Protecting Intellectual Property Rights:
The Special Case of China

ALAN ZIMMERMAN
*International Business, City University of New York*

PEGGY E. CHAUDHRY
*Department of Management, Villanova University*

China is the largest source of counterfeit goods. Both U.S. and European Union customs statistics put the People’s Republic of China at the top of the list of pirated product seizures. Along with the remarkable growth in the Chinese economy and exports has come the growth of counterfeit product production and distribution throughout the world. To present a full picture of the many intellectual property rights (IPR) protection problems in China this article reviews Chinese history and traditional attitudes toward individual ownership of IP under Confucianism and communism. Finally, the article presents a view of the current enforcement of IPR rights in China describing the major difficulties encountered by rights owners.

**KEYWORDS** China, intellectual property rights, confucianism, communism, historical roots of local conditions

**INTRODUCTION: THE CHINA PROBLEM CONTINUES**

The U.S. government has been particularly interested in improving the intellectual property rights (IPR) environment in the People’s Republic of China (PRC). Frequent and sometimes contentious negotiations have taken place between the two governments, resulting in a U.S. request for a Dispute Settlement Panel at the World Trade Organization (WTO). In January 2009, after nearly 1½ years of deliberation, the Panel failed to support U.S. claims
“that the criminal thresholds [for product counterfeiting] are inconsistent with China’s obligations under . . . Article 61 of the TRIPS agreement” (WTO, 2009). The Panel did conclude that China’s copyright law is inconsistent with the Berne Convention and the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement and recommended that China bring this law into conformity. The Panel also found that China’s practice of removing trademarks and selling pirated goods into markets violated the TRIPS agreement and that changes should be made in Customs measures to prevent this (WTO, 2009).

It is clear that there is widespread counterfeiting of nearly every type of product in the PRC. In addition, although the Chinese government has been taking more action against counterfeiters in recent years, the scope and size of the problem is extremely large and appears to be growing. Just about every pirated product is being sold in-country and exported.

A full review of IPR conditions requires a look at the Chinese economy as well as Chinese history. For hundreds of years the Chinese economy experienced minimal growth, and in fact from 1300 to 1950, per capita gross domestic product (GDP) decreased. Under the communist regime economic conditions did not improve much, and it was not until Deng Xiaoping took over that the Chinese economic miracle began. Since 1978 annual GDP growth has exceeded 7%. Foreign direct investment has been a major reason for this rapid growth, and as a result exports have increased exponentially. With the growth of exports has come the growth of exported counterfeit product. For the last few years, China has been the main source for pirated goods coming into the United States and the European Union (EU) (EU Taxation and Customs Union, 2005, 2007; U.S. Customs Service, 2007, 2008). Although it is virtually impossible to estimate the value of counterfeit product originating in China, it is evident that the total is significant and growing.

Looking at the history of IP in China, it is clear that Chinese political culture did not lend itself to the concept of ownership of IP. Confucianism required control of information, and a traditional Chinese belief is that inventions draw on past knowledge that belongs to all citizens. The basic beliefs of communism dovetailed with these traditional attitudes. Censorship was more important than copyrights, and inventions belonged to the state.

Over the last hundred years under pressure from foreign powers, China has enacted a series of copyright, trademark, and patent laws; and at this point the laws appear to be adequate. The most recent problems come from weak enforcement. Mertha (2005) and Tabata (2003) described the “opaque” bureaucratic apparatus attempting to enforce these laws. For firms and governments a combination of pressure at the national and local level results in better laws and enforcement. Nevertheless IP holders doing business in China are dissatisfied with the level of IPR protection. Recent bad news from China including tainted medicines and pet food add urgency to solving this problem.
THE EMERGING DRAGON: THE GROWTH OF THE CHINESE ECONOMY

For centuries the Chinese economy was stagnant. According to Maddison (2001) total Chinese GDP in 1500 was about $62 billion in constant 1990 U.S. dollars. This grew to about $230 billion by 1820 and only to $240 billion by 1950. Over the same period total GDP in Western Europe advanced from about $44 billion in the year 1500 to nearly $1.4 trillion in 1950. In China, per capita GDP actually fell from about $600 in 1300 to only $439 in 1950. Overall total GDP did not improve much under Chairman Mao. In fact as Mao’s biographer Philip Short (2000) understated, “economics was not Mao’s strong point.” Mao himself recognized his weakness in this area saying to businessmen in 1956, “I am an outsider in the field of economics” (Short, p. 439).

