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## "Making a Dollar out of Fifteen Cents"<sup>[1]</sup>: Tradition and Economy in the Development of Chinese Intellectual Property Law Since 1984

By Richard Xiang

Ranging from movie DVDs, *Harry Potter* books, and music CDs to computer software, educational materials, and industrial plans, intellectual property (IP) infringements were among the main foreign criticisms of China in the past two decades. One could easily find a bootleg media store in most urban areas, which would have rows and rows of pirated movies ranging from five to twenty RMB.<sup>[2]</sup> In most of these stores, one could also find pirated video games, CDs, and office software. In response to foreign criticism and motivated to attract foreign investment and technology, the Chinese government first introduced IP laws in 1984, and several subsequent revisions later, rampant piracy still persisted. Chinese IP laws were augmented by substantial borrowing from Western legal systems. Put simply, this mostly borrowed legal system worked against Chinese consumers, has thus failed to gain their support, and has been widely flouted. This IP piracy situation has been driven by economics and is not, as some have argued, a product of a specific cultural disposition. While the economic motivations for or against IP protection are universal, what has been uniquely Chinese, and which determined what kind of problems the reformers in the central government must face in order to strengthen IP, was local cultural factors' influence on regional politics and economics. Given that imported laws that work against the profitability of native economic endeavors could not be effective regardless of what foreign pressure was applied, the principle predicament for China to strengthen IP protection was the government's methods for economic development, which was rooted deeply in the distribution of economic space.

The three major branches of IP laws developed independently over the past four centuries in Western legal systems.<sup>[3]</sup> In contrast, modern Chinese IP laws were only hastily introduced two and half decades ago. In *To Steal a Book is an Elegant Offense*, William P. Alford examined the historical factors that have constricted IP law development. "Imperial China did not develop a sustained indigenous counterpart to intellectual property law,"<sup>[4]</sup> and the initial introduction of IP laws at the start of the twentieth century failed to achieve cogent effect because both natives and foreigners "presumed a legal structure, and indeed, a legal consciousness, that did not then exist in China."<sup>[5]</sup> The initial modern re-establishment of IP laws in 1984 was, to no one's surprise given that the government used the measure primarily to attract needed foreign investments and technology, only a proclamation of rights without any ground-level enforcement.<sup>[6]</sup> "Hence [the government's plan to balance foreign demand and regulate as little as possible] has resulted in having it neither way."<sup>[7]</sup> As foreign pressure grew, the government had to commit more and more resources to strengthen IP enforcement. Alford concluded his analysis of Chinese IP history with a perspective on the U.S. government's stance. He argued that the implantation of Western values and extrinsic legal mechanisms will not solve the array of problems facing Chinese regulators, and the U.S. government should promote a native development of IP laws.<sup>[8]</sup> Alford argued that Chinese cultural traditions, particularly scholastic traditions, emphasized that transmission of knowledge is a virtue and knowledge is communal wealth.<sup>[9]</sup> Current IP development has failed to satisfy foreign expectations or fit into the legal idiosyncrasy because the nature of these grafted foreign laws necessarily undermined IP enforcement. In

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addition, bilateral treaties and World Trade Organization (WTO) regulations could not help but remind the Chinese of their painful encounter with Western imperialism in the past. Alford argued for the need for the Chinese government to reconcile modern IP laws and traditional Chinese culture. However, Alford's implication was that cultural difference was at the center of the problem of rampant IP infringement. Yet taking value in imitation of calligraphy styles in art pieces was not the same as promoting counterfeit CDs produced in industrial sized factories.

The phenomenon of unrestricted counterfeiting is a symptom of a diverse array of Chinese economic illnesses. In *Piracy and State*, Martin Dimitrov pointed out that while the Chinese government employed the biggest IP enforcement agencies in the world, the country continued to be the world's largest counterfeit producer.<sup>[10]</sup> These enforcement agencies have not worked efficiently. He suggested that the government must reorganize the bureaucracy to make its enforcement power felt at the ground-level. In *The Politics of Piracy*, Andrew Mertha observed that the enforcement agencies, controlled by the central government, wanted strict enforcement of IP laws but were hindered by layers of bureaucracy and provincial politics.<sup>[11]</sup> In multiple congressional hearings about IP infringements in China, U.S. witnesses either claimed that the Chinese government was unwilling to enforce IP laws or recited the statistics on lost revenue American businesses incurred by counterfeiters.<sup>[12]</sup> Chinese legal scholars responded that IP necessarily constituted monopolistic control over products and resources, and IP enforcement agencies should not unconditionally obey foreign demands because it would hurt the Chinese economy. In *Intellectual Property and Antimonopoly Law*, Wang Shian-Lin argued that the developing IP system must be complimented with strong antimonopoly laws to guard against foreign companies such as Microsoft.<sup>[13]</sup> The IP problem is like a Rubik's Cube; there are a prohibitively large number of sides to look at in a study,<sup>[14]</sup> but the centerpiece is economic profit.

The printing press existed in China in ancient times, as well as a primitive law about printing rights. For example, Dongdo Shilue's (a collection of classical books) exclusive printing right was granted to one printer by the imperial government. During the Song Dynasty, Pi Sheng invented movable type, which put woodblock printing at a disadvantage. The printing guilds, who had heavily invested in woodblock machines, created a monopoly of printing rights against the new invention.<sup>[15]</sup> Some Chinese historians argued that China did have primitive copyright, but "the hierarchical organization of the imperial society left little room for a consciousness that rewarded outstanding creative efforts."<sup>[16]</sup> Furthermore, the imperial governments, fearing dissenters, viewed anything outside the classics as detrimental to their rule. In fact, the first IP law comparable to that in the West was the Copyright Act of the Great Qing Dynasty in 1910, but it was set aside when the dynasty ended in 1912. The communist government wanted to modernize the Chinese economy, which as a result, started to synchronize Chinese law with Western law in 1979. The push for a modern IP system culminated in its ascension to the Paris Convention for the Protection of Industrial Property in 1984.<sup>[17]</sup> This was a part of Deng Xiaoping's plan to modernize China after the devastating Cultural Revolution. An IP system comfortable for Western technology holders was a boon to a number of Chinese industries that desperately needed Western technologies.<sup>[18]</sup> Trademark Law was implemented in 1982,<sup>[19]</sup> Patent Law in 1984,<sup>[20]</sup> and Copyright Law in 1990.<sup>[21]</sup> These legal codes, along with the creation of new regulatory agencies to oversee the enforcement of these laws,<sup>[22]</sup> were declarations of the existence of such rights, the purpose of which was to declare the government's recognition rather than to create impact on the ground-level.<sup>[23]</sup> For instance, all foreign investors were required to register trademarks with the government to secure legal protection, but the protections attached to these registrations were scarcely enforced.<sup>[24]</sup> In the early nineties, the U.S. pressured China to improve IP protection, resulting in a 1992 bilateral agreement.<sup>[25]</sup> Under threat of sanction, the Chinese government revised IP laws in 1993, signed new treaties in 1994,<sup>[26]</sup> and signed another bilateral treaty with the U.S. in 1995,<sup>[27]</sup> as both parties surmised that the problem was with the law. The issue of IP infringement was one of the reasons the U.S. government

intransigently held for blocking China's accession to the WTO until 2001,<sup>[28]</sup> even though the central government promised to create more implementations of IP laws as they had revamped patent laws in 1999.<sup>[29]</sup> Since then, U.S. politicians have consistently pressured China through WTO regulations and sanctions to implement better IP protection. These perturbations on the central government engendered little result on the ground-level, and it only generated reluctant responses, seeking only fictive solutions that aimed at temporary patching work.<sup>[30]</sup> Alford described this development as a failure, mainly because of the U.S.' strategy of coercion by threat of economic sanctions was incompatible with the nascent Chinese IP establishment.<sup>[31]</sup> Hence, the estimated piracy rate did not improve despite multiple reorganizations of IP enforcement and implementations of new IP laws.

The Chinese government developed an IP system to modernize the economy, and IP laws were designed to protect the collective interests of the society rather than those of individuals or commercial parties. The 1982 version of the Trademark Law stated, "this law is enacted for the purposes of improving the administration of trademarks...with a view to protecting consumer interests and to promoting the development of socialist commodity economy."<sup>[32]</sup> The 1984 Patent Law stated, "This Law is enacted to protect patent rights for inventions-creations ... to foster the wider dissemination and application of inventions-creations, and to promote the development of science and technology for meeting the needs of the construction of socialist modernization."<sup>[33]</sup> The Chinese tradition was devoid of Lockean individualism and Smith's free market; instead, the collective family, regional society, and the nation were the central organizing units of life. This was evident in the Patent Law of 1984: "no patent rights shall be granted for any invention-creation that is contrary to the laws of the State or social morality or that is detrimental to public interest."<sup>[34]</sup> Hence, the nature of these IP laws necessarily contradicts the tradition of placing collective interest well above individual rights. As Alford phrased it, "[Chinese IP laws] have been deeply flawed in their failure to address the difficulties of reconciling legal values, institutions, and forms generated in the West with the legacy of China's past..."<sup>[35]</sup> Another scholar described this as "the problems of IP right holders in China today rather than reflecting inadequate legislation are more a result of the practical difficulties encountered in exercising their rights."<sup>[36]</sup> These legal components accurately reflected contributions of cultural factors within the legal structure. Nonetheless, Alford's observation explained only the cause of the IP regime's failure at the level of application, but not the cause of the IP piracy problem. The cause of rampant piracy and its persistence was not, then, fundamentally cultural.

