Intellectual Property Rights: Violations in China

April 2001
Sino-US relations have been troubled by numerous problems in the advent of China’s expected entry into the World Trade Organization. Examples of recent discord include the dispute over the US surveillance plane on Chinese soil, the NATO bombing of the Chinese embassy in Belgrade, and continued controversy over human rights issues. One recurring difficulty has centered around repeated violations of intellectual property rights (IPR) in China. In her efforts to pave the way to entry into the World Trade Organization however, China has attempted to lessen the extent of such violations. Nonetheless, western firms remain wary as they continue to face enormous losses in the face of increasingly sophisticated counterfeiting techniques.

China is home to a thriving black market which has been the bane of many a western firm. Copyright piracy is rampant. It is becoming increasingly difficult to distinguish the packaging of counterfeit goods from that of authentic goods. Pirated goods are infinitely cheaper than non-pirated goods, and there is a lot of money to be made through illicit production. Counterfeit versions of popular products such as Tide detergent, Budweiser beer, and Marlboro cigarettes are easily found. The city of Yiwu, a five-hour train ride from Shanghai, is the center of the counterfeiting industry. In Yiwu, 10 boxes of six fake Gillette razor blades each can be bought wholesale for a total of 65 cents, as opposed to the Beijing market price of $9.60 for a 10-pack of the real thing. It is estimated that 200,000 distributors buy close to 2,000 tons of goods in Yiwu on a daily basis. Indeed, the profitability of piracy assures that intellectual property rights violations remain widespread.

Given the low prices of fake products, intellectual property rights violations can be devastating to legitimate firms. With the widespread availability of imitation goods, foreign firms not only lose a large portion of the massive Chinese market, but they also accrue losses on
a global scale as counterfeit goods produced in China leak to the world market. Last year alone, the US Customs Service reported that it had made 694 seizures from China, for a value of US $15.1 million. As a result, many foreign firms have seriously contemplated pulling out of China. Procter & Gamble is one such company, estimating that is losing somewhere in the vicinity of US $150 million a year in the local market. Likewise, the German food and chemical company Henkel, Japan’s Kao, and even the joint-venture of Shanghai Volkswagen are also reporting losses of millions of dollars each year. According to speculation, five out of six Yamahas in China are counterfeit.

In response, 53 foreign companies created the China Anti-Counterfeiting Coalition as a forum for discussing this issue with top Chinese officials. Their efforts have indeed played a role in increasing awareness of the issue in China, although not to as great an extent as they would like.

The Chinese government has also recognized the need to crack down on IPR violations in light of its aspirations to join the WTO. It has signed numerous relevant treaties, including the Paris Convention for the Protection of Intellectual Property, the Madrid Agreement on international trademark registration, the Berne Convention on Copyright, and the Patent Cooperation Treaty. In concerted attempts to alleviate the fears of current and potential trading partners, the mainland has taken a wide variety of other measures, including encouraging a State Council’s three-month long effort to stop the proliferation of counterfeit goods, declarations of intent by China’s chief negotiator for entry into the WTO, and the sponsorship of an anti-corruption film to combat IPR violations.

In order to convince WTO members of its sincerity, China’s chief negotiator for entry into the WTO has assured its prospective partners that “China will put in place a transparent,
open and fair legal system to protect investors.” Indeed, Beijing has attempted to preserve IPR by adhering its copyright, trademark, and patent laws to those of the Trade Related Aspects of Intellectual Property (TRIPS) Agreement of the GATT. It has promised to implement TRIPs immediately upon its succession into the WTO. As this agreement covers all the minimum steps WTO members are required to take in order to guarantee the rights of patent holders, it is a necessary move for Beijing. Once it has joined the WTO, China must also remove import and export license barriers.

Another move that China is undertaking to help strengthen intellectual property rights is participation in the EU-China Intellectual Property Rights Co-operation, established in October 1998 and expected to be completed at the end of this year. This program entails the training of legal officials, legislative support, the strengthening of administrative mechanisms, and border enforcement. It is also intended to supplement China with the technical support intended to help her transform her legislation into one that is more compatible with the TRIPs Agreement.