The advent of Deng Xiaoping as leader of the Communist Party drastically changed the economic fortunes of the PRC. His famous saying “whether a cat is black or white makes no difference, as long as it catches mice it is a good cat” (CNN, 2008) made possible the changes allowing the transition to what he called a “socialist market economy.” From 1978 when Deng took power, the Chinese economy has grown rapidly.

For 2007 the World Bank (2007) placed China’s total GDP just behind the U.S., second largest in the world at more than $7 trillion, on a purchasing power parity basis. It may not be surprising that an economy growing in one generation from an 18th-century level to a powerhouse with exports to virtually every other country has also become the chief source of counterfeit products.

PERCEPTIONS OF THE PIRACY PROBLEM IN CHINA

Marquand (2002) repeated a common joke in China, “everything is fake but your mother.” Pirated products include Budweiser beer, Gillette razor blades, Marlboro cigarettes, Yamaha motorcycles, and Skippy peanut butter (Hopkins, Kontnik, & Turnage, 2003; personal observations by authors). In fact any product with a well-known brand is probably a victim of product counterfeiting in China.

The Economist Intelligence Unit’s (2007) ratings of the “degree of property rights protection” in China show no improvement from 1994 to 2005. The ratings show slow improvements expected over the next few years but remaining at a modest level for the foreseeable future. (see Figure 1–the rating scale is 1–5 with 5 meaning the highest degree of protection.)

A survey of its members by the Quality Brands Protection Committee (QBPC, an organization of more than 150 IP holders in China) revealed that nearly 70% felt IP concerns were among the three most important operating issues facing their companies. Forty-one percent of members reported at
least 11% of their products in the market were fakes, and 13% of members said this figure was 51% or more (QBPC, 2006). According to the U.S. Trade Representative (USTR; 2007a) in 2006, 85% to 93% of all copyrighted materials sold in China were pirated with very little improvement in this percentage since 2005.

The Motion Picture Association of America (2006) believes that 93% of the potential market for the film industry in the PRC is lost to piracy. An inspection by the China Healthcare Association revealed that “more than 25% of healthcare products in China were fakes” and between 200,000 and 300,000 Chinese die every year because of counterfeit or substandard medicine (Schwarz & Wong, 2006). The Software and Information Industry Association claims that nearly 100% of business software in China is pirated (Hopkins et al., 2003). At an IP meeting called by the U.S. Ambassador in Beijing the U.S. National Electrical Manufacturer’s Association (NEMA) provided an extensive list of fake electrical products made in China and exported, including batteries, smoke detectors, circuit breakers, wire/cable, and relays. The association also reports counterfeit certification marks including those of Underwriters Laboratories and the Canadian Standards Association. False certification labels and substandard versions of these products are a threat to health and safety (NEMA, 2005). China has also been a major source of counterfeit cigarettes, producing 190 million annually (World Customs Organization [WCO], 2001). The International Anti-Counterfeiting Coalition (“Testimony Before,” 2002) stated “the trademark community confronts a market filled with counterfeit goods . . . affecting every conceivable product”. They claim a wide range of products are subject to counterfeiting, from auto parts to industrial lubricants to chewing gum and razor blades. Naim (2005) reported that even a Chinese expert on IP had his IP books pirated and placed on the Internet.

An amusing example of trademark infringement is seen in Figure 2: the invention of “W&Ws” copying M&Ms packaging in every detail.
China is the most important source for counterfeit products intercepted by U.S. Customs (2007) and reported by the EU Taxation and Customs Union (2007). More than four-fifths of counterfeit products seized in the United States came from China and more than half of goods seized at EU borders in 2004 were counterfeit products from China. In addition the Organization for Economic Cooperation and Development (OECD; 2007b, c) identified China as a country where IPR problems persist. Naim (2005) and Hopkins et al. (2003) cited China as the most important source for counterfeit product.