Local officials often refused to enforce central government policies, such as an administrative order or a court case decision. If local officials closed down counterfeit factories permanently as instructed by enforcement agencies in the central government, it would have decimated the local job market. Furthermore, because many counterfeit producers colluded with key local officials, their political associations were emblematic of the commonly perceived image that being the aggregate economy of IP piracy was government sponsored. Local autonomy coincided little with Confucian ideas of obeisance and respect for political hierarchy. In fact, many local businessmen and officials established monopolistic practices that dominated the local economic growth and took money into their own pockets; the central government did not have enough political capital to eradicate this form of corruption.<sup>[37]</sup> Often, the enforcement agencies or relevant courts issued enforcement orders to local police forces that would put the requests aside and answer further inquiries with excuses of limited resources and manpower.<sup>[38]</sup>

IP piracy meant something different to Chinese consumers than it did to the government. To an average urban resident in Shanghai, one of China's most developed cities, software piracy meant thrift and a little patriotism. To obtain original copies of Windows and Microsoft Office meant spending several months' salary, while a cheap counterfeit at a mom and pop shop meant spending ten RMB for both. Purchasing a well made pirated copy at a shopping center meant spending, at most, fifty RMB for both. The most convenient scenario for the consumer would be that one of a group of friends had an original copy bought by their employer and everyone else would

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make a copy at a dinner party. If one asked any consumer in these counterfeit stores about why they disregarded the law, they would commonly reply that companies should make products affordable.<sup>[39]</sup> In addition, a consumer would argue that if he or she bought the original software, the money spent would aid foreign competitors of Chinese companies. It was a consumer's duty to buy Guo-Chang (made in China).<sup>[40]</sup> In the case of consumer goods such as imported alcohol, Calvin Klein, perfume, television sets, jewelry, or food, an average consumer usually preferred more affordable native equivalents to counterfeit goods.<sup>[41]</sup> The flow of pirated products depended on the actions of private individuals and had little to do with the government's stance, although a satisfied consumer would strengthen the government's legitimacy.

The phrase "China failed to protect intellectual property rights"<sup>[42]</sup> consistently appeared in Congressional hearings, journal articles, newspapers, magazines, and most frequently in the 301 annual reports written by the Office of the United States Trade Representative (USTR). The Chinese government was thought responsible for protecting American IP. Alford put this as one of the "fundamental misconceptions,"<sup>[43]</sup> because "it is critical that one not equate the promulgation of new law on intellectual property with a meaningful transformation of Chinese life."<sup>[44]</sup> In the 1995 301 report, USTR listed the completion of the bilateral agreement with China, and the consequent revision of IP laws, as its most significant accomplishment.<sup>[45]</sup> A decade later, China was on Section 306, under WTO disputes and threats of immediate trade sanctions, since the rate of piracy calculated by USTR did not change.<sup>[46]</sup> In the congressional hearing of the same year, Ambassador Michael Kantor (USTR) elaborated on the government's accomplishments, especially the ratification of "some effective and important documentation," and said that he would be happy to "supply technical assistance to the Chinese Government in order to implement this agreement [to revise its IP policies]."<sup>[47]</sup> The purpose of these scrutinies of the IP problem was to bring the Chinese government into compliance with bilateral treaties and WTO regulations. As Alford warned, "the conditions that breed protection for intellectual property are also those that breed competition with regard to intellectual property."<sup>[48]</sup> The same laws the U.S. wanted also stimulated factors that undermined the IP regime. The U.S. policies persuaded the Chinese government to hastily draft IP laws that mimicked U.S. standards, which resembled grafted organs a body would naturally reject. Since the motivation for the Chinese government to conduct revisions and create vigorous implementations of IP laws was to satisfy the U.S. government instead of adjusting policies to the needs of its own society, discrepancies between the laws on paper and the ground-level effect of the laws arose. China was one of the countries consistently included in the 301 watch list. The placement trend of nations on the 301 report supported Alford's argument: countries such as South Korea, Argentina, Brazil, India, Poland, and Taiwan were under the threat of U.S. trade sanctions if they would not provide IP protection similar to the U.S. standards. Yet from 1989 to 2004, the period in which China emerged as the largest counterfeiting market, these nations remained on the 301 reports as their IP protections proved little satisfaction to the U.S.,<sup>[49]</sup> and the actual improvement of IP protections in these countries remained doubtful. The contributions of external factors on the IPR development were cryptic, as were the internal dynamics.

While foreign governments put pressure on the Chinese government, much of the conflict over piracy played out through litigation in Chinese courts. One of the early legal battles that tested the water was Wang Yongmin's lawsuits with the Dong-Nang Company over the Wubi software program.<sup>[50]</sup> Developed by Wang's team in the eighties, Wubi is a software program essential to many Chinese computer users because it encodes the Chinese language for computers, which previously only accepted Western alphabets and not Chinese characters.<sup>[51]</sup> Wang's lawsuit in 1993 was for patent infringement<sup>[52]</sup> and ended with Premier Zhu Rongji's intervention in favor of Wang in 1999.<sup>[53]</sup> Wang's various litigations were controversial; they were among the first to test the Chinese IP system. There were multiple cases with very large amounts of money involving powerful interest groups,<sup>[54]</sup> multinational companies,<sup>[55]</sup> and Chinese consumers. The litigation involved a program that many Chinese

speaking consumers might use whether they lived in the People's Republic of China or elsewhere. Wang's litigations revealed most of the influential factors about IP protection in China.

Wang Yongmin graduated from Science-Technology University with a degree in wireless electronics in 1968 a few years after the Cultural Revolution began.<sup>[56]</sup> He initiated a state-sponsored project to invent a solution for Chinese in computer languages in 1978, and his patent for the Wubi software was officially recognized in 1987.<sup>[57]</sup> Wang and his investors opened the Wang-Ma Computer Company in 1988. His software moved quickly into the marketplace, but only gained popularity in the early nineties.<sup>[58]</sup> Wang's enterprise was successful until a number of other companies commercially reproduced Wang's software without acknowledgement. Wang attacked these IP violations publicly, and his protests resulted in an apocryphal lawsuit for libel from Dong-Nang in 1992.<sup>[59]</sup>

Dong-Nang Technical Trading Company was similar to almost all the other commercial enterprises established in the 1980s and early 1990s in that it had political backing from local and state officials. Dong-Nang was impatient with Wang's criticism because of the resulting loss of sales, so the company sued him for libel.<sup>[60]</sup> Dong-Nang argued that its "Dong-Nang 9218 II" was not an exact copy of Wang's software. In addition, one of the team members of Wang's original development team, Zhang Daozheng, developed Dong-Nang's product. Since Zhang claimed to be one of the inventors of Wubi, the parts that Dong-Nang shared with Wubi were legally justifiable.<sup>[61]</sup> The company sought three and half million RMB (410,000 U.S.D. 1995) and demanded a public apology. Wang argued that Dong-Nang's product was technically indistinguishable from Wubi and Zhang was not the owner of the patent for the software.<sup>[62]</sup> The court ruled against Wang, giving its reasons that several characters were not put in the same place and Dong-Nang's product ran independently of Wubi. The punishment was a public apology and two million RMB in compensation to Dong-Nang.<sup>[63]</sup> The battle soon escalated as a diverse range of opponents also filed suits against Wang. Those companies that used Wubi in computer products had to pay Wang royalty if Dong-Nang lost this suit. The patent law protected only the integral part of Wang's technical solution and not the general computer method, meaning that others may avoid legal consequence if they proved their solutions only used general ideas from Wang's product.<sup>[64]</sup>

The litigation was as much a political battle as a legal one. Wang was connected politically and his project was initially a part of a state-sponsored program. Nonetheless, Dong-Nang was more entrenched in the politics of technology than Wang, and IBM also had a stake in Dong-Nang's success because it used Dong-Nang's software. The secretary of the official Chinese Information Association, among other officials, also publicly supported Dong-Nang. <sup>[65]</sup> Regardless of the daunting pressure, Wang sued Dong-Nang for patent infringement in the Beijing Medium Court in 1993. The court evaluated the case based on its technical merits. The arrangement of entry blocks was slightly different. Dong-Nang claimed their arrangement was more efficient. Nevertheless, Dong-Nang's software contained 83 percent of the same coding for characters as Wang's. The court rejected Dong-Nang's statistical arguments, though no standard for such a comparison was invoked. The court ruled that Wang's patent protected him against minor manipulation of the product, and since Dong-Nang's product necessarily required the use of all of Wang's patented technology, Dong-Nang lost the case. The court decided that Dong-Nang should compensate Wang in the amount of two-hundred-forty-thousand RMB, with further compensation for using Wang's patent, and make a public apology.<sup>[66]</sup> This court decision attracted attention from all the interest groups that allegedly infringed upon Wang's rights, which were now expected to pay Wang's company a considerable sum of royalties for the patented Wubi. In 1994, Dong-Nang appealed with political backing that transpired a large group of companies. The Beijing High Court reversed the previous decision on the grounds that Wang's patent did not cover Dong-Nang's content exactly, despite finding many similarities in coding.<sup>[67]</sup> The court used the exclusion principles in the law that narrowed the parameter of patent protection to prevent unfair competition. The traditional concept of "holdership," wherein the owner of the patent only holds the patent as a show for his



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achievement and nothing more, was still a common belief among citizens.<sup>[68]</sup> Many thought the core of the case was pretext for licensing fees instead of IP protection, and Wang was, in a sense, fighting against the economic interests of the many. Wang's opponents thought to damage his image by painting him as a greedy capitalist who would not allow free public access to vital technology. During the trial, the high court placed the burden of proof on Wang, which provided an advantage to Dong-Nang. These issues were later addressed in revisions of the patent law.

