

INTERNATIONAL PROPERTY RIGHT PROTECTION IN CHINA: IS CURRENT ENFORCEMENT ADEQUATE?

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I. Introduction

With the continued growth of global trade the issues of Intellectual Property Rights (IPR) and piracy have developed as leading problems for businesses. No country demonstrates the economic importance of this issue as well as China. With the second highest software piracy rate in the world on a percentage basis (92 percent) and the highest in absolute dollar value, \$2.4 billion¹, resolving the issue of piracy in China is an important one. It is important to understand the policies in place and to examine what else can be done. To date very little academic research has been performed to shed light on this field with the focus of most study on the actual legalities of IPR and the need for it, with little discussion about what needs to be done now that the laws are in place. With China's entrance in the World Trade Organization (WTO) this issue is growing in prominence as China continues to harmonize their IPR policies with world standards. Given the previously lax enforcement and a culture that has not historically valued IPR the problem is a daunting one. Within the world of international protection of IPR there are two areas of study; the regime deficiencies and enforcement inadequacies². It can be argued that China has been making inroads with respect to the regime deficiencies. This paper will offer a broad overview of the IPR framework in China and further study the area of enforcement inadequacies and examine what progress has been made.

II. Economic Impact

China accounts for 44 percent of the dollar losses due to piracy in the Asia/Pacific region. As noted above this amounts to \$2.4 billion³ in the area of software alone. It cost the U.S. entertainment industry \$979 million in lost sales in 2000⁴. This does not include losses in the areas of pharmaceuticals, agriculture and publishing, other areas that suffer great economic impact due to piracy issues. On average, 20 percent of all consumer products in the Chinese market are counterfeit⁵. These losses will continue to increase as China continues to adopt free market policies and increases global trade.

III. IPR Defined

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¹ Business Software Alliance. (2003). *Eighth Annual BSA Global Software Piracy Study: Trends in Software Piracy 1994-2002*. Washington, DC 20036: Business Software Alliance.

² Jain, S. C. (1996). Problems in International Protection of Intellectual Property Rights. *Journal of International Marketing* (Vol. 4, pp. 9): American Marketing Association.

³ *Id.* at Article 1.

⁴ Farrell, N. (2002). *China cracks down on piracy*. Retrieved 4/24, 2004, from <http://crn.vnunet.com/News/1134387>.

⁵ International Trade Administration. (2003). *China's Current IPR Environment*. Retrieved 4/24, 2004, at http://www.mac.doc.gov/china/IPRNEW.html#CHINAS_CURRENT_IPR_ENVIRONMENT.

Intellectual Property Rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time.⁶ Intellectual Property Rights are divided into two areas:

1. Copyright and rights related to copyright and ;
 - a. Industrial property.
 - b. Protection of distinctive signs, in particular trademarks and geographical indications.
2. Inventions (protected by patents), industrial designs and trade secrets.

The purpose of these protections is to provide an economic incentive for innovation and technological development.

IV. Comparison of U.S. and Chinese Intellectual Property Rights

Major differences exist between the U.S. and China relative to the legal recognition of IPR. These differences include the source of IPR in each country and the system of law followed in each country.

The recognition of a person's right to intellectual property in the U.S. is based on the federal Constitution, which grants Congress the power to regulate such rights.⁷

The Constitution of China makes no mention of intellectual property rights. The document grants to the National People's Congress (the highest organ of the country) the power to enact civil and criminal laws.⁸ The current IPR laws in China evolve from this legislative power.

The different systems of law followed in each country also impacts IPR in each. As a result of the U.S. following the common law system, a large body of case law relative to IPR has evolved based on precedent. In contrast, China's adoption of the civil law system (and its non-recognition of the concept of precedent) results in a small body of case law.

V. Trademark Law in China

The use of marks on items of trade in China dates back many centuries. China's involvement in international trade grew significantly during the T'ang Dynasty (618-906 A.D.). As international sales increased, the Chinese started using marks on these items of trade. "The use of distinctive markings applied both to the central government in its capacity as the monopolistic manufacture of certain products and to the makers and vendors of those things not controlled by the imperial monopoly, such as jewelry or local grocery stores."⁹ These marks were applied to specific items or types of items. "Thus the buyer would know what he was buying as well as who made it."¹⁰

The first formal trademark law was passed in China in 1904. When the People's Republic of China (PRC) was established in 1949, a new set of trademark laws was adopted. A unique aspect of this law was a requirement that the owner of the trademark maintains the quality of the protected good or risk losing the trademark.¹¹

⁶ WTO. (2004). *What are intellectual property rights?* Retrieved 3/21, 2004, at http://www.wto.org/english/tratop_e/trips_e/intel1_e.htm.