It is virtually impossible to accurately estimate the value of counterfeit product originating in China, but it is evident that counterfeit production has grown right along with the economy and exports. In 1998 a confidential report by the Chinese State Council stated that the country was “drowning in counterfeits” and placed the value of counterfeit production at $16 billion for 1998 (Hopkins et al., 2003). According to testimony by Chow (“Intellectual Property Protection,” 2005), a later study by the same government agency placed the value at $19 to $24 billion by 2001. In 2002 the Christian Science Monitor stated that the piracy industry produced something between $40 and $80 billion and directly or indirectly employed three to five million people (Marquand, 2002). Calculations completed by Havocscope (2007) conclude that the Chinese “illicit market” is the third largest in the world, valued at $79.5 billion. Chow estimated in 2005 counterfeit product accounted for approximately 8% of China’s GDP, implying that the total of counterfeit products exceeded $150 billion.
Some observers claim 60% to 70% of worldwide counterfeit goods is produced in China (Economist Intelligence Unit, 2007; Schwarz & Wong, 2006). The OECD (2007a) estimates the worldwide volume of tangible counterfeit products at about $200 billion. Using the OECD estimate places the total value of counterfeit products from China at between $120 and $140 billion annually, similar to the total based on Chow’s estimate.

THE HISTORICAL CONTEXT OF INTELLECTUAL PROPERTY IN CHINA: CONFUCIAN AND COMMUNIST UNDERPINNINGS

To understand the difficulties of protecting IP in China, one must look back through history, not only to the communist regimes of the PRC but even to the early dynasties. Two researchers, Alford (1995) and Mertha (2005), provided the most thorough historical references to the IP environment in China. Alford contended:

The most important factor in explaining the late appearance and relative insignificance of the idea of intellectual property in the Chinese world lays in . . . its political culture, and especially in the central importance to the state, for purposes of legitimation and power, of controlling the flow of ideas. A system of state determination of which ideas may or may not be disseminated is fundamentally incompatible with one of strong intellectual property rights in which individuals have the authority to determine how expressions of their ideas may be used and ready access to private legal remedies to vindicate such rights. (p. 119)

He explained that a pillar of traditional Chinese belief is that individual inventions draw on past knowledge that belongs to all citizens. In addition, Confucianism requires the control of information. Contrary to conventional wisdom, copyright did not evolve in China with the invention of printing. Alford found there was neither a “formal or informal counterpart to copyright or other major forms of IP law in Imperial China (221 BCE to 1911 CE)” (p. 9). He dated the earliest efforts to regulate publication of particular works to 835 CE. These regulations were not designed to protect the property rights of authors but to ensure prepublication review so that the state could prevent nonconforming ideas from being distributed. This emphasis was clearly in line with ancient Chinese precepts regarding the role of the state versus individuals. As Alford put it, rulers were seen to be in a parent-like position, and therefore it was their responsibility to “nurture the populace [and] . . . determine which knowledge warranted dissemination and which ought to be circumscribed in the best interests of the Commonwealth” (p. 23). On the other hand, there was no sanction against the pirating of many more ordinary works. Until the 20th century, there was far more interest in
the control of publications than in trademarks or patents. The main interest was to prevent ordinary people from reproducing official symbols. Although some guilds and clans used brand names and symbols there was widespread counterfeiting and copying of secret manufacturing processes. There was little IP owners could do to put a stop to it.

In the late 19th century Western interest in IP revived. The formation of the Paris Convention in 1883 dealing with patents and trademarks and the Berne Convention that addressed copyright in 1886 focused more attention on IP within the country, even though China was not a party to either convention. Although negotiations with Chinese officials began, it took about 20 years for laws to be passed related to copyright, trademarks, and patents. Even these were unsatisfactory to the treaty powers working in China, and in 1924 the U.S. Consul in Shanghai said there was “widespread unauthorized reproduction of foreign patented articles” (Alford, 1995, p. 43). In fact although the Chinese believed that economically successful countries had patent and trademark law, they did not easily understand the Western concept of IP. The Jiangnan Bureau of Commerce even issued patents to Chinese for imitation rather than innovation.

Although new, well-designed laws were passed to protect IP during the reign of the Nationalist Guomindang government in the 1920s and 1930s, there was little improvement in IPR protection because there were a few trained government people or judges who understood IP. In addition the government continued to see the control of ideas as paramount.