Wang's litigation against infringement continued as his software's popularity grew; legal problems about IP spread to provinces where new industries sprouted as the Chinese economy took off. In these provinces Wang's connections with the government were sufficient, as was evident in a 1994 case in Hunan where the court ruled in his favor. The compensation was three-hundred-and-sixty-thousand RMB.<sup>[69]</sup> His battle with Dong-Nang also continued. In 1998, the Beijing First Medium Court threw out Wang's appeal and ruled that his public criticism of Dong-Nang resulted in the company's loss of three hundred and five million RMB. The compensation was set at two million RMB.<sup>[70]</sup> The decision stated that based on the previous case, which Wang had lost, Dong-Nang's product did not constitute patent infringement. Wang, nonetheless, continued to publish articles criticizing Dong-Nang, and the court ruled that Wang thereby committed libel.<sup>[71]</sup> Finally, the central government intervened in this popular case in 1999 and terminated Dong-Nang's legal assault on Wang's company.

During the period of these battles, a letter to the central government, written by one of the drafters of the Patent Law, stated that Wang's invention was historically significant and that Dong-Nang's victory would result in "the country's loss of millions in royalties from foreign sources," though it might also result in loss of confidence by Chinese inventors, the general population, and foreign investors in the IP system.<sup>[72]</sup> Throughout Wang's story, neither side invoked any notion of accommodation to traditional values, although Wang publicly claimed that his product was for everyone to use and that he had done this out of a sense of patriotism. This was evident because the ordinary consumer end of Wubi was free, but the commercial end of the program was not. The conflict arose from Wang's economic loss; Chinese traditions remained on the periphery of this famous legal battle. As a result of cases like this, the revision of Patent Law added that accused infringers now have the burden of proof instead of plaintiffs.<sup>[73]</sup> Despite the absence of considerations or implications of cultural factors in these revisions, many natives became enthusiastic about obtaining a patent, and evidentially both the volume of application and patent enforcement rose dramatically.<sup>[74]</sup>

This change, nevertheless, did not constitute a sudden shift in Chinese culture towards a rule of law society wherein IP piracy was not a pressing defect. One must also not perpetuate the idea that a single snapshot of a problem in one location is applicable to another place. Wang's legal victory by no means propelled his company into the Fortune 500, and change towards strict enforcement of IP laws was but a small milestone. The improvement of IP protection was limited to specific sectors of industry and particularly to limited metropolitan areas. One should look into the history of the formalization of legal systems outside the cities to understand why the Chinese were more successful in protecting patented technology than copyrighted materials.

After the Cultural Revolution in the mid-seventies, the central government planned a top down development of lawyers and paralegals to help enforce the law, which was in most part absent during the Cultural Revolution. Originating from experimentation in rural areas, the "basic-level legal workers" were a group of legal advisers that substituted for lawyers. The central government implemented the policy of establishing legal advice offices to strengthen the judicial system in rural areas and places far away from the central government's influence. "Judicial administration office" and "local legal service offices" were the sub-court government agencies that handled the majority of legal conflict in these areas, and they were either staffed or worked with "basic-level legal

workers."<sup>[75]</sup> Historically, Chinese lawyers and their equivalent predecessors did not deal with rural problems. These educated elites remained in urban areas, and one could easily find stories of farmers going to the nearest town to solve a legal conflict in ancient and modern times. In the past, the government relied on the literate elites of townships and villages to self-regulate and solve legal problems. These literate elites were expected to pass at least some form of official exams, and if they failed to obtain government employment, the next job would be to mediate between government officials and the local people. Jia Fa's literary translation is family law; the traditional organization of rural family and society centered on a family leader and a local oligarchy. The "basic-level legal workers" ameliorated the demand for legal personnel during the development in the eighties. In 1987, the number of these workers approached 60,000. The Total number peaked at 122,000 in 2000.<sup>[76]</sup> This group of legal professionals handled most civil issues including IP protection, though all criminal issues required lawyers. In rural towns and villages, the "basic-level legal workers" were the most direct group to inform, educate, and advise people on legal policies.

In 2000, the administration wanted to formalize the status of "basic-level legal workers" through better administration and a nationwide licensing exam. It was overturned because a large group of lawyers demurred to support.<sup>[77]</sup> Chinese lawyers invoked American examples to assert their objection against the "basic-level legal workers." The Minister of Justice Zhang Fusen supported the lawyers' position on the grounds that China should foster professionalism, even at the expense of weakening a beneficial institution.<sup>[78]</sup> Through the 1980s and 1990s, lawyers gained in number, power, prestige, and money. The effort to uproot the "basic-level legal workers" in 2000 was an attempt to draw a line between the lawyers and the paralegals. The invocation of professionalism was little more than veiled protectionism.<sup>[79]</sup> The criticism of the "basic-level legal workers" was due to misrepresentation of their professional status. To many Chinese, they were the "second lawyers" of lesser quality but a lot cheaper. In a sense, they were the counterfeit lawyers for the masses. The lawyers publicized animadversion about the group for a lack of professional education and the subsequent spread of misinformation. Officials did not like the public's confusion about the status of this group, and the number of basic-level legal workers was reduced to 80,000 in 2006.<sup>[80]</sup> Reduction of legal workers, in concordance with no significant increase in the number of lawyers outside major urban areas, the segue was destined to increase the lack of information about what people were entitled to under law. Furthermore, this situation reinforced beliefs regarding party rule and who was in power.<sup>[81]</sup> Without the rule of law enforced in all of China, IP protection could not find indigenous roots in Chinese society.

New Balance Athletic Shoes, Inc. was one of the American companies that invested in manufacture-contracting. Like all famous trademarks in China, manufacturers and counterfeiters exploited the attraction of the name brand. Albeit New Balance registered their trademark with government agencies, some manufacturers managed to find loopholes. They exploited technicalities of law in some cases and the public's misinformation in others. New Balance completed a trademark authorization contract with the Yan Jian You Lian Company in 1995. The contract allowed this manufacturing company to produce shoes with New Balance trademarks. The contract was registered in the United States later that year, and the effective term was from January 25, 1995 to April 14, 2003, however, the contract was then terminated in December 31, 1999 due to a lack of orders from New Balance. New Balance's agents found out in late 2000 that Shengzhen Long-Haio Shoe Company, a sales company located in Shengzhen, was selling shoes with the New Balance logo. The agents bought one pair and found out that the product was made by Yan Jian You Lian in 1999. New Balance then filed a lawsuit against the sales company and the manufacturer for trademark infringement.<sup>[82]</sup> New Balance employed one of the IP agencies in Shanghai to confiscate a large number of New Balance shoes produced by the manufacturer and suspected that the manufacturer produced shoes after the termination of the contract. The case landed in the High Court of Guangdong Province in 2002.



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The court discovered a report of the manufacturer's productions, which indicated the company produced almost three million pairs of shoes with the New Balance logo in 1999, one and half million pairs in 2000, and seven thousand pairs in the first month of 2001. The report also showed that most of these products were sold. The company showed a profit before tax of 299,093.01 RMB in 1999, a loss of 1,497,499.56 RMB in 2000, and a profit of 167,381.22 RMB in 2001. The plaintiff and defendant concurred that the report produced by a third party was accurate.<sup>[83]</sup>

The focus of the case was the issue of how much commercial freedom the original contract granted the manufacturer. New Balance claimed that the contract did not grant the manufacturer the right to use the three named logos. The company refused to provide a copy of the contract, but the court later obtained a copy. New Balance then argued that the contract allowed the manufacturer to put the New Balance logo on shoes produced for New Balance, but that it did not allow the company to provide New Balance logoed shoes to other retailers. The contract specified that the manufacturer should provide all New Balance's products to the company's retail partner in Hong Kong. Since the manufacturer sold the shoes directly to different Chinese retail companies, it violated the terms of the contract.<sup>[84]</sup>

The manufacturer argued that the contract granted it authority to produce and sell the logoed products, and the terms did not specify which retailer the manufacturer must sell to. Since New Balance never ordered any production, the manufacturer claimed the sales were justified and legal. Furthermore, New Balance counterclaimed that the manufacturer produced New Balance shoes after the termination of the contract, but the court dismissed its claim due to lack of evidence. New Balance claimed that the Shengzhen Long Haio Company violated its registered trademarks because New Balance did not authorize sales in retail stores associated with this company. The retailer claimed sales were contracted with the manufacturer.<sup>[85]</sup> The court determined that the contract allowed the manufacturer to use the three New Balance logos within China during the term of the contract. Therefore, only the productions during the first month of 2001 violated the terms of the contract and constituted trademark infringement. Nevertheless, New Balance provided evidence against the retailer's alleged infringement but not against the manufacturer.

New Balance developed its argument, claiming that the first part of the contract stated that New Balance granted the manufacturer the rights to production, and that this was separate from trademark rights that would allow for sales. New Balance signed a contract with a Hong Kong based retail company that granted the company sole rights of sales within China. The original designed process of production allowed the Hong Kong based company to provide the manufacturer materials, and later the factory would send the finished shoes back. It was up to the Hong Kong based company to determine how much production the manufacturer should undertake. New Balance argued that the court must concede to international standards and recognize the rights to production were separate from trademark rights, and must consider the economic damage caused by these products due to unfair competition. According to the nature of granted rights and the business law of the land, New Balance claimed, the manufacturer's business was not retailing but production; hence, the legal rights associated with the business were limited to production.<sup>[86]</sup> The manufacturer counterclaimed that New Balance did not provide factual and valid evidence. The contract stated that production was allowed before July 2001; New Balance's contract with the Hong Kong based company bore no legal relevance to this case because it was not registered with the proper authorities in China.