⁷ U.S. Constitution, Article I, Section 8.

⁸ Constitution of the People's Republic of China, Article 62.

⁹ Charles L. Miller II, *A Cultural and Historical Perspective to Trademark Law Enforcement in China*. 2 *Buffalo Intellectual Property Law Journal* 103, Summer 2004. (Visited February 17, 2005) at http://web.lexisnexis.com/universe/document?_m=9e85d6ce6a77p76c9b2f109914954023&_docum=7&.

¹⁰ *Id.* at 105.

¹¹ *Id.* at 107.

The current trademark law was adopted August 23, 1982 and revised February 22, 1993 and October 27, 2001. The revised law provides for both trademark and service mark protection.

Specific provisions of the law include the following:

Article 7. Any user of a trademark shall be responsible for the quality of the goods in respect of which the trademark is used. The administrative authorities for industry and commerce at different levels shall, through the administration of trademarks, exercise supervision over the quality of the goods and shall stop any practice that deceives consumers.¹²

Similar to U.S. trademark law, the Chinese law requires distinctiveness:

“Article 9. Any trademark...shall be so distinctive as to be distinguishable...”¹³

Certain words and devices cannot be used as trademarks:

Article 10. The following signs shall not be used as trademarks:

1. Those identical with or similar to the State name, national flag, national emblem, military flag, or decorations, of the People’s Republic of China...
2. Those identical with or similar to the State names, national flags, national emblems or military flags of foreign countries...
3. Those identical with or similar to the flags, emblems or names, of international intergovernmental organizations...
4. Those identical with or similar to the symbols, or names, of the Red Cross or the Red Crescent; those having the nature of discrimination against any nationality;
5. Those having the nature of exaggeration and fraud in advertising goods;
6. Those detrimental to socialist morals or customs, or having other unhealthy influences.¹⁴

A registered trademark is valid for ten years and is renewable. The ten-year period commences with the date the registration is approved.¹⁵

A provision of the trademark law particularly impacting foreign businesses requires the foreigner/foreign enterprise to utilize the services of an agent approved by the State to act as agent in procuring the trademark.¹⁶ This provision correlates with the Chinese law requiring all foreign companies operating in China to have a Chinese partner

VI. Copyright Law in China

The Copyright Law of the People’s Republic of China was adopted September 7, 1990 and amended October 27, 2001. Copyright protection protects authors in their literary, artistic and scientific works.¹⁷ The term “works” includes written works (novels, poems, essays and theses); oral works; musical works, dramatic works; “quyi works” (referring to ballad singing, story telling, etc.) choreographies; fine arts (paintings, architecture, etc.); photographic work; cinematographic, television and video works; engineer drawings and product designs; and maps.¹⁸ The Chinese

¹² Trademark Law of the People’s Republic of China, (visited February 21, 2005) at

http://www.sipo.gov.cn/sipo_English/flfg/xgflfg/t20020416_34755.htm.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at Article 37.

¹⁶ *Id.* at Article 18.

¹⁷ Copyright Law of the People’s Republic of China, Article 1. (visited February 21, 2005) at

http://www.sipo.gov.cn/sipo_English/flfg/xgflfg/t2002416_34754.htm.

¹⁸ *Id.* at Article 4.

copyright law allows for limited duplication of “works” without obtaining the copyright holder’s permission.¹⁹

VII. Patent Law in China

The Patent Law of the People’s Republic of China (the law) was adopted March 12, 1984 and amended September 4, 1992 and August 25, 2000. The law provides patent protection for inventions and creations, which are defined as “...inventions, utility models and designs.”²⁰ The government will not grant a patent for any invention/creation that violates the laws of China, its social morality or is considered detrimental to the public interest.²¹

In order to obtain a patent, the invention or creation must be novel, inventive and have practical applicability.²² The law specifically provides that no patent shall be granted for:

- (1) Scientific discoveries;
- (2) Rules and methods for mental activities;
- (3) Methods for the diagnosis or for the treatment of diseases;
- (4) Animal and plant varieties;
- (5) Substances obtained by means of nuclear transformation.²³

The duration of a patent for an invention is twenty years; patents for utility models and designs are valid for ten years with the time commencing with the date of filing.²⁴

VIII. Current Status

In 1979 the United States and China signed the Agreement on Trade Relations which led to the establishment of the China Patent Office in 1980 to administer the national patent system and to protect patent-related IPR. However, it was not until 1985 that laws were actually created when China joined the Paris Convention for the Protection of Industrial Property. In 1995 the Regulation on Customs Protection of Intellectual Property was created. New patent laws were created in 2000 and for enforcement in 2001.²⁵ China’s entry into the WTO led to the acceptance of the Trade Related Aspects of Intellectual Property (TRIPS) agreement which allowed harmonization of Chinese patent laws with international standards. This was followed in 2003 by laws that further improved China’s laws and brought them in line with WTO standards. These laws came into force in March 2004.

Since its entry into the WTO nearly two years ago, China has stepped up law enforcement in a bid to more effectively protect IPR and to follow the standards of TRIPS, the governing law of the WTO. In addition, since the 1980’s, China has also become a member of many international IPR treaties and organizations; The Paris Convention for the Protection of Industrial Property, the Berne Convention, the World Intellectual Property Organization (WIPO) and the Universal Copyright Convention (UCC).

China currently has three primary organizations overseeing IPR protection:

I. State Intellectual Property Office of the P.R.C (SIPO)

¹⁹ *Id.* at Article 27.

²⁰ Patent Law of the People’s Republic of China, Article 2 (visited February 21, 2005) at

http://www.sipo.gov.cn/sipo_English/flfg/zlflfg/t20020327_33872.htm.

²¹ *Id.* at Article 5.

²² *Id.* at Article 22.

²³ *Id.* at Article 25.

²⁴ *Id.* at Article 42.

²⁵ Isinolaw Research Centre, 2001.

Functions and responsibilities:

Drafting and publicizing rules, regulations and policies related to patents and intellectual property rights (IPR); Negotiating IPR matters with foreign parties and organizing international IPR cooperation; Drafting development plans for IPR work and patent information network plans; Overseeing formulation of standards for determining patent verification and violations; Helping local areas handle patent disputes and prosecute violations; and Designating foreign-related proxy patent agencies²⁶.

2. *State Administration for Industry and Commerce (SAIC)*

Functions and responsibilities:

Deals mainly with cracking down on fake goods and also oversees the Trademark Office State Administration for Industry and Commerce of the P.R.C. (CTMO). There are a number of IP law firms under the SAIC, including the China Trademark and Patent Law Office, the China Trademark Service and the NTD Patent and Trademark Agency Ltd.²⁷.

3. *National Copyright Administration of the P.R.C. (NCAC)*

Functions and responsibilities:

The National Copyright Administration is charged with the responsibility for copyright matters including writing regulations, investigating major infringements, administering foreign copyrights, administering state owned copyrights, and the supervising of other copyright authorities.²⁸

China's entry into the organizations provides the country a wealth of resources for establishing an appropriate legal framework for the protection of IPR. The important question is whether enforcement is keeping pace. Below are excerpts of press releases from the various enforcement agencies. Normally the leaders of the various IPR organizations hold the press conferences in conjunction with each agency and they tend to have a high ranking official make the statements at a press conference, demonstrating that they are aware of the public relations issues involved and this united front provides greater impact.

In 2003, the local copyright administrations across the country handled 23,013 cases, nearly 2.6 times of 2002, and resolved 22,429, with a resolving rate of 97.6 percent. Of all the cases, 21,032 cases received fines, 1,173 were mediated and 224 were transferred to the judicial organs. The top 5 regions, where the most cases were handled, resolved and fined, were Guangdong, Guangxi, Henan, Jiangsu, and Fujian.

In 2003, a total of 756 IP infringement cases at a value of 67,970,000 RMB (US \$8.5 million) were investigated and solved by the customs across China, among which, 9 cases worth 270,000 RMB were related to imported goods and 747 cases worth 67,700,000 RMB were related to exported goods. Of all handled cases, there were 741 cases worth 66,930,000 RMB related to trademark, 14 cases worth 1.04 million RMB related to patent right, and 1 case related to copyright.²⁹

In 409 criminal cases on IPR infringement, 253 violators were brought to justice according to the nation's criminal law. Meanwhile, nationwide IPR

²⁶ China Online. (2001). *State Intellectual Property Office (SIPO)*. Retrieved 22 February 2001, at http://www.chinaonline.com/refer/ministry_profiles/c00122168.asp.