When the Chinese communists took over in 1949, they found a commonality with the Soviet approach toward IP because it reflected traditional Chinese attitudes toward inventions and the control of information. Mertha (2005) pointed out that inventor’s rights touch on “the set of core assumptions that separate socialist from capitalist systems.” Although laws were passed giving recognition and some monetary rewards to inventors and authors, apparently few took advantage of them. Instead, there was unauthorized copying and trademark use in the 1950s. A major problem was that there was neither basic contract law nor any effective legal redress. During the 1960s the minimal patent protection of the earlier years was removed from the law and trademark guarantees were weakened. The IP environment reached its low point during the Cultural Revolution where even the meager payments for inventions were eliminated. After the Cultural Revolution, starting in the mid-1970s, the Chinese moved to create new laws for patents and trademarks. This was difficult for China because these laws established new private ownership rights in an ostensibly socialist country. Copyright law took an even more torturous path before being finally issued in 1990. Alford (1995) explained that this law allowed only limited payments and excluded “works prohibited by law to be published and disseminated,” and that the copyright holder could not violate the Constitution and the law or infringe upon the “public interest,” an obviously vague term.
Mertha (2005) described in great detail the role of the United States in pushing China to enact IPR protections. From the time of normalizing relations with China in 1979, the United States began negotiations aimed at convincing the Chinese to improve their patent, copyright, and trademark laws. China agreed to protect foreign patents, copyrights, and trademarks in the U.S.–China bilateral trade agreement of 1979. As a result China issued new patent and trademark laws and joined the Paris Convention. By 1984 the U.S. Trade and Tariff Act included inadequate protection of IP as one of the “unreasonable” practices of foreign governments, and in 1988 a new U.S. trade act provided for trade sanctions against countries who were abusing U.S. firms’ IP. This law also established the annual report from the USTR on unfair trade practices and the “priority foreign country” designation for countries whose actions, including failure to provide IP protection, had an adverse impact on U.S. products. The United States continued negotiations with China, pressing them to fulfill all the commitments in the 1979 agreements. The repression of Tiananmen Square put these negotiations on hold for more than a year. By late 1991 IPR issues became central to the negotiations between the United States and China. Although agreements were reached in 1992, IPR violations continued at a high level in China. The United States pressured China using the provisions of the 1988 Trade Act and issuing deadlines for changes in IPR protection. An important agreement was reached in 1995, but the United States again found the Chinese enforcement of the 1995 agreement less than ideal and threatened another set of trade sanctions in 1996. Negotiations have continued to this day culminating in the WTO Dispute filed by the United States.

According to the USTR (2007a) China has enacted a relatively good set of laws since its accession to the WTO. However, the USTR claims that enforcement has often been ineffective. Some contend that the tight control of information dissemination exacerbates the counterfeiting problem. Pang (2004) stated that the Chinese government’s insistence on “ideological purity” and resulting tight restrictions on film production and distribution only encourages cinema piracy. Although the laws described above were improvements over those in the past there was a lack of provision for resolving disputes. The lack of enforcement and corrective mechanisms is examined next.

CHINA’S LEGAL AND REGULATORY ENVIRONMENT: THE COMPLEXITY OF IPR ENFORCEMENT

As can be seen in Figure 3, the Economist Intelligence Unit (2007) saw a significant risk in the legal and regulatory environment in the People’s Republic of China.
Yasuhiro Tabata (2003), managing director of the Japan Intellectual Property Association, described the characteristics of the legal environment in China:

1. A complex legal system consisting of custom and statute.
2. Insufficiency in “Rule of Law.”
3. Insufficient independence of judicial system.
4. Insufficient transparency in legislative, administrative, and judicial procedure.
5. Local-protectionism in legislative, administrative, and judicial procedure.

Ostergard (2000) pointed out how important enforcement is in assessing the strength of IPR protection in a particular country. A study conducted by Chaudhry and Stumpf (2007) confirmed this, finding that managers who had recently visited China identified weak enforcement of IPR and limited criminal and civil penalties as two of three important reasons that suppliers offer counterfeit goods. The most important reason was obvious: profitability.

Understanding the IPR environment in China requires a careful review of the enforcement of existing laws. Chow (“Intellectual Property Protection,” 2005) identified two main barriers to effective enforcement: local protectionism and inadequate punishment. The protectionism comes about despite the best intentions of the central authorities because particular localities may benefit from counterfeiting. This activity provides jobs and generates revenue and may be vital to the local economy. He stated “some local areas in China are entirely supported by the trade in counterfeit goods and local residents are ready to use any means necessary to protect their illegal trade.” Regarding inadequate punishment, he pointed out that there is enforcement activity, but the fines and prosecutions are so minimal that
they do not create a level of deterrence. As he put it, “enforcement in China does not create fear in counterfeiters.”