The court independently discovered that New Balance sent a letter to inform of a termination of business association with the manufacturer on April 27, 2001, and the sales rights were granted to Joahco Company in

Haikou. The court referred to Articles 9 and 26 of the 1993 version of the Trademark Law, which stated that the trademark user must put the place and name of the manufacturer on the product and that the quality of the product should be monitored.<sup>[87]</sup> According to Articles 8 and 60, the purpose and usage of a contract should be determined by the exact terms and relevant circumstances, and all contracts should guarantee both parties' intention for economic profit.<sup>[88]</sup> The specific contract in 1995 did not make an explicit statement about the term of sales; hence, the court should not determine whether the manufacturer violated trademark laws. If the manufacturer did not have the right to sell its products, then the manufacturer would not have any profit, given that the manufacturer was not doing well fiscally without the lawsuit. Therefore, a prohibition of sales would contradict the intention of the original contract. New Balance could not legally limit where and how the manufacturer could sell the products because such a limit was not included in the contract and it was not supported by the law of the land. Furthermore, the sales of the products should have resulted in a positive outcome for New Balance since the products were of satisfactory quality and sales would garner a more positive reputation for New Balance. The contract termed that a termination of association should only take effect after 90 days of the letter-to-inform. Since the letter came in April, and the manufacturer stopped production in January, this did not violate any laws.

New Balance lost this lawsuit. One could interpret adjudication as evidence for the existence of protectionism since the court ruled in favor of the native manufacturer and the ruling was based on legal principles instead of specific codes or precedents; hence, the court might have had a degree of favoritism, since the court had nothing to gain from New Balance's victory but a lot to lose if the manufacturer should lose. On the contrary, to the proponents of the claim that Chinese courts did not uphold law, clear violations of trademarks were punished.

In the case of *New Balance Athletic Shoe, INC. vs. Cheng Jia Cai and etc.* for trademark infringement, the native counterfeiting company was severely punished. New Balance claimed that the decision was a significant improvement in the Chinese legal system. The American company New Barlun teamed with a Chinese manufacturer and several distributors and engineered an artifice using New Balance's trademarks, selling N marked shoes that looked very similar to New Balance logoed shoes. In 2004, several IP enforcement agencies seized small amounts of counterfeits in several cities. The ruling led to confiscation of New Barlun's products and a fine of 300,000 RMB. Despite such a ruling, and positive reaction from New Balance, cases like these did not have the effect of an American landmark case. In fact, most IP enforcements were carried out by enforcement agencies and IP campaigns. Furthermore, the reach of IP laws were limited by the geography, since the further inland one traveled, the less reach the central government had over local economies.

As the volume of trade between the U.S. and China increased, the Chinese government faced increasing pressure from American businessmen to conform to U.S. IP regimes. They expected the government to support this issue in exchange for more investments. Development of the IP regime was nonetheless criticized by U.S. scholars from independent perspectives. William Fisher examined the history of IP development in respect to the general discourses. In "The Growth of Intellectual Property," Fisher projected the development of IP in the U.S. as a strict economic victory for a small group of entrepreneurs at the expense of the general consumers.<sup>[89]</sup> For example, in 1987, a chain of Mexican restaurants in Texas sued another chain for having similar decor, and in 1996 a group of lawyers argued that sportsmen should be able to patent athletic maneuvers. Fisher observed that the expansion of intellectual property was persistent throughout U.S. legal history.<sup>[90]</sup> William Landes has a different view than Fisher.<sup>[91]</sup> He supported the expansion and the government's increasing involvement in IP, while reciting Hegel's argument about the inalienable rights of owning whatever one creates.<sup>[92]</sup> Landes believed that "given the danger that a rewards system would be hopelessly politicized, with grossly debilitating effects on economic efficiency, as well as likely to have misallocative effects similar to those created by enforcing intellectual property rights, might

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be simply leaving the market for intellectual property to find its own way."<sup>[93]</sup> The nature of policy making will always limit the government to managing the current stock of IP products instead of regulating the IP economy.<sup>[94]</sup>

Fifty years was perennial for someone's lifetime, but it was not long enough for a society to be oblivious about what changed in the collective memory. The communist party has ruled China since 1949, and the communist ideology was not IP protection friendly given that it promoted the view that an individual's creations all draw knowledge from the society. Karl Marx phrased it as:

"Even when I carry out scientific work, an activity which I can seldom conduct in direct association with other men, I perform a social, because human, act. It is not only the material of my activity such as the language itself which the thinkers use which is given to me as a social product. My own existence is a social activity. For this reason, what I myself produce, I produce for society, and with the consciousness of acting as a social being."<sup>[95]</sup>

It was similar to Confucian ideas in theory, but the similarity stops at theory. The communist regime promoted disregard of all forms of intellectual property, but the Cultural Revolution was set in place exactly to eradicate all cultural tradition, particularly anything Confucian. During the late 1950s and early 1960s, the Communist party raised doubts about whether people should be rewarded for contributions in the form of intellectual property with material rewards, and the majority was against the practice. The cult of personality that surrounded Chairman Mao, and the party's effort to instill this set of values, was certainly far reaching in Chinese society. In comparison, Confucian ideas only existed within the confines of the literate group of Chinese, which was purged of old ideas during the Communist rule. If one could assume that an inventor or a proprietor of intellectual property did not have to be literate, then it was clear that the communist ideology had much more influence.

Deng Xiaoping began his modernization policies in the late 1970s, and the core of his idea was to liberate the economy from communist ideologies in order to foster growth. The initial change about IP was that the central government revived old policies that rewarded IP with material rewards distributed by the government. The modernization campaign created the State General Administration for Industry and Commerce (SAIC), which oversaw IP policies even though there was no law made for IP protection. In 1978, the central government established the State Science and Technology Commission in light of the need to regulate the reward system for innovations and to promote modernization. Ironically, some officials from this agency went against Wang Youmin in the legal battles regarding Wubi. In the early 1980s, the leaders thought that the government needed to change the public's mentality about their reliance on the benefits the government provided during Mao's years. Deng's plan was to start the economic engine, and the government needed to jumpstart the public's momentum. In many state owned factories, most workers sought for sinecures; they either played card games or slept through shifts. Many of the factories, where the government invested new Western technologies, could produce enough products for the state quotas in a short amount of time; since workers were paid the same, they choose not to increase their purview or maintain efficiency. The central government wanted to use issues such as IP protection to change this widespread phenomenon.

The newly created agencies that oversaw IP policies proved ineffective; furthermore, these implementations did not invite the desired volume of foreign technology. The reformers thought IP policies were relevant for conducting international trade, and that alone speaks greatly about the government's commitment to protect foreign investments, and thus, it influenced China's image in international business. Deng Xiaoping decided to create IP laws despite great opposition from conservative members in the central committee. The government

examined previous IP policies, other socialist countries' IP laws, and focused especially on Hong Kong's IP laws. The National People's Congress passed the Patent Law on March 12, 1984.<sup>[96]</sup> This implementation met significant resistance from the government because it deviated from communist principles and from workers who saw it as a threat to their job security. The law was, nevertheless, not what people made it out to be. Much of the law was polished to avoid conflict between socialism, Chinese social practices, and foreign demands for IP protection.<sup>[97]</sup> Because the law borrowed significantly from foreign laws, being that China never had similar construct in this subject, the law did not effectively protect IP properties. The law did not protect chemical industry related IP or process of creation, the two major areas in which the country needed Western technology. The same set of problems was also applicable to the Trademark Law created in 1982. For the first few years after the creation of these laws, the governing policies used regulations and government agencies, instead of using laws and the courts, to implement the IP regime.

The central government did not want to change the legal frame around IP in a short period of time. The political purpose for creating IP laws was obvious, and the limitations of these creations were predictable. The government did not want to create policies that sanctified rights to private property, which did not agree with Deng's policies of limited economic freedom. The purpose of modernization was not to make China a capitalist society, but to create economic growth, and in the government's terms, it was to "create a socialist economy with Chinese characteristics." One of these characteristics was to reframe the IP laws and not wholeheartedly enforce IP protection. Deng's reformist party was not free of political opposition from the conservative Maoists in the government, and Deng's reform faced constant crisis because of the split in ideologies. The Maoists believed Deng's reform had uprooted their revolutionary heritage and must be stopped. Deng's party feared the conservatives would "scuttle the past several years of pragmatic reforms and widened contacts with the outside world" under the pretense of being true to Communism.<sup>[98]</sup> Deng's reform could not shake free from past holdings; therefore, the construction of the IP regime relied on old mechanisms not specifically designed to make the laws effective or the enforcement of law efficient. The reliance on administrative agencies to implement IP enforcement was the de facto solution to most IP problems. The creation of the Copyright Law of 1990 was evidence of the government's attitude towards IP protection, in that it was purely a response to diplomatic pressures. The U.S. media generated great pressure towards China and crowned it the top copyright pirate. The U.S. government threatened sanctions as they had done with Thailand in 1989 for IP infringement.<sup>[99]</sup> Up to this point in history, the IP protection was a government led program focused on modernization. It did not rally significant support from the population, and indigenous groups were not ready to utilize this new feature of law. The bedrock of Western IP protection was the support from many significant groups of people that understood the benefits of IP protection.<sup>[100]</sup> Up to the early 1990s, the prominence of state-owned industries, popular resistance to privatization, political resistance to change, and lack of understanding about the frame of IP protection all worked against an effective IP regime.<sup>[101]</sup>

One of the major legal battles soon after the completion of the second draft of the IP system in 1992 and the establishment of a trade agreement concerning IP protections with the United States also in 1992, was the case Walt Disney vs. Beijing Press (1995).<sup>[102]</sup> It was a case through which the foreign companies tested the new system and sought to find out how much protection it offered.