²⁷ *Id.* at Article 26.

²⁸ China Council. (2004). *Copyright protection*. Retrieved 4/22, 2004, at <http://www.chinacouncil.com/copyrightprotection.html>.

²⁹ State Intellectual Property Office. (2004). *IPR Awareness to Get a Boost*. Retrieved April 14, 2004, at <http://www.china.org.cn/english/2004/Apr/92898.htm>.

administrative organs, including patent offices, industrial and commercial administrative bureaus and copyright watchdogs, accepted 1,442 patent disputes, investigated 39,105 trademark violations with total fines of 214 million Yuan (25.78 million US dollars), and confiscated 67.9 million pirated publication products.³⁰

Though China has complained about the influx of pirated goods this data shows that exported items still comprise the over 99 percent of the pirate trade and the total of seizures is a minuscule amount (less than .3 percent) of the overall pirated goods trade.

The heartening fact of these press releases is that current enforcement is highly publicized and high profile. For example, China launched a new publicity campaign in March of 2004 in which the agencies under the State Council are campaigning to publicize IPRs and combat infringement across the nation. This campaign also promotes public awareness of intellectual property with the goal of creating a favorable social environment for protection of intellectual property.³¹ This is reinforced by recent statements by Vice-Premier Wu Yi in April 2004 who reiterated China's resolution in protecting IPR's and recognizes the necessity for a "comprehensive, balanced and sustainable development of Chinese economy and society."³² Yet it remains to be seen if this enforcement will be ongoing or simply a public relations effort while China is in the spotlight of external pressure to improve IPR protections, especially by the U.S., as Chinese piracy of U.S. products remains an area of contention between the two countries.³³

It is important that the publicity be continuous to hope to have an effect on curtailing the efforts of pirates producing, and consumers purchasing, the goods. Punishing the producers of pirated goods is a good area to focus on and probably the only choice for the agencies involved at this time. Focusing on purchasers of pirated goods would be a strain on already limited resources.

With increasing claims being submitted by local companies the trend of the court systems, which previously had little experience with infringement, giving paltry judgments and slow turnover is being reversed as the courts increasingly recognize the value of IPR protection to society and the economy.³⁴

A recent court case for IKEA exemplifies the modern route that China is taking towards IPR enforcement as well as dealing with internet issues.

IX. Background

Ikea is an internationally recognized manufacturer of furniture with its trademark registered in more than 80 countries. When Ikea began their expansion into China they found that [ikea.com.cn](http://www.ikea.com.cn) had been registered by Guowang, Inc. Guowang contested that IKEA had not registered the trademark with the Trademark Office of the State Administration for Industry and Commerce per the Provisional Rules on the Certification and Management of Well-known Trademarks and therefore they could rightfully claim the name. China uses the first to file rule versus the first to invent rule in the US. Companies are required to register their trademarks in China to receive the benefit of protection. The need to register trademarks under this policy has been changed to harmonize with international standards and to recognize well-known brands.

³⁰ People's Daily. (2003, October 24, 2003). *China strengthens IPR law and administrative enforcement*. Retrieved 4/17, 2004, at http://english.peopledaily.com.cn/200310/24/eng20031024_126795.shtml.

³¹ State Intellectual Property Office. (2004). *Speech of Commissioner Mr. Wang Jingchuan*. Beijing: State Intellectual Property Office of the P.R.C.

³² People's Daily. (2004, 4/21/04). *China resolute on IPR protection: Vice Premier*. Retrieved 4/24, 2004, at http://english.peopledaily.com.cn/200404/21/eng20040421_141060.shtml.

³³ Neigel, C. (2000). Piracy in Russia and China: A Different U.S. Reaction. *Law and Contemporary Problems*, 63(autumn), 179-.

³⁴ International Intellectual Property Alliance. (2000). *2000 Special 301 Report People's Republic of China*: International Intellectual Property Alliance.