One author’s conversation with a Chinese customs official reveals the attitude that has been prevalent in China. The official restated the opposition of the Chinese government toward fraudulent product, while acknowledging that many industries discourage “government interference.” (It should be noted that Mertha (2005) identified the word interference as a euphemism for effective enforcement.) The official also stated that “it is unrealistic to expect the average citizen to think about the illegality of products” (Name Withheld, personal communication, July 9, 2002).

The national government seems to launch one program after another to put a stop to piracy. Recent efforts include at least seven campaigns such as Mountain Eagle, Sunshine, and Blue Sky. In 2006, a nationwide IP complaint hotline was established. The deputy director of the IP Crimes Bureau claimed a 70% increase in criminal IP cases in 2005 and 167,000 cases of illegal production and trade in medicines and medical equipment (Schwarz & Wong, 2006). In the mid-1990s a campaign called “strike down fakes” was started. Local offices were established using personnel from the Administration for Industry and Commerce (AIC) and the Quality Technical Supervision Bureau (QTSB). Because of interagency conflict the system was ordered to be dismantled in 1998, but Mertha (2005) found that offices related to this effort still existed at the national and local level as of 2003. Operation Blue Sky was designed to help companies at trade fairs. The government has designated a week in April of each year to stress the importance of enforcing patents and copyrights (U.S. Chamber of Commerce, 2007). However these efforts have not had any measurable effect on the growth of counterfeit product in China. In some cases pirate factories were related to the Ministry of Electronics Industry and the People’s Liberation Army (PLA), although interviews conducted by Mertha (2005) indicate that the press had overstated the role of the military. The Economist (“The Long March,” 2007) reported that by the late 1990s, the central government had changed its view about the PLA being involved in business. They were asked to give over these enterprises to civilians, and the government made up for it by increasing budgets for the PLA.

In May 2005, Victoria Espinel, Assistant U.S. Trade Representative (Acting) outlined a series of tactics to deal with the China problem (Intellectual Property Theft in China and Russia, 2005). They included working with U.S. industry and other stakeholders to enforce WTO procedures to bring China into compliance with its WTO TRIPS obligations; invoking the transparency provisions of the WTO TRIPS Agreement, which will require China to produce detailed documentation on certain aspects of IPR enforcement that affects U.S. rights under the TRIPS Agreement; elevating China onto the Priority Watch List on the basis of serious concerns about China’s compliance with its WTO TRIPS obligations and commitments China made to
significantly reduce IPR infringement at the April 2004 U.S.–China Joint Commission on Commerce and Trade (JCCT); continuing to monitor China’s commitments under U.S. 1992 and 1995 bilateral agreements; and using the JCCT, including its IPR Working Group, to secure new, specific commitments to significantly improve IPR protection and the enforcement environment in China.

Despite promises made at meetings of the JCCT to increase the number of criminal prosecutions versus the number of administrative cases, the USTR (2007a) has yet to see a shift in emphasis toward criminal enforcement. The U.S. government has identified several factors contributing to poor IPR enforcement in China: underutilization of criminal penalties, fines that are too low to provide a deterrent to counterfeiters, and the lack of effectiveness of rules designed to promote the transfer of cases to criminal authorities.

Mertha (2005) stated that “the bureaucratic apparatus charged with managing and enforcing intellectual property in China, particularly at the local level is . . . convoluted and opaque” (p. 3). His study involved numerous in-country interviews with various Chinese sources over a period of 5 years. Mertha makes a clear division between enforcement of copyrights and patents and trademarks. The success realized in each of these areas varies considerably partly because of the independence of the particular bureaucracy charged with enforcement and therefore its reliance on a superior agency for personnel and budgets. Success is also related to the type of external pressure from foreign governments and companies and the competition of particular bureaucracies with each other. The Chinese bureaucracies charged with implementing IP policy are an excellent example of “fragmented authoritarianism,” meaning that authority below the top of the Chinese political system is disjointed. Mertha (identified two dimensions of fragmentation: functional and geographic differences separating agencies. These differences allow agencies to effectively veto the implementation process.