In September 2, 1987, Walt Disney Co. registered Mickey Mouse and related figures and publications in China for copyright. Disney also signed a contract with a British company named Maxwell conferring Maxwell the rights to sell Disney publications in China on August 19, 1987. The duration of the contract was from October 1, 1987 to September 30, 1990. The contract excluded Maxwell's ability to transfer the rights to any other companies. On March 21, 1991, Maxwell transferred its rights to reproduce to a Chinese company named Big World Press. The

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contract with Big World was intended to have Big World further transfer the rights for production to Beijing Press. On March 11, 1992, Beijing Press completed the transfer process, and the company registered the contract with Big World Press; however, the government did not acknowledge the contract officially. From August 1991 to November 1993, Beijing Press produced nine Disney publications. On January 21, 1994, Walt Disney Co. sued Beijing Press in the First Middle Municipal Court of Beijing, asking for 177,000 Yuan (\$21,295) in damages and a public apology. Beijing Press argued that the contract with the Big World Press released Beijing Press from liabilities, and Big World Press argued that the contract with Maxwell releases them from liability. Nonetheless, Maxwell went bankrupt in 1993.<sup>[103]</sup>

The court's investigation found that Beijing Press printed 118,200 copies of Disney stories, and had 33,341 in the warehouse. The cost for production was 116,363 Yuan and the profit was 62,850 Yuan. Beijing Press incurred a loss on the deal. The production of Disney before 1992 was not legally liable because U.S. did not have a binding trade agreement with China. The productions after 1992 constituted copyright violation. Disney then changed the requested damage payment to 850,000 Yuan (\$102,262).

On May 18, 1995, the court decided that, first, Beijing Press had to stop producing the Disney books, second, issue a public apology, third, pay 227,094 Yuan (\$27,321) to Walt Disney Co., fourth, pay damages of 90,837 RMB to Beijing Press for contract violation and deception, and last, the defendants had no further liability to Walt Disney Co. Big World Press appealed, adducing that they were the middleman for the transfer, and thus had no liability. The final ruling revised Big World's payment, which reduced it to 45,418 Yuan (\$5,464).

The court's opinion stated that Beijing Press' production constituted copyright infringement. The court should calculate the damage paid to Disney based on Beijing Press' profit; since Beijing Press was at loss, the damage was calculated based on Walt Disney's expenses on this trial. The record of expense that Disney submitted to the court was 262,606 Yuan (\$31,594) paid to a Beijing based law firm, 289,625 (\$34,844) paid to a Hong Kong based law firm, and 317,332 (\$38,177) to a San Francisco based law firm. The court's opinion also stated that Beijing Press was completely liable, but the infringement did not constitute criminal violation. Furthermore, if Maxwell was not bankrupt at the time of the trial, the court would hold Maxwell for contract violation, and Maxwell would become the primary defendant in the case regardless of which company Disney chose to sue.

Daniel C.K. Chow, a law professor at Ohio State University, spoke to a congressional commission about the nature of piracy on the ground-level. Chow estimated the economic loss to counterfeiting was 19-24 billion dollars a year, which constituted 8% of the G.D.P. Fifteen to twenty percent of goods in China were counterfeits.<sup>[104]</sup> He deemed the legal system weak and criminal organizations centered in Hong Kong and Taiwan dominated the counterfeiting business. Yiwu, a city two hundred miles south of Shanghai, was one of the biggest counterfeiting centers. Chow observed that local officials encroached on the local economy, meaning they had special control over the counterfeiting businesses that constituted the entire local economy. Because the entire local economy was centered on counterfeiting, the officials, especially those in the Agency of Industry and Commerce that was legally responsible for overseeing counterfeiting, were corrupt. The local officials defended the criminal productions because the illegitimate businesses supported the growth of legitimate ones such as restaurants, hotels, and entertainments, Chow reasoned. In the year 2000, the government had 22,000 enforcement cases, and the average fine for each case was \$794.<sup>[105]</sup> Forty-five of the cases were criminal, and most of these were cases involving pornography. Chow concluded that the piracy problem was of criminal nature and the government was inefficient in dealing with the matter. Foreign investors were afraid of pressuring the government, and thus they pressured the U.S. Government and other Western governments to negotiate with the Chinese government for an increase in efforts to deal with piracy. One of the major concerns was that the Chinese government had no political will to enforce because it would cost a lot of money.

An American investor, Eric Smith, complained during the hearing that the Chinese government limited the market access to foreign investors, and that the government must make IP infringement criminal. He also traduced that the conspiracy theory that the Chinese government intended to use counterfeiting to compete with foreign business. Unlike many foreign investors, Jim Zimmerman, a partner and chief representative of Sanders & Dempsy who also worked in the U.S. embassy in Beijing, suggested that China improved the written laws and thus precipitated growth of rule of law. The judges on the Chinese courts became more qualified and the enforcement agencies became more professional. Zimmerman adduced that one of the obstacles was that over 20,000 cases were not prosecuted because of the lack of man power and resources in the enforcement agencies and the legal system. He argued contrary to Eric's conspiracy theory, and that a better IP environment would be beneficial to both the Chinese government and legitimate business.<sup>[106]</sup>

In many IP infringement cases after the 1990s, litigation for IP protection was intended to regain lost sales. Most PC users in China had a pirated Windows operating system and Microsoft committed to a series of lawsuits targeting those who could pay for their software. In a routine inspection, a government agency discovered thirteen counterfeit copies of Windows XP in a company located in Beijing. Microsoft sued the company for a large compensation.<sup>[107]</sup> The Grass Root company was a privately owned small tech company located in Beijing, and the city's administrative agency confiscated counterfeit copies of Microsoft products in a routine inspection. Microsoft's representatives sued the company for about 300,000 RMB for IP infringement. The Grass Root company argued in court that they were tricked by the inspecting agents, and they had receipts for their Microsoft products bought from a genuine outlet.<sup>[108]</sup> Microsoft argued that the 13 copies of Microsoft products confiscated by the city's administrative agency were counterfeit copies, and the Grass Root company should also be responsible for Microsoft's spending on investigations concerning this lawsuit. The Grass Root company argued that the company's management made a mistake on the purchase, and they thought the products were genuine copies.<sup>[109]</sup> The court ruled that Microsoft had legitimate claims but sought exorbitant compensation, as the court estimated "actual economic damage" done by the Grass Root company was not worth as much as Microsoft claimed. The ruling ordered the Grass Root company to pay 100,000 RMB to Microsoft and pay legal fees for both parties to the court. The court made the ruling from the Copyright Law and the bilateral treaty with the U.S.<sup>[110]</sup>

In another of Microsoft's enforcement cases, the defendant was a Chinese company called Thinking-Creation-Future (TCF) selling computer hardware accessories and assembling computers with counterfeit Microsoft Windows and Office. Microsoft used investigators in Beijing to acquire hard evidence, which they accomplished with four desktops bought from TCF that had counterfeit software installed.<sup>[111]</sup> Microsoft sued TCF for copyright infringement in the First Medium Court of Beijing, and sought 500,000 RMB and confiscation of counterfeits. TCF claimed that the copyright law did not apply because the company was not a manufacturer, and hence they could not have installed the software since they only assemble computers. Furthermore, Microsoft's investigators allegedly tricked TCF sales people into selling the four desktops; thus, these computers could not be used as evidence.<sup>[112]</sup> The court's finding was that Chinese law recognized Microsoft's registered copyright in the U.S., and through a bilateral treaty, the software's copyright was also protected in China. The court sent administrators to raid the company and confiscated thirteen more computers that had counterfeit Microsoft software installed. TCF countered that their customers had to install the software on their own, and the confiscated computers were exceptions, and the legal responsibility should be on the TCF worker who installed the software without TCF's knowledge.<sup>[113]</sup> The court found that TCF did not have any evidence to support their argument. The four computers acquired by the investigators were assembled and operational computers. The thirteen confiscated computers were also operational. The argument that TCF was only involved with the part of a computer that did not have the counterfeit software was invalid. The court ruled from the bilateral treaty with the U.S., the



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Computer Software Copyright Protection Policies, and the Copyright Law. The ruling criticized Microsoft for not providing evidence concerning economic damage incurred by the sales of TCF's product to Microsoft; thus, the sought compensation was reduced. The final ruling stated that TCF stop installing counterfeit software and pay Microsoft 410,000 RMB.<sup>[114]</sup>

In another instance with the Mitsubishi Company's elevator division in Shanghai, Microsoft investigators found counterfeit Windows, Office, Foxpro and NT server in Mitsubishi's office computers. Microsoft wanted 500,000 RMB and an official apology from Mitsubishi on local newspapers. The court asked for mediation, and suggested that Microsoft's evidence only proved that isolated employees of Mitsubishi installed counterfeit software without the company's knowledge. The adjudication ended when Mitsubishi promised to conduct routine inspections for counterfeit software.<sup>[115]</sup>