X. Court finding:

The conduct of the defendant to register the well-known trademark "IKEA", owned by the plaintiff as its own domain name, not only violated applicable regulations set forth in the Provisional Rules on the Management of Internet Domain-Name Registration in China, but was contrary to the spirit reflected in the Paris Convention for the Protection of Industrial Property and the basic principle of the Law against Unfair Competition of the People's Republic of China. It hence infringed the lawful rights and interests of the plaintiff as the owner of the well-known trademark and should be held for corresponding civil liabilities. Therefore the defendant shall not use the domain name "ikea.com.cn" and its registration of should be revoked. According to Clause 1, Article 2 of the Law against Unfair Competition of the People's Republic of China., the court ruled that the domain name, "ikea.com.cn", registered by Guowang Inc. shall cease using the domain name immediately and cancel the domain name within ten days after this ruling takes effects.³⁵

This case demonstrates that China recognizes the importance of trademarks and is willing to accept international business standards of fair and good faith conduct in business.

As has been pointed out by Gang Fan:

Politicians and bureaucrats, indeed, will only take action when "domestic piracy" starts to occur. When people in a country begin to illicitly copy the intellectual achievements of a fellow citizen, IPR becomes a real domestic political issue dividing special interest groups. Containing piracy then becomes a matter debated in political assemblies, in the media and - most importantly - in the courts. When this happens, real efforts to enforce laws that previously existed only on paper to please foreigners, starts to take place.³⁶

With the greater influx of pirated goods there is now a rise in cases of Chinese companies seeking copyright and trademark protection both in filings and court cases. As can be seen by the short list of Supreme Court cases below, almost all of the plaintiffs are Chinese companies.³⁷

- *Guangzhou Chinese Investment Company v. Jiang Su Jiang Kong Filming Company Limited* (7/19/2002)
- *An Action in Unfair Competition and Trademark Infringement Involving Beijing Vantone New World Plaza Ltd, Wenzhou Bei-Bei Rubber-Shoes Company, Jingsu Bei-Bei Group Company* (6/24/2001)
- *An Action in Copyright Contract Dispute Involving Dunde Chen, Beihai Zhong Ding Stock Co., Ltd, Guilin Energy Resources Development (Group) Company, Gungai Farm-Industry Products Purchasing & Sale Service Center, Guangxi Old People Tourist Company, Guilin Overseas Tourist Company, Guilin Chang Hong Trade Company, the People's Government of Binyuang County, Hong Kong Pei Run International Co., Ltd and Nanning Taian Property Development Co., Ltd.* (6/24/2001)
- *The Action of Trademark Infringement and Unfair Competition brought by Fuzhou Wan Da Pencil Stationery Ltd. Co., and Fuzhou Pencil Factory*

³⁵ Zhipei, J. (2002). *IKEA Case, Laws and Policies Concerning Domain-Name Disputes in China*, at <http://www.chinaiprlaw.com/english/case/case1.htm>.

³⁶ Fan, G. (2001). *Piracy in China*. Retrieved 4/24, 2004, at http://www.project-syndicate.cz/article_print_text?mid=545&lang=1.

³⁷ *Id.* at Article 35.

against Fuzhou Ren Yu Stationery Ltd Co, and Fujian Light Industrial Products Import & Export Group Co. (5/7/2000)

- *Violation of Trade Secrets Disputes on Xiangsheng Co., Shanjue Mo, Rongbai Wu, Aiyuan Gu v. Haiying Co, Ltd.* (13/4/2000)
- *Zhang v. Suzhou Nanxin Cement, Co. Ltd, Zhi Zhong Zi, No.3* (3/6/2000)

XI. Current Issues in Enforcement

Ironically, due to the recent crackdowns, pirates are now moving to Hong Kong and Macau and shipping phony goods back into China, which has led to Chinese officials crying foul to the fact that people are importing pirated goods.

Given the size of the industry and the rampant piracy, China's enforcement agencies lack the manpower necessary to run both the application agencies and the enforcement. As noted above the two main agencies, SIPO and CTMO, do not have their own enforcement officers to conduct raids and must rely on other agencies such as Administrations for Industry and Commerce (AICs) and Technical Supervision Bureaus (TSBs) and Public Security Bureaus (PSBs)³⁸.