An example of this fragmentation described by Mertha (2005): the State Intellectual Property Office (SIPO), a bureaucracy established specifically to manage and coordinate the patent, copyright, and trademark bureaucracy’s IPR protection activities. He said, “In reality SIPO is an organization largely adrift and often disconnected from the actual institutional and political arena in which . . . IPR protection and enforcement in China take place” (p. 28). Although SIPO was to be the agency in charge of all IP, the State Administration for Industry and Commerce (SAIC) is the national bureaucracy that manages the Trademark Office. According to Mertha, the Trademark Office is “a cash cow for the SAIC” and therefore is highly resistant to a merger of that office into SIPO. The National Copyright Administration (NCA) also has not been moved under SIPO because of concerns about culture and propaganda.
Although the national SAIC and the local AICs are responsible for registering and enforcing trademarks, at the local level, the AICs are branches of local governments. They invest in creating markets, issue licenses to businesses, and collect management fees from proprietors. This puts the AIC in a compromised position with counterfeiters from whom they are collecting large fees (Kearney, 2005). Although the AIC is responsible for trademark enforcement, a competing agency, the Quality Technical Supervision Bureau (QTSB), saw an opportunity to expand its influence where the AICs were not vigorously protecting trademarks. The QTSB is formally responsible for product quality and consumer protection. However, it has expanded its mandate by identifying counterfeit product as potentially harmful to consumers. The QTSB’s actions have prodded the local AICs to take on more vigorous enforcement against pirates (Mertha, 2005).

Tabata (2003) gives a diagram of the confusing Chinese IP enforcement system reproduced in Figure 4 below.

Successful foreign companies have established alliances with various enforcement agencies on the local level. They have also used private investigation agencies and law firms who establish good relationships with particular local AIC or QTSB officials. Some of these agencies are foreign and others are Chinese owned. In fact, some of them are essentially state owned or closely aligned with governmental agencies. One company includes on its staff former members of the Public Security Bureau, the AIC, and the

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**FIGURE 4** IP enforcement system in China.

Trademark agents also play an important role in fighting piracy by filling out a complaint letter that is similar to a search warrant in the United States. Because foreign firms can afford to pay larger fees than Chinese firms, much of the enforcement action is on behalf of these foreign IP holders.

Mertha (2005) described an anticounterfeiting raid in which he was an eyewitness. This involved private investigators as well as AIC agents. After the raid the “sponsor” bought everyone dinner and an evening at a karaoke place. Mertha concluded that although enforcement actions are often quite different, common elements are important for success. First, private investigators lay the groundwork and absorb the costs while the officials provide authority and take credit for the raids. Second, either direct or indirect payments are expected as well as a symbolic giving of “face.” This would be accomplished by publicly recognizing the important role of the official(s) in any actions taken. (In the Chinese culture the concept of “face” is quite important. Generally this means looking good, or not being humiliated, in the eyes of others. To give face at the simplest level would be to politely agree with someone publicly even if privately one disagrees. At a higher level it would require more effort. The more difficulties one need overcome to honor another person, the more face is given to that other person.) (Jieming, 2004).

According to Pfizer’s Director of Global Security, the company is focusing on many levels to protect its IP rights. In addition to working with law enforcement, Pfizer is organizing roundtable discussions and seminars with Chinese ministries to exchange information and experience related to fighting drug pirates (Schwarz & Wong, 2006).

Mertha (2005) concluded that top-down pressure on the national government can help to change policy, but this must be combined with what he calls lateral pressure focused on the local level to improve enforcement. Alford (1995) advised that one must take into account the political culture to understand the difficulties of developing effective IP law in China. He described the difficulties in “efforts to graft limbs grown in one setting onto trunks that have matured in another.”

RECENT EVENTS

The chairman of the American Chamber of Commerce in Shanghai said, “intellectual property protection has made the transition from a lawyer’s issue to a mainstream issue” (Associated Press, 2006). A spate of bad news coming from China suddenly made the problem of counterfeit goods a matter of life and death. Cough syrup containing ethylene glycol was identified as responsible for the deaths of hundreds of people in Panama and the Dominican Republic, toothpaste tainted with the same chemical had been
found on three continents, and a cell phone exploded, killing a 22-year-old man in western China. Phone manufacturers Motorola and Nokia blamed counterfeit batteries. Preceding all three of these episodes was a problem with tainted pet food, which surfaced in the United States in the spring and summer of 2007.