Furthermore, authorities amended a 15-year old patent law in January of this year. Previously, applicants for patents had to wait anywhere from a few months to a few years to find out if their application had been approved. The new amendment, effective July 1, 2001, would speed up the process by removing a six-month revocation procedure and by no longer requiring the submission of foreign search and examination results.

The government has also set up regulations that would keep foreign firms from administrative malpractice. For example, an independent judiciary body is in the works, which would handle lawsuits by foreign investors against the Chinese government. An advisory body is also in planning, its goal being to answer all legal inquiries by foreign investors within a timeframe of 45 days. This is a major step up from the current situation, whereby the central
government will every now and then establish new regulations via circulation of ‘internal
documents,” and fail to announce it publicly; or they will arbitrarily impose fines or fees on
foreign investors. The government has promised to eliminate these seemingly arbitrary decisions
by enacting only those laws which have been announced publicly. This then should be a step
closer towards removing some of the red-tape barriers investors currently face.16

Although Beijing has made visible efforts to crack down on the proliferation of fake
goods, success has not come easily. This is due not only to the country’s vast size in terms of
both geography and population, but also to the lack of law enforcement in conjunction with the
persistence of regional protectionism. One writer has aptly argued that “China's central
government is more like an emperor trying to control a far-flung network of unruly fiefs than an
all-seeing Big Brother whose commands are instantly obeyed.”17

The reluctance of local officials to tackle the counterfeiting problem can be attributed to
the enormous number of jobs created by the thriving black market. At the same time, Beijing
finds it extremely difficult to enforce IPR policies due to a weak rule of law. Penalties for
violations are minimal, funding for enforcement agencies is extremely low, and it is exceedingly
rare for IPR offenders to be imprisoned.18 As a result, the violation of intellectual property
rights has continued virtually in full force. The Washington-based Business Software Alliance
estimated that 91% of the software in use in China in 1999 was stolen, barely less than five years
prior.19

Nonetheless, these obstacles are not insurmountable. Experts are hopeful that IPR
violations will abate once China has completed its entry into the WTO. The WTO contains legal
provisions against counterfeiting, and requires its members to actively deter piracy. A
spokeswoman for the Office of the U.S. Trade Representative declared in February, "When
China eventually accedes to the World Trade Organization, they will be agreeing to abide by a set of common international rules. There are enforcement mechanisms in the WTO.\textsuperscript{20} Indeed, it is expected that the WTO will soon raise its IPR standards, making them stricter than those of the US-China bilateral agreement. Some US company representatives and government officials therefore believe that China’s acceptance into the WTO cannot come too soon.

Admission into the WTO will require China to make changes which it has thus far been unsuccessful in implementing. It remains to be seen how extensive the abatement of IPR violations will be, but some improvement is likely. If intellectual property rights are protected, the fears of many western firms may be allevied and they will be more enthusiastic in investing in China. Protecting intellectual property rights will benefit not only foreign companies operating in China, but Chinese industries as well. The products of domestic firms will be protected, and multinational corporations will be more willing to share trade secrets with their joint-venture partners. Beijing’s efforts, if successful, will be a long-awaited and welcome relief to foreign and domestic investors.
Notes


3 Ibid.

4 Matthew Miller, “Call for more action on pirates; Tougher criminal penalties, greater diligence needed after WTO entry, warns US delegation,” South China Morning Post, 14 March 2001, p.4.

5 Ibid.


7 McGregor, p. 20.

8 Miller, p. 4


11 As quoted in Yau.


14 Yan, “State Working.”


16 Yau, “Playing field level.”

17 Smith, p. W1.


19 Smith, p. W1.

**Bibliography**


Miller, Matthew. “Call for more action on pirates; Tougher criminal penalties, greater diligence needed after WTO entry, warns US delegation,” *South China Morning Post*, 14 March 2001, p. 4.