Given that Intellectual Property Rights are such a new phenomenon in China the public is not accustomed to viewing piracy as breaking the law. It is not stigmatized and therefore there is no disincentive to purchase pirated goods. The same applies to the manufacturers themselves; however, their case is untenable now as it has become clear that piracy is no longer tolerated by the government. Interestingly in the embassy section of Beijing one can find a market filled with pirated and counterfeit goods where the police are there to guard the safety of the market and are not concerned with the pirated goods themselves.

With the recent laws passed in 2001 and 2003, the previous issues of patent application have been streamlined resulting in a subsequent rise in applications for protection. This is one critical step in creating an atmosphere conducive to IPR protection. As Chinese companies themselves begin recognizing the value of IPR's this will create a grassroots support of IPR. These companies will begin defending the patents and hopefully remove the impression that IPR complaints against China are a purely foreign issue. One would assume as Chinese companies grow technologically their derived benefits will lend industrial and commercial support to the judicial and enforcement systems.

XII. Suggested Improvements

The Chinese piracy problem derives from:

[T]he Confucian beliefs ingrained in the Chinese culture, the country's socialist economic system, the leaders' skepticism toward Western institutions, the xenophobic and nationalist sentiments of the populace, the government's censorship and information control policy, and the significantly different Chinese legal culture and judicial system.³⁹

Yu⁴⁰ then continues to outline a 12 step program to improve the piracy problem in China, the essence of which is the education of the peoples involved and the removal of corruption from the judicial branch. The points regarding harmonizing the law have pretty much been completed by the Chinese.

³⁸ China Online. (2001). *State Intellectual Property Office (SIPO)*. Retrieved 22 February 2001, at http://www.chinaonline.com/refer/ministry_profiles/c00122168.asp.

³⁹ Yu, P. (2001). *From Pirates To Partners: Protecting Intellectual Property In China In The Twenty-First Century*. *American University Law Review*, 50(131-243). p. 152.

⁴⁰ *Ibid.*

The situation in China is similar to that of Japan in the 1980's when Japan became a large economic force. Japan has seen a drastic decrease in piracy over the decades. For example, the latest report from BSA show that Japan's piracy rate dropped from 66 percent piracy in 1994 to 35 percent in 2002⁴¹. This bodes well for the hope that China too can curb piracy.

The important area of focus will be enforcement; this will be critical for deterring the piracy of goods. At a more systemic level enforcement is critical in changing the practice of major manufacturers from copying intellectual property. The current focus of enforcement is on the underground movement; the larger legitimate operations need to be targeted as well. To date it does not appear that legitimate substantial operations that are infringing on technology and processes are being targeted. It is easy to target the criminal element as a scapegoat but systemic enforcement is a must, though politically less savory, and will be the true test of the P.R.C.'s resolve. Exacerbating the issue is that by leaving enforcement to local agencies a conflict of interest arises. Due to the prevalence of piracy and counterfeit production, crackdowns can have a significant negative impact on local economies.⁴²

The publicity war being waged is a positive development. This must continue with the targeted focus on education. The up and coming generations must be aware of the societal value of protecting rights; this is the only realistic way of changing the current cultural attitude towards IPR.

Enforcement needs greater funds allotted to it for the basic operation. For the laws to be meaningful and for the enforcement agencies to be legitimate there must be a call for development of their own law enforcement arm. By using their own agents for enforcement they will be able to streamline operations, providing for greater case resolution and reduce interagency rivalries that are inherent to any governmental interagency organization. The other method of improvement would be to bring all of the agencies under the jurisdiction of one authority which was the original plan. This will remove much of the jurisdictional confusion and the ensuing enforcement delays.⁴³

In sum it appears that China is making good progress towards enforcing IPR's but there is room for much improvement. As China's production and trade increases so will the severity of the problem. The current enforcement has only made a minuscule dent to date. For companies operating in the Chinese market it is up to the individual business to take as many preventative measures as possible, namely registering with the appropriate Chinese offices. Many of the organizations cited in this paper provide an abundance of information on how to protect businesses in this challenging environment. A good starting point is export.gov. The Chinese government is making great strides in dealing with the piracy issue and it appears that they do recognize the value of protecting the rights of individuals and businesses. Only time will tell if educational efforts can overcome the cultural and historical obstacles, but past successes in Asia and the current focus argue that this problem can be brought down to a manageable scale.

⁴¹ *Id.* at Article 1.

⁴² *Id.* at Article 39.

⁴³ *Id.* at Article 5.

