

Intellectual Property Rights in China

Politics of piracy, trade and
protection

Gordon C. K. Cheung



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Intellectual Property Rights in China

Intellectual property rights (IPR) infringement is so rampant in China that counterfeit goods – from general household merchandise, garments and media consumables to specialist products including pharmaceutical products and supercomputer chips – can be found in roadside stalls, markets, shops, department stores and even laboratories of leading universities. If allowed to continue, these infringements may further engender a socially accepted culture of ‘fakeness’ that may seriously hamper innovation and economic progress.

Gordon C. K. Cheung uses the case of IPR to examine how and to what extent market forces and knowledge development affect the relationships of China and the world, especially the United States. Including detailed original statistics and data collected from Chinese provinces and cities and in-depth interviews with legal experts and policy makers, this book gives a unique insight into the opportunities and challenges that China faces as it increasingly becomes part of the global society.

Intellectual Property Rights in China is a stimulating read for anyone studying Chinese Business and International Political Economy.

Gordon C. K. Cheung is Lecturer in the School of Government and International Affairs, Durham University, UK.

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For Flora, Edmund and Jenna

Preface

My interest in intellectual property rights (IPR) in China stemmed from my previous studies on the market liberalism that developed in US-Sino foreign economic relations after the Second World War. In other words, this book serves as an extension of the notion of market liberalism in US-Sino relations with particular reference to IPR disputes and IPR protection in China. In moving along the market development, China has gone through various truncated, if not zigzag, ways of development. Even after 30 years of economic openness following Deng Xiaoping's open door policy in 1978, market economy has always been a double-edged sword. The concomitant outcome of economic success has always been further criticism either on the ideological front or with regard to domestic socio-economic problems. In the report of the 17th Party Congress in October 2007, Hu Jintao reemphasized the importance of Deng's economic development, which has increasingly become the core value of the current political economy in China. Yet, he also detailed the challenges of the social and economic costs of a market economy as well as rampant corruption and environmental problems.

In the area of international political economy, China is still working within an economic system largely constructed by the US market development after the Second World War. The US leadership role has witnessed a steady decline, but, as Susan Shirk and John Ikenberry recently pointed out, China should be acting as a responsible power and be in cooperation with the current superpower, the US – even if China can take the US on alone, China cannot replace the Western international order. China had made applications for membership in the World Trade Organization (WTO) since 1986. It was eventually accepted as a member in December 2001. With regard to an IPR regime, China has been learning quite rapidly to incorporate established IPR regimes into its economy, especially those from the World Intellectual Property Organization (WIPO) and Trade-related Aspects of Intellectual Property Rights (TRIPS) of the WTO.

On the state level, China did effectively comply with many world treaties and global conventions. Even bilaterally, China has signed important agreements with the US. Yet, if we look to the provincial level, the picture of an IPR regime becomes hugely distorted by the intertwining political interests between local governments and business people. The key problem of IPR infringement is that implementation of laws is weak and ineffective. The third level would be that individual choices and consumer culture have been accelerated through the establishment of the market economy of China since 1978. Commodity, money and freedom to exercise individual's consumer power effectively transform China's economic landscape as well as contest Chinese people's acceptance and compliance of the global norms. What I am trying to demonstrate in this book, tentatively, is that while multilateral or bilateral agreements and legal establishments are necessary conditions for China to comply with international standards, they are not sufficient alone. In a country as large as China, we have to take into consideration the social and economic experiences to see how and whether the concept of IPR is being fully understood by people at various levels. In the game of catching up with global norms and standards, China is basically a follower, not a leader.

Some people may take a different view on the IPR issues in China, especially from the domestic and the developing nature of Chinese circumstances. They demand greater relaxation of China's compliance. This is highly debatable. I will therefore leave this open for people to consider. Finally, I spent lots of time reconstructing all the figures and the tables used in this book. If there are any errors, I am the only one to be blamed.

Gordon C. K. Cheung
Durham
2008

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analysis in Sino-American disputes over intellectual property rights' which appeared in the *Journal of World Intellectual Property*, vol. 2, no. 2 (March 1999: 189–207) for Chapters 3 and 5. Thank you to Jacques Werner for permission to use that material here.

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1 Introduction

Ban zheng, shenfenzheng, gongzuozheng, biyeezheng ... [Needing any certificate, identity certificate, working certificate, graduation certificate ...]¹

In 2004 the above words were murmured to me daily as I crossed the footbridge in Beijing in Zhongguancun Street to get to the university that I was visiting. These people were trying to sell different kinds of identity cards, counterfeit certificates and receipts to any passerby. Intellectual property rights (IPR) infringement is so rampant in China that fake goods and counterfeit products can be found in roadside stalls, markets, shops and even department stores. Street vendors also infiltrate every nook and corner of the streets with makeshift stands, even selling counterfeit products in broad daylight. In China, apart from the counterfeit production of computers, machine parts, garments, golf equipment and so on, fake products also include food, medicine and infant formula milk powder. In 2004 the fake infant formula milk powder, produced by some unknown factories and small businesses, led to 12 infant deaths and the permanent brain damage or physical impairment of 200 babies in Fuyang, Anhui province (*Financial Times*, 18 August 2004; and *South China Morning Post*, 7 January 2005).²

These cases demonstrate that counterfeit culture is rampant and is becoming part of the social life in China. No sooner had the Chinese government demonstrated to the global society a very successful Olympics games – both the result and the administration of – in August 2008, than a new scandal of tainted baby formula milk powder containing an industrial chemical called melamine spread from September 2008. This time, leading giants of dairy companies such as Sanlu, Mengniu and Yili were all discovered to be producing tainted baby milk powder leading to at least three babies being killed and more than 53,000 children being sick. Prime Minister Wen Jiabao had to apologize and promise a reform on food safety (Yardley and Barboza 2008). But more alarming perhaps was that the use