

BEST IP PROTECTION IS THROUGH EDUCATION, NOT MORE ENFORCEMENT ACTIONS

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INTRODUCTION

It is beyond dispute that China has some of the most comprehensive and up-to-date Intellectual Property (IP) protection laws of any country in the modern world, in conformance with its accession to the Berne Convention and the Geneva Convention.¹ This is a direct result of China's serious fourteen-year pursuit of World Trade Organization membership and compliance with its WTO obligations.² "On October 27, 2001, China promulgated the amendment to its PRC, Copyright Law of 1990 (the Copyright Law). The amendment came into effect upon its promulgation. The purpose of this amendment was to bring China's copyright protection to full compliance with relevant international conventions. It seems more than coincidental that the amendment was promulgated one week before China signed its WTO accession documents; the amendment was issued in all likelihood to prove that China is making efforts to honour its WTO commitments."³

China acknowledges that its own IT sector is retarded due to lack of transfer of foreign technology and lack of foreign investment, both caused by lack of foreigners' belief in IP protection in China.⁴ China has ratcheted up IP enforcement with record numbers of prosecutions in all provinces and semi-autonomous regions, because China sees this as being in its own economic best interests. Yet, organizations like AmCham assert that while such enforcement actions are laudable, they fall far short and suggest that the situation is getting worse, not better.⁵ The Asia-Pacific Council of American Chambers of Commerce asserts, "Aggressive enforcement of intellectual property rights will benefit both consumers and

1 Chen Chao (2001). China Amends Copyright Law, Retrieved from <http://www.china.org.cn/english/2001/Nov/22246.htm>

2 Olson, E. (2001). WTO Sets Date to Discuss China's Entry, New York Times November 14, 2000. Retrieved from <http://www.globalpolicy.org/soecon/bwi-wto/wto/2000/1114eo.htm>

3 Wang, V, and Cai, R. (2001). New Changes to Copyright Protection in China Retrieved from http://www.dwt.com/practc/sha_chi/bulletins/10-01_copyright.htm

4 China Daily (2004). Piracy still plagues China's IT industry. Retrieved from http://english.people.com.cn/200406/30/eng20040630_148091.html

5 American Chamber of Commerce (2004). *White Paper - Intellectual Property Rights*. Retrieved from <http://www.amcham-china.org.cn/amcham/show/content.php?Id=332>

businesses. Encouraging the enforcement of IPR rights will allow U.S. companies to reap the benefits of their investments, and will also encourage additional businesses, particularly small- and medium-sized enterprises, to participate in the global marketplace."⁶ This myopic world-view taken from a "business only" perspective ignores the most fundamental principles of Globalization, cultural diversity appreciation and understanding. For five thousand years the Chinese have had no concept of private intellectual property rights. Under the Emperor Dynasties and more recently the Socialist Economic System, the government owns all real and personal property, including celebrity endorsements⁷. 1.3 billion people cannot be expected to embrace such a foreign concept over night. IP protection is brand new (last 20 years) and the basic change in recognizing private ownership of IP is hard to teach and hard to accept. Only 53 percent of the people even speak Mandarin⁸ and more than 8.72 percent are illiterate.⁹ That is one-hundred thirteen million illiterates in China. An entire society needs to be taught about the value of private ownership of intellectual property. This educational process must begin at China's universities where libraries allow and even encourage wholesale copying of entire books. Under the socialist economic system the government owned the books (copyrights were non-existent) and the people are the government. So, the people copy what they already own and thus are not stealing anything from anyone. This practice continues to this day. Chinese libraries still allow this practice to continue unabated without even a cursory check to see if the book has an ISBN number. The Chinese universities are the Research and Development labs for China and yet 75 percent of them fail to patent their own inventions.¹⁰ India is as adept at copying China's non-patented pharmaceuticals as China is at copying America's copyrighted DVDs.¹¹ Chinese people understand that it is wrong to steal tangible goods but there is no concept that taking IP without compensation is wrong. Intangible thoughts and ideas have no reality as something that is subject to theft, even when they are reduced to a writing or artwork. On any given day, in any given Chinese bookstore, there are more people sitting on the bare floor stealing IP (reading books for free) than patrons in the local library. Even the bookstores encourage IP theft. There are no signs prohibiting free reading and no enforcement of such a "foreign" idea. The people know that they cannot take the book out of the store without paying for it, but they do not understand that their act of reading it without compensation also constitutes a theft. A major Shanghai university teaches IP protection using a Prentice Hall book, copied in violation of the copyright laws. This university has a teacher stand in front of the class and teach that it is wrong to steal IP while teaching from a stolen textbook. This is hypocritical and sends the wrong message to the students who are the next generation of business and government leaders. The universities must teach, not just preach, IP protection and they must implement what they teach. China's universities are teaching the next generation of political

⁶ Asia-Pacific Council of American Chambers of Commerce (2005). *Intellectual property Rights - Position Paper*. Retrieved from <http://www.apcac.org/?id=47>

⁷ Falk, J. (2005). *Yao Ming vs. Coca Cola. A Professional Athlete's Right to Publicity in China*. Retrieved from http://www.iln.com/2004_newsletter/may/na_epstein_becker.htm

⁸ People's Daily On Line (2005). *Greater numbers speak Mandarin*. Retrieved from http://english.people.com.cn/200412/27/eng20041227_168739.html

⁹ People's Daily On Line (2005). *Illiteracy Rate Among Adult People in China Slashed* http://english.people.com.cn/200412/27/eng20041227_168739.html

¹⁰ China Education and Research Network. (2005). *75% of Chinese Universities Need Patent Application*. Retrieved from <http://www.edu.cn/20050617/3141159.shtml>

¹¹ Taipei Times (2004). *India accedes to pressure over generic drugs*. Retrieved from <http://www.taipetimes.com/News/worldbiz/archives/2004/12/27/2003216955>

and business leaders, as well as the next generation of teachers. Education is the fundamental key to change, not enhanced enforcement actions.

Increasing IP enforcement actions tenfold will not accomplish the desired transformation of Chinese thinking and attitude towards IP ownership and protection. This can only be accomplished through proper education, not hypocritical half-hearted educational efforts. It is no easy task to bring such fundamental change to the thinking of 1.3 billion Chinese people. It requires a psychological revolution of unprecedented proportions to create a new ethos where none has existed before. Enforcement actions undoubtedly have an effect on those successfully prosecuted but to assume a deterrent effect that will sweep throughout China's society is to continue to believe that capital punishment deters murder or other serious crimes.