Economic growth has made native Chinese companies and individuals more open to the concept of intellectual property. Growth in the number of computer users made information technology related counterfeits profitable, but the growth also made more and more Chinese interested in protecting IP rights for their own interests. One of Microsoft's litigations was about an ordinary Chinese consumer suing Microsoft for IP infringement under the category of trade secrets. Fen Yong, a local in Wuhan, was interested in fixing Microsoft's Chinese Pinyin software that allowed Chinese to be entered with alphabet keyboards.<sup>[116]</sup> He studied Microsoft's software in the 1.5, 2.0, and 3.0 editions, and he found that some of the programming errors were the cause of bugs that made incorrect Pinyin for Chinese characters. He contacted Microsoft and gave his solution and methods about solving this problem to Microsoft. He studied hundreds of characters that had errors, and submitted 35 to Microsoft, and Fen received a free copy of Microsoft's software and a promise for future compensation. Fen attempted to obtain compensation several times, and the administrative mediation agencies made Microsoft notarize the promised compensation, yet it never materialized. Fen was angered when Microsoft's new edition of the software only acknowledged his contributions to 10 characters instead of all those he submitted. He claimed that his intellectual contribution made Microsoft's product better in quality and no one else found the same ideas and told Microsoft. Therefore, Fen sued Microsoft for releasing his ideas and methods that he gave to Microsoft for sampling during the negotiation, and demanded 10,000 RMB for compensation and an apology in the newspaper.<sup>[117]</sup>

Fen submitted to the court his communications with Microsoft representatives, which constituted nine fax documents, concerning the 35 characters he informed Microsoft about. He included a letter from Microsoft to the Consumer Association of Hubei Province that acknowledged the need to pay Fen and letters from Microsoft to Fen regarding his compensation. Microsoft representatives claimed that the company's Pinyin software was open-source public software, and that was why Fen could look at the coding and find the errors. The information released by the company was not trade secrets, and Fen had no claim of ownership to such knowledge because the original software was open-source. The representative expressed gratitude for Fen's contribution. The negotiations did not constitute a contract, and thus Fen's claim had no legal basis. The Pinyin used the Chinese standard method, which was entirely public, and so Fen did not have any claim over these public ideas or implementations of these ideas. The representatives provided evidence that Fen's contribution was already discerned by Microsoft from works done by others earlier on, and that some of Fen's suggestions were incorrect. The new patches that purportedly included some of Fen's work were not entirely all his, because it comprised of some of Microsoft's corrections.<sup>[118]</sup>

The court established the legal facts of the case that Microsoft's Pinyin software was a free product accompanying the Windows program, there have been five different editions, and the most recent was 4.0. Fen discovered errors in edition 2.0. He later studied the 1.5 and 3.0 editions. Fen examined the errors closely and spent a considerable

amount of time finding and fixing these errors. Microsoft expressed gratitude but never made a contract with Fen. One of the letters stated that Microsoft representatives promised Fen 3500 RMB for his contributions, but his part was only minor compared to the 1,103 corrections done by Microsoft at the time. The court's opinion held that the Antimonopoly Law protects trade secrets that were not in any way available to the public. Fen's work was not intellectually unique and technically advanced. The letters did not legally constitute a contract. The Medium Court of the City of Wuhan in Hubei Province dismissed Fen's claim.

It would seem then that Alford is incorrect when he contended in his argument that Confucian and traditional cultural baggage were influential factors in the establishment of an IP legal frame. The communist ideology and its lasting hold on the public guided the development of the Chinese IP system. In the world as a whole, since China first implemented IP laws, a decreasing trend in IP piracy rate has corresponded inversely with an increase in G.D.P per capita.<sup>[119]</sup> China's increasingly large problem with IP protection was due to economic forces of supply and demand. Even if China had a perfect IP regime, which was not the case in any country in the world, it still would have failed if it did not offer a significant economic advantage both to the country and its individual consumers.<sup>[120]</sup> To steal a book may have been an elegant offense, and that cultural tradition and social history sculpted the outlines of many economic factors that contribute to IP piracy, such as the absence of a legal consciousness about IP, however, the primary reason for piracy is economic necessity. The workers and owners of these counterfeit factories found piracy the most efficient way to generate profit; the consumers found piracy tolerable because of its complicity with cheap prices. As in the case of patent and trademark protection, once a significant group of citizens possessed a stake in upholding IP laws, people such as Wong Youmin and many other emerging native companies, the government had enough political capital to solve IP law problems. Chinese economic demography adumbrated when, where, and how IP piracy should be solved.

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[1] The title is taken from a racist tune that goes "Ching Chong Chinaman sitting on a fence, Trying to make a dollar out of fifteen cents. Along came a choo-choo train, Knocked him in the cuckoo-brain, And that was the end of the fifteen cents." See Richard Bernstein, "A Very Superior Chinaman," Review of *The Untold Story of the Honorable Detective and His Rendezvous with American History*, by Yunte Huang, *The New York Review of Books*, October 28, 2010.

[2] RMB, 人民币 is the Chinese currency, and Yuan is also used as the equivalent unit of a dollar.

[3] Note, copyright, patent, trademark, others may include trade secrets.

[4] William P. Alford, *To Steal a Book is an Elegant Offense: Intellectual Property Law in Chinese Civilization* (Stanford, California: Stanford University Press, 1995), 2.

[5] *Ibid.*, 53.

[6] Peter Gaena and Thomas Pattloch, *Intellectual Property Law in China* (Frederick, MD: Aspen Publishers, 2005), 4.

[7] Alford, *To Steal a Book is an Elegant Offense*, 94.

[8] *Ibid.*, 122-123.

[9] "The Master said: I transmit rather than create; I believe in and love the Ancients." See the Analects, book 7, chapter 1. 孔丘 (Confucius), and students, *The Analects*.

[10] Martin K. Dimitrov, *Piracy and the State* (Cambridge: Cambridge University Press, 2006).

[11] Andrew C. Mertha, *The Politics of Piracy: Intellectual Property in Contemporary China* (Ithaca, NY: Cornell University Press), 2005.

[12] U.S./China Intellectual Property Agreement and Accession to the World Trade Organization: Hearings, Before the Subcommittee on Trade of the Committee on Ways and Means House of Representatives, 104<sup>th</sup> Cong. 104-3, March 9, 1995. See also, Intellectual Property Theft in China and Russia: Hearing, Before the Subcommittee on

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Courts, the Internet, and Intellectual Property of the Committee on the Judiciary House of Representatives, 109<sup>th</sup> Cong. 109-34, May 17, 2005.

[13] Wang Shian-Lin, *Intellectual Property and Antimonopoly Law, Study on Antimonopoly Issues of Abuse of Intellectual Property Right*, 1 ed. (Beijing: Law Press, 2008).

[14] See also Lee Chen. *On the Systematization of Intellectual Property Law* (Beijing: Peking University Press, 2005); and Zhang Yumin, *A Comparative Study on EU-China Intellectual Property Law, EU-China Law Studies Series*, Rudolf Steinberg (Beijing: Law Press, 2005). Note, the many prospects of this phenomenon are interconnected. If one focus on the political aspect, then one could find that corruption and protectionism run deep in the local officials, and hence they may not enforce IP policies directed by the central government, provided that the central government indent to do what it claims. When looking at how this affects the development of IP laws, one then must touch the issue of tradition and culture to prove that the political aspect of IP supports this phenomenon. And Following this, one must prove that some other aspect of IP necessarily supports the economic theory, and hence we must study almost infinitely many scenarios.

[15] Ganea and Pattloch, *Intellectual Property Law in China*, 206.

[16] Ibid.

[17] Robert Haibin Hu, *Research Guide to Chinese Trademark Law and Practice* class=apple-converted-space> (New York: Carolina Academic Press, 2009), xxv.

[18] Alford, *To Steal a Book is an Elegant Offense*, 68-69.

[19] Trade Mark Law of the People's Republic of China, adopted by the Standing Committee of the National People's Congress on 23 August 1982. An revision started in 2001, and later took the form, Implementing Rules to the Trademark Act of 3 August 2002, Gazette of the State Council 2002 No. 26, 6, China Patents & Trademarks 2002 No. 4, 81, [www.ccpit-patent.com.cn/references.htm](http://www.ccpit-patent.com.cn/references.htm); Trade Mark Review and Adjudication Rules of 17 September 2002, China Law & Practice December 2002/January 2003, 128; Provisions for the Establishment and Protection of Well-known Trade Marks of 17 April 2003, Gazette of the State Council 2003 No. 35, 28; China Patents & Trademarks 2003 No. 3, 86.

[20] Alford, *To Steal a Book is an Elegant Offense*, 69. See also, Patent Law of the People's Republic of China, adopted at the Fourth Session of the Standing Committee of the Sixth National People's Congress on 12 March 1984. It was revised in 1991, Patent Agencies Provisions of 4 March 1991, Gazette of the State Council 1991, 199; China Current Laws 1991 No.4 20. An implementation was put in place in 1999, Implementing Rules to the Patent Act of 15 June 2001, Gazette of the Sate Council 2001 No. 23, 243; China Patents & Trademarks 2001 No. 3, 85.

[21] Copyright Law of the People's Republic of China, adopted at the 15<sup>th</sup> session of the Standing Committee of the Seventh National People's Congress on September 7, 1990; Provisions on the Implementation of International Copyright Conventions of 25 September 1992, Gazette of the State Council 1992, 988; China Patents & Trademarks 1993 No. 1, 98, [www.qis.net/chinalaw](http://www.qis.net/chinalaw); Implementing Rules to the Copyright Act of 2 August 2002, Gazette of the Sate Council 2002 No. 26, 12; China Patents & Trademarks 2002 No. 4, 95, [www.ccpit-patent.com.cn/references.htm](http://www.ccpit-patent.com.cn/references.htm).

