and commends and rewards achievements in scientific research as well as technological innovations and inventions.”), and *id.* art. 47 (“The state encourages and assists creative endeavors conducive to the interests of the people that are made by citizens engaged in education, science, technology, literature, art and other cultural work.”), with U.S. CONST. art. I, § 8, cl. 8 (“The Congress

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shall have Power . . . to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”)

<sup>85</sup> In the past decade, substantial research has been devoted to explore the common grounds between human rights and the Chinese culture, in particular Confucianism. See, e.g., DANIEL A. BELL, *EAST MEETS WEST: HUMAN RIGHTS AND DEMOCRACY IN EAST ASIA* (2000); CONFUCIANISM AND HUMAN RIGHTS (Wm. Theodore de Bary & Tu Weiming eds., 1998); WM. THEODORE DE BARY, *ASIAN VALUES AND HUMAN RIGHTS: A CONFUCIAN COMMUNITARIAN PERSPECTIVE* (1998); THE EAST ASIAN CHALLENGE FOR HUMAN RIGHTS (Joanne R. Bauer & Daniel A. Bell eds., 1999); HUMAN RIGHTS AND CHINESE VALUES: LEGAL, PHILOSOPHICAL, AND POLITICAL PERSPECTIVES (Michael C. Davis ed., 1995).

<sup>86</sup> See Peter K. Yu, *The Copyright Divide*, 25 CARDOZO L. REV. 331, 336-53 (2003).

<sup>87</sup> See ROBERT SHERWOOD, *INTELLECTUAL PROPERTY AND ECONOMIC DEVELOPMENT* ch. 6 (1990) (discussing the introduction of a modern copyright law in Singapore in the late 1980s and the adoption of modern patent and copyright laws in South Korea in 1987).

<sup>88</sup> See JAMES BOYLE, *SHAMANS, SOFTWARE & SPLEENS: LAW AND THE CONSTRUCTION OF THE INFORMATION SOCIETY* 3 (1996) (noting that the United States used to be the biggest pirate in the late eighteenth and early nineteenth centuries); Alford, *supra* note 20, at 146 (stating that the United States has been “notorious for its singular” and “cavalier attitude toward the intellectual property of foreigners” during the time when it was a less developed country); Thomas Bender & David Sampliner, *Poets, Pirates, and the Creation of American Literature*, 29 N.Y.U. J. INT’L L. & POL. 255, 255 (1997) (stating that the United States failed to observe foreign intellectual property rights during its formative period and did not sign any international intellectual property agreements until the end of the nineteenth century).

<sup>89</sup> Act of May 31, 1790, § 5, ch. 15, 1 Stat. 124 (emphasis added).

<sup>90</sup> Chace Act, *supra* note 19.

<sup>91</sup> Barbara A. Ringer, *The Role of the United States in International Copyright—Past, Present, and Future*, 56 GEO. L.J. 1050, 1051 (1968).

<sup>92</sup> See Yu, *The Copyright Divide*, *supra* note 86, at 374-401.

<sup>93</sup> See generally Peter K. Yu, *The Escalating Copyright Wars*, 32 HOFSTRA L. REV. 907 (2004). For reports of the recording industry’s lawsuits, see Amy Harmon, *The Price of Music: The Overview*, N.Y. TIMES, Sept. 9, 2003, at A1 (261 lawsuits); *Record Industry Files 80 More Lawsuits*, N.Y. TIMES, Oct. 31, 2003, at C6 (80 lawsuits); *Music Industry Files More Suits*, N.Y. TIMES, Dec. 4, 2003, at C9 (41 lawsuits); John Schwartz, *Music Industry Returns to Court, Altering Tactics on File Sharing*, N.Y. TIMES, Jan. 22, 2004, at C1 (532 lawsuits); *More Downloading Suits by Recording Industry*, N.Y. TIMES, Feb. 18, 2004, at C3 (531 lawsuits); John Schwartz, *More Lawsuits Filed in Effort to Thwart File Sharing*, N.Y. TIMES, Mar. 24, 2004, at C4 (532 lawsuits); Brock Read, *Record Companies Sue People at 14 Colleges for Alleged Music Piracy*, CHRON. HIGHER EDUC., May 7, 2004, at A33 (477 lawsuits).

<sup>94</sup> See Jefferson Graham et al., *Hammering Away at Piracy*, USA TODAY, Sept. 11, 2003, at 1D; Greg Kot, *Music Industry Chooses to Bite Hand That Feeds It*, CHI. TRIB., June 29, 2003, at C10. But see FELIX OBERHOLZER & KOLEMAN STRUMPF, *THE EFFECT OF FILE SHARING ON RECORD SALES: AN EMPIRICAL ANALYSIS* (2004) (showing that file sharing has only had a limited effect on record sales), available at [http://www.unc.edu/~cigar/papers/FileSharing\\_March2004.pdf](http://www.unc.edu/~cigar/papers/FileSharing_March2004.pdf).

<sup>95</sup> Simon Beavis, *Record Firms Threaten Big Employers with Action to Combat Piracy*, INDEPENDENT (London), Jan. 21, 2003, at 19.

<sup>96</sup> See Saul Hansell, *Crackdown on Copyright Abuse May Send Music Traders into Software Underground*, N.Y. TIMES, Sept. 15, 2003, at C1.

<sup>97</sup> See generally Adam Langley, *Freenet*, in PEER-TO-PEER: HARNESSING THE POWER OF DISRUPTIVE TECHNOLOGIES 123 (Andy Oram ed., 2001) [hereinafter PEER-TO-PEER], for a discussion of Freenet software.

<sup>98</sup> See generally Alan Brown, *Red Rover*, in PEER-TO-PEER, *supra* note 97, at 133 (describing Red Rover); Marc Waldman et al., *Publius*, in PEER-TO-PEER, *supra* note 97, at 145 (describing Publius); Roger Dingledine, *Free Haven*, in PEER-TO-PEER, *supra* note 97, at 159 (describing Red Haven).

<sup>99</sup> For discussion of efforts by Chinese authorities to regulate the Internet, see generally SHANTHI KALATHIL & TAYLOR C. BOAS, *THE INTERNET AND STATE CONTROL IN AUTHORITARIAN REGIMES: CHINA, CUBA, AND THE COUNTERREVOLUTION* (Carnegie Endowment for International Peace Information Revolution and World Politics Project Working Papers 2001), available at <http://www.ceip.org/files/pdf/21KalathilBoas.pdf>; Nina Hachigian, *China’s Cyber-Strategy*, FOREIGN AFF., Mar./Apr. 2001, at 118; Jack Linchuan Qiu, *Virtual Censorship in China: Keeping the Gate Between the Cyberspaces*, 4 INT’L J. COMM. L. & POL’Y 1 (1999); Jiang-yu Wang, *The Internet and E-Commerce in China: Regulations, Judicial Views, and Government Policies*, COMPUTER & INTERNET LAW., Jan. 2001, at 12; Peter K. Yu, *Barriers to Foreign Investment in the Chinese Internet Industry*, GIGALAW.COM, at <http://www.gigalaw.com/articles/2001/you-2001-03.html> (Mar. 2001). See generally THE NETWORKS OF CONTRADICTIONS: UNDERSTANDING THE INFORMATION SOCIETY IN CHINA (Peter K. Yu & Jack Linchuan Qiu, forthcoming 2004).

<sup>100</sup> See *China and the WTO*, *supra* note 55.