The Chinese government took drastic action against one individual, Zheng Xiaoyu, former head of the State Food and Drug Administration. Xiaoyu was executed for taking bribes to approve untested medicine. Despite this draconian measure, the Chinese face daunting problems in regulating the safety of products and struggle to enforce IPR. As we have seen, many different bureaucracies have been given responsibility for IP. In the food and drug area alone, the Ministry of Health, the Ministry of Agriculture, the State Administration of Industry and Commerce, and the General Administration of Quality Supervision, Inspection, and Quarantine all have some role. Because each distinct government agency wishes to collect license fees and fines to supplement their budgets, inspectors are tempted to accept bribes to ignore violations (Barboza, 2007; Castle, 2007; Kahn, 2007a, b).

Despite what the USTR calls “welcome progress” including completion of the accession to the WIPO Internet treaties, China remains on the USTR (2007b) Priority Watch List. The USTR identifies pirated optical discs, movies, music, books, journals, business software, and a wide variety of counterfeit goods including pharmaceuticals, electronics, batteries, auto parts, industrial equipment, and toys as problem areas. The U.S. government says that these pirated products “pose a direct threat to the health and safety of consumers in the United States, China and elsewhere”. In September 2007, the U.S. government requested a WTO Panel to hear a case related to “specific deficiencies in China’s legal regime for protecting and enforcing copyrights and trademarks” (USTR, 2007b). This followed 3 years of bilateral discussions and formal WTO consultations. The Panel’s decision gave mixed support to U.S. claims (WTO, 2009).

According to the Quality Brands Protection Committee (QBPC), (2006) Annual Membership Survey, 44% of the 102 firms responding believed the Chinese government’s commitment to addressing counterfeiting was excellent, good, or satisfactory, but 44% rated it as only fair. Three fourths of the respondents wanted to see greater effort made in local IP enforcement. Eighty-five percent of those surveyed thought the Chinese government should increase enforcement of existing counterfeit laws, 64% recommended “increased measures to prevent local protection [of the counterfeiters],” and just over half recommended increased legislation regarding counterfeiting.

The Economist Intelligence Unit (2006) reemphasized the point made above, “intellectual property is still a very foreign concept in China.” In their opinion, at the state level China’s government seems to be aware of the importance of solving the piracy problem because this issue could have a negative effect on trade relations or investment. But “as is the case with so many problems in China, the farther you get from Beijing the more difficult it is to police”.
CONCLUSIONS: THE CHINA QUANDARY IS EXPECTED TO PERSEVERE

Because of tainted medicines and pet food, the widespread availability of counterfeit product from China has reached the front pages. That China is the main global source of counterfeit goods is beyond dispute. The total of this counterfeit production and distribution is not clear but the value may easily be over $100 billion annually. Products counterfeited in China range from motion pictures to pharmaceuticals to cigarettes, including nearly every industrial and consumer product.

Looking at Chinese history explains the reasons for the difficulties governments and manufacturers have encountered in trying to establish effective IPR protection. Traditional Chinese beliefs about the ownership of inventions and the need for controlling information from the earliest days of the nation through Mao’s regime yield valuable insights. After more than 100 years and constant pressure from foreign governments, Chinese laws related to copyright, trademarks, and patents are acceptable, but enforcement leaves much to be desired. China’s arcane bureaucracy makes it difficult even to understand how IPR laws are to be enforced. Despite nearly constant national antipiracy campaigns, functional and geographic fragmentation, protection of revenue sources at the local level and outright corruption leaves most of the counterfeit industry in place.

Alford (1995) took the broadest view of the problem. He believes the political culture in China is the greatest barrier to the growth of effective IP protection. He explained that political liberalization and a greater commitment to “a rights-based legality” are needed to produce better IP protection. In short he believes that improvements in the protection of basic civil and political rights are a necessary precursor to improvements in protection of property rights.

Establishing alliances with local enforcement agencies, using private investigation agencies or law firms, while keeping pressure on at the national and international level provide some measure of success for some firms. But it appears there is a long way to go. As we have seen IP is still a foreign concept in China. It may be that real change in China will not happen until there are major changes in the overall approach to individual rights.

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