[22] The agencies involved in IP protections were the State Intellectual Property Office, State Administration for Industry and Commerce, Administration of Quality Supervision, Inspection, and Quarantine, Ministry of Health, Sate Food and Drug Administration, State Tobacco Monopoly Administration, Ministry of Agriculture, National Copyright Administration of China, General Administration of Press and Publications, Ministry of Culture, State Administration of Radio, Film, and Television, Anti-Pornography and the Anti-Piracy Office. See Dimitrov, *Piracy and the State*, 117.

[23] Alford, *To Steal a Book is an Elegant Offense*, 72-73.

[24] Michael D. Pendleton, *Intellectual Property Law in the People's Republic of China: A Guide to Patents, Trade Marks and Technology Transfer* (Seattle, Washington: Butterworth Legal Publishers, 1986), 9-13.

[25] Intellectual Property: Memorandum of Understanding Between the United States of America and the People's Republic of China, January 17, 1992.

- [26] U.S./China Intellectual Property Agreement and Accession to the World Trade Organization: Hearings, Before the Subcommittee on Trade of the Committee on Ways and Means House of Representatives, 104<sup>th</sup> Cong. 104-3, March 9, 1995: 7-10.
- [27] Haibin Hu, *Research Guide to Chinese Trademark Law and Practice*, xxv.
- [28] Intellectual Property Theft in China and Russia: Hearing, Before the Subcommittee on Courts, the Internet, and Intellectual Property of the Committee on the Judiciary House of Representatives, 109<sup>th</sup> Cong. 109-34, May 17, 2005: 2-8.
- [29] Measures on Administrative Patent Enforcement of 17 December 2001; China Patents & Trademarks 2002 No. 3, 69, [www.lehmanlaw.com/lib/library/Laws\\_regulations/IP.htm](http://www.lehmanlaw.com/lib/library/Laws_regulations/IP.htm).
- [30] Dimitrov, *Piracy and the State*, 30.
- [31] Alford, *To Steal a Book is an Elegant Offense*, 122-123.
- [32] Trade Mark Law of the People's Republic of China, adopted by the Standing Committee of the National People's Congress on 23 August 1982: Article 1. See also Michael D. Pendleton, *Intellectual Property Law in the People's Republic of China: A Guide to Patents, Trade Marks and Technology Transfer* (Seattle, Washington: Butterworth Legal Publishers, 1986), 53.
- [33] Patent Law of the People's Republic of China, adopted at the Fourth Session of the Standing Committee of the Sixth National People's Congress on 12 March 1984: article 1. See also, Pendleton, *Intellectual Property Law in the People's Republic of China*, 77.
- [34] Ibid.
- [35] Alford, *To Steal a Book is an Elegant Offense*, 2.
- [36] Ganea and Pattloch, *Intellectual Property Law in China*, 289.
- [37] Ibid., 340.
- [38] Ibid., 332.
- [39] Tian Dexin, "The Hegemonic Role of the United States in the U.S.-China Copyright Disputes," *Chinese Journal of Communication* 1, no. 2 October (2008), 224-241: 233-234.
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- [40] Jiang Jiao-Lian, conversation to author, April 2, 2002.
- [41] Note, the native goods were competitive not only in price but in quality as well. Furthermore, only the well-off consumers could afford foreign brands, so in a normal department store consumers shop almost exclusively Chinese made goods, since most of the foreign brands were made in China as well. In the case of food, it would be absurd to argue that the consumers prefer fake eggs or fake pork chops.
- [42] U.S./China Intellectual Property Agreement and Accession to the World Trade Organization: Hearings, Before the Subcommittee on Trade of the Committee on Ways and Means House of Representatives, 104<sup>th</sup> Cong. 104-3, March 9, 1995: 2.
- [43] Alford, *To Steal a Book is an Elegant Offense*, 3.
- [44] Ibid., 116.
- [45] Office of the United States Trade Representative, USTR Announces Two Decisions: Title VII and Special 301, April 29, 1995: 3.
- [46] Office of the United States Trade Representative, 2005 Special 301 Report, Executive Summary: 1.
- [47] U.S./China Intellectual Property Agreement and Accession to the World Trade Organization: Hearings, Before the Subcommittee on Trade of the Committee on Ways and Means House of Representatives, 104<sup>th</sup> Cong. 104-3, March 9, 1995: 25-26.
- [48] Alford, *To Steal a Book is an Elegant Offense*, 123.
- [49] Office of the United States Trade Representative, 2005 Special 301 Report, Appendix D: Chart of Countries' Special 301 Placement (1989-2004) and IIPA 2005 Special 301 Recommendations.
- [50] Dong Nang Technology Trade Company, 中国东南技术贸易总公司.
- [51] Wubi, 五笔字型输入法. See <http://www.yale.edu/chinesemac/wubi/xing.html> for an introduction and usage of this method in English, and the official free download is at [http://www.wangma.com.cn/ejl.asp?f\\_id=37](http://www.wangma.com.cn/ejl.asp?f_id=37).

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- [52] Wang Yongmin 王 永民, "Constantly in Crisis, Insight Gained from Wubi Lawsuits" 劫难重重的"五笔字型"—"五笔字型"诉讼案引发的启示, December, 1995. [http://www.wangma.com.cn/wym\\_disp.asp?id=75](http://www.wangma.com.cn/wym_disp.asp?id=75) (accessed Nov 18, 2010).
- [53] Wang Yongmin 王 永民, "Wang Yongmin Test Sword in the Middle"王永民中原论剑, January 7, 2004, [http://www.wangma.com.cn/wym\\_disp.asp?id=47](http://www.wangma.com.cn/wym_disp.asp?id=47), note, 朱镕基 was the Premier from 1998-2000. See also, "Wang Yongmin Passionately Light the Fire of Invention"王永民激情点燃创新的火焰., State Intellectual Property Office of PRC, July 14, 2005. [http://www.sipo.gov.cn/sipo2008/mtjj/2005/200804/t20080401\\_362777.html](http://www.sipo.gov.cn/sipo2008/mtjj/2005/200804/t20080401_362777.html) (accessed Nov 5, 2010).
- [54] Beijing Wang-Ma Computer Company v. Chinese Dong-Nang Technical Trading Company Appeal, First Court Final 65 Civil, 1998 Beijing First Medium. China Law Info (December 18, 1998).
- [55] Wang Yongming 王 永民, "Constantly in Crisis, Insight Gained from Wubi Lawsuits"劫难重重的"五笔字型"—"五笔字型"诉讼案引发的启示, December, 1995. [http://www.wangma.com.cn/wym\\_disp.asp?id=75](http://www.wangma.com.cn/wym_disp.asp?id=75) (accessed Nov 18, 2010).
- [56] Wang Yongmin's Short Biography" 王永民简, [http://www.wangma.com.cn/wym\\_disp.asp?type=wym\\_gfjj](http://www.wangma.com.cn/wym_disp.asp?type=wym_gfjj).
- [57] WangYongmin 王 永民, "The Brilliance of Truth" 真理的光焰——纪念国家科委发文在全国推广"五笔字型"五周年, [http://www.wangma.com.cn/wym\\_disp.asp?id=77](http://www.wangma.com.cn/wym_disp.asp?id=77) (accessed Nov 8, 2010).
- [58] Wang Yongmin 王 永民, "My Country's Language Change" 我国文字技术的伟大变革, In Using Science and Technology to Advance Economic Building Conference, October 25, 1991, [http://www.wangma.com.cn/wym\\_disp.asp?id=43](http://www.wangma.com.cn/wym_disp.asp?id=43) (accessed Nov 2, 2010).
- [59] Chinese Dong-Nang Technical Trading Company v. Beijing Wang-Ma Computer Company Libel, Hia-Ming Initial 2144 Civil, 1992 Beijing Hia-Ding Civil Court. China Law Info (1998).
- [60] Ibid.
- [61] Ibid.
- [62] Ibid.
- [63] Ibid.
- [64] Ganea and Pattloch, *Intellectual Property Law in China*, 26.
- [65] Wang Yongmin 王 永民, "Constantly in Crisis, Insight Gained from Wubi Lawsuits"劫难重重的"五笔字型"—"五笔字型"诉讼案引发的启示, December, 1995. [http://www.wangma.com.cn/wym\\_disp.asp?id=75](http://www.wangma.com.cn/wym_disp.asp?id=75) (accessed Nov 18, 2010).
- [66] Beijing Wang-Ma Computer Company v. Chinese Dong-Nang Technical Trading Company Patent Infringement, Medium First 180, 1993 Beijing Medium Court. China Law Info (December 24, 1993).
- [67] Beijing Wang-Ma Computer Company v. Chinese Dong-Nang Technical Company Patent Infringement, High Final 30 Civil, 1994 Beijing High Court. China Law Info (July 18, 1997).
- [68] Ganea and Pattloch, *Intellectual Property Law in China*, 34.
- [69] Beijing Wang-Ma Computer Company v. Hunan Computer Factory Patent Infringement, Xian Final 03 Civil, 1994 Human Supreme Court. China Law Info (May 5, 1994).
- [70] Beijing Wang-Ma Computer Company v. Chinese Dong-Nang Technical Trading Company Appeal, First Court Final 65 Civil, 1998 Beijing First Medium. China Law Info (December 18, 1998).
- [71] Ibid.
- [72] "国家将损失数百万甚至数以千万美元计的外汇收入." See, Zhu Jinj 朱 晋卿, "Letter to the Officials Regarding the Litigations about Wubi" 关于五笔字型专利侵权案给国家领导人的信. August, 1996.



[http://www.wangma.com.cn/wym\\_disp.asp?id=46](http://www.wangma.com.cn/wym_disp.asp?id=46) (accessed Nov 28, 2010). Note, he was straight to the point since, HP, DEC, Apple, SCO, IBM, WYSE, ANS, Microsoft, Sun, Casio, Hitachi, etc. signed contract with Wang.

[73] Ganea and Pattloch. *Intellectual Property Law in China*, 36.

[74] 麻毓筠"山西太原市每870人中有1人申请发明专利 (Shang Xi, Tai Yuan, One Patent Application for Every 870 people),"太原日报 (Tai Yuan Daily), November 12, 2010,

[http://www.ipr.gov.cn/gndtarticle/updates/localupdates/201011/977037\\_1.html](http://www.ipr.gov.cn/gndtarticle/updates/localupdates/201011/977037_1.html).

[75] William P. Alford, "Second lawyers, first principles: Lawyers, rice-roots legal workers, and the battle over legal professionalism in China," in *Prospects for the Professions in China*, ed. William P. Alford, Kenneth Winston and William C. Kirby (New York: Routledge, 2011), 50.

[76] *Ibid.*, 56.

[77] *Ibid.*, 48.

[78] *Ibid.*, 49.

[79] *Ibid.*, 59.

[80] *Ibid.*, 56.

[81] *Ibid.*, 62.

[82] *New Balance Athletic Shoe INC v. Shenzhen Long-Haio Shoe Company*, Iao High Final 87 Civil, 2002 Guangzhou Provincial High Court. China Law Info (January 7, 2005).

[83] *Ibid.*

[84] *Ibid.*

[85] *Ibid.*

[86] *Ibid.*

[87] Jianqiang Nie, *The Enforcement of Intellectual Property Rights in China* (London: Cameron May, 2006), 495-497.

[88] Contract Law.

[89] Fisher also examined the underlying causes for IP that may shed light on analysis of other nation's developments. On the top of the list of factors was the transformation of the basis of the American economy. Before the industrialization period in the late nineteen hundreds, the predominance of agriculture and textile production did not provide a support basis for the development of IP. Hence IP protection became significant only after U.S. transformed from a net consumer to a net producer of IP. The proliferation of national brands elevated the importance of the manufacturer's reputation, which in turn pushed the expansion of trademark protection. Several ideological and cultural factors contributed to this expansionary trend in history. Americans subscribe to the "labor-desert theory of property" -- that is "a person deserves to own something that he or she has created" -- and to the "equity theory' of distributive justices" -- that is "each person who contributes to a collective enterprise deserves a reward." Furthermore, cultural worship of individualism contributed to the establishment of the values associated with the individual artist, author, scientist, and inventor, though this was not the case before the industrial revolution. Fisher argued that Romanticism in general and influential authors such as Wordsworth built a culture that associated IP with physical property, and the author or inventor with heroic genius.

[90] In all, Fisher advocated the position against the unlimited expansion of IP protection on the ground that these laws have adverse effect towards the public welfare. He augmented many distinct cases that illustrate the absurdity of some usages of IP laws, and also observed the factors that allowed the development of such IP regime in the U.S. The nation's economic structure was evident about how much IP protection one could utilize. In Petra Moser's article about the influence of patent laws in the nineteenth century, the author generalized the effect of IP in the development of legal regimes in many European countries. In this statistical study of industrial trends in relation to patent registrations, Moser observed a direct relation between the direction of industrial development and the IP policies. The statistics gathered between the Crystal Palace World Fair in 1851 and the American Centennial in 1876 showed that machinery and manufacturing were industries that generally required IP protection to be profitable, as directly correlated with the degree of patent protection in the country. Americans had a great deal of patent laws, as the large proportion of American industries concerned machinery and manufacturing. The



Netherlands abolished patent law in 1869, and statistics showed that the predominant industry in that country was textile and food processing. In general, industries that produced consumption products such as food and textile did not require patents to keep advantageous processes secret, and thus did not promote IP expansion. In contrast, machines, instruments, and other heavy equipment required IP protection against reverse engineering. Thus, "the introduction of patent laws in developing countries today may slow rather than accelerate economic growth if patent laws lead them to compete more directly with innovations from developed countries," and, "the introduction of uniform patent laws across the world may reduce rather than increase variation in the direction of innovation."

[91] Landes believed that history has shown the economic importance of property management, namely by creating restrictions on property usage. The Enclosure movement in England, Landes argued, was detrimental to individuals (namely the general peasantry) but allowed better management of property; hence the result was a net positive in the total economy. Nonetheless, blanket IP enforcement was not the best way, as Landes suggested that judicial decisions have been public in the U.S. (though one could feasibly argue that cases could be copyrighted, knowing the current strong favor towards IP protection and given that cases cost significant amounts of resources in legal fees, investigation fees, and such). Though it is argumentum a fortiori, copyrighted cases would defeat the purpose for the courts to reach decisions, which is to clarify the law and serve justice to the public. Hence IP protection must be managed on a case by case basis.

[92] William M. Landes and Richard A. Posner. *The Economic Structure of Intellectual Property Law* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2003), 4.

[93] *Ibid.*, 9.

[94] If one should discover a great location for building a gas station, one should not be able to prohibit the establishment of gas station by a competitor across the street. The antitrust laws explicitly work against monopolies. In a market economy, one should have the freedom to imitate, to copy, and ultimately to minimize monopoly profits. However, excessive competition creates social cost, as in that economic resources are wasted in competition, which in turn result a loss in the total economy. Hence, the government should manage IP in correspondence to the market's development.

[95] Karl Marx, *Early Writings*, 157.

[96] Patent Ac of 12 March 1984 (amended on 25 August 2000) Gazette of the State Council 2000 No. 30, 9; China Patent & Trademarks 2000 No. 4, 83, [www.sipo.gov.cn](http://www.sipo.gov.cn).

[97] Alford, *To Steal a Book is an Elegant Offense*, 70.

[98] James R. Schiffman, "Premier Zhao Says Chinese Reforms Will Be Continued," *Wall Street Journal*, May 26, 1987, 33.

[99] Clyde H. Farnsworths, "China Called the Top Copyright Pirate," *New York Times*, April 20, 1989, D7.

[100] The concept of Intellectual Property in itself is an ambiguity if not a contradiction. Unlike the power that comes from the control of scarce material resources, the holders of intellectual property construct scarcity through legal instruments. The process of defining intellectual property creates "particular perspectives that may benefit some at the expense of others," since some become property and others become public knowledge. In history, Intellectual Property was not a uniform concept, though it came to represent historically different concepts. The origin was that of the diction to be made between private information and public knowledge, and this notion progressed along with technological and political change. America was in a similar period of economic development in the nineteenth century as China, and the U.S. government offered little protection to foreigners' intellectual property in order to satisfy domestic demands for imported technology. This hunger for easily accessible technology led to rampant IP infringement, which was harmful not only to foreign investors but also placed a limitation on the natives. The progression of the establishment in America was not done overnight, and the parts of the American IP system were not completed simultaneously. Though the U.S. attended multilateral meetings about international copyright protection, such as the Copyright Congress at Brussels in 1858, the process continued to the twentieth century.

[101] Some scholars, such as Nicole Piquero and Alex Piquero, argue that IP piracy is directly related to whether the government is a democracy. While many democracies have great IP infringement problems, such as South Korea, Taiwan, Greece, and Poland, the absurdity of this kind of argument is obvious. History shows that the United

States was once among the rank of IP pirates, and this should provide an answer since often the "Justifications of intellectual property are presented as outside time, as trans-historical, which we contend, they are not."

[102] *Selected Cases of Intellectual Property Rights Disputes*, Chinese-English Edition ed. Qi Qi, Shi Qiuqin, and Ying Xinlong. Beijing: Law Press China, 2001.

[103] Ibid.

[104] Intellectual Property Theft in China and Russia: Hearing, Before the Subcommittee on Courts, the Internet, and Intellectual Property of the Committee on the Judiciary House of Representatives, 109<sup>th</sup> Cong. 109-34, May 17, 2005.

[105] Ibid.

[106] Ibid.

[107] Microsoft v. Beijing Ciao-Geng Network Science Ltd, Yi Zhong Ming Initial 1647 Civil, 2010 Beijing Municipal First Medium Court. China Law Info (December 20, 2010).

[108] Ibid.

[109] Ibid.

[110] Ibid.

[111] Microsoft v. Beijing Si-Chuang-Wie-Lai Science Development Ltd Patent Infringement, Yi Zhong Ming Initial 4083 Civil, 2009 Beijing Municipal First Medium Court, China Law Info (July 2, 2009).

[112] Ibid.

[113] Ibid.

[114] Ibid.

[115] Microsoft v. Shanghai Mitsubishi Elevator Patent Infringement, Hui Yi Zhong Zhi Initial 14 Civil, 2000 Shanghai Municipal First Medium Court, China Law Info (June 2, 2000).

[116] Fen Yong v. Microsoft Trade Secret Infringement, Wu Zhi Chu Initial 70 Civil, 2003 Hubei Province Wuhan Municipal Medium Court, China Law Info (February 2, 2004).

[117] Ibid.

[118] Ibid.

[119] Dimitrov, *Piracy and the State*, 224-225.

[120] Joy Buchanan and Bart J. Wilson, "An Experiment on Protecting Intellectual Property," Thesis, the Economic Institute, 2010.

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