

The Hegemonic Role of the United States in the U.S.-China Copyright Disputes

Dexin Tian

SCAD, Hong Kong

Abstract

This paper examines the U.S. hegemonic role in imposing its copyright standards onto the Chinese, who hold fundamentally different cultural perceptions of copyright in terms of innovation, fair use, and the public domain. A thematic analysis of the transcripts of 45 in-depth interviews of the Chinese copyright holders and consumers via the theoretical lens of hegemony reveals the following. To obtain bigger market access and better protection of its intellectual property rights (IPR), the United States Trade Representative (USTR) has been coercive in universalizing its IPR standards and policies by establishing an internal interagency mechanism and an external network. The study suggests that both the United States and China need to adopt the golden mean to realize the goals of its respective copyright laws.

Keywords: hegemonic role; cultural perceptions; innovation; fair use; the public domain

Introduction

When discussing the U.S.-China copyright disputes, Shao (2006), a renowned scholar of intellectual property rights (IPR), commented that the United States "has been aggressive in pushing for a universal intellectual property regime" (4). IPR refers to "the legal rights concerning intellectual activity in the industrial, scientific, and artistic fields" (Nasheri 2005: 81). To guard its trade interests abroad, the United States established the Office of the United States Trade Representative (USTR) as early as in 1962 based on the U.S. Trade Expansion Act. As part of the Executive Office of the President, the USTR is the key U.S. government agency empowered with the authority to take charge of trade agreement programs and U.S. bilateral trade policies (Office of the USTR, 2008). Annually, the USTR reviews the protection of the U.S. IPR in its trading-partner nations and announces the results in its "Special 301 Report." Depending on the violation degrees of the Special 301 provisions, countries are categorized and put on a list of Watch List, Priority Watch List, Section 306, or Priority Foreign Country.

China has been on the Priority Watch List, Section 306 Monitoring, and Priority Foreign Country during the past decade. Besides, China has also been under the World Trade Organization (WTO) Dispute Settlement Pursuit as a result of the U.S. charges in recent years. As China is now the world's third largest trading power and the fourth biggest export market for the United States, its protection of the U.S. IPR has attracted increasing concern and efforts from the USTR and the U.S. businesses. Since 2001, U.S. exports to China have grown five times faster than they have to the rest of the world; however,

The U.S. Congress estimates that counterfeit trade in China is worth from \$19 billion to \$80 billion a year in terms of loss for us. When you apply the general rule of thumb that \$1 billion in economic activity equals 12,000 to 14,000 jobs, that means we are talking anywhere from 240,000 to a million jobs a year that are being impacted, opportunities for Americans to earn, opportunities for the income and taxes off of that earnings, opportunities to create a future. (Siwek 2007: 2).

Thus, there has been increasingly higher pressure on China for its ineffective protection of the U.S. IPR from the U.S. side during several rounds of U.S.-China IPR negotiations. As a result of the negotiations, the Chinese government has been making compromises and cooperating with the U.S. side in a variety of ways, but the results have been far less than satisfactory to the U.S. copyright holders and the USTR negotiators.

The exact piracy rate in China and the U.S. trade losses can be obtained from the annual Special 301 Reports of the International Intellectual Property Alliance (IIPA). Representing around 1,900 U.S. copyright-based industries, IIPA is one of the U.S. IPR associations that supply the USTR with information concerning foreign market access and foreign protection of U.S. copyrighted materials. According to IIPA (2001, 2003, & 2008), we have arranged the relevant statistics in the following table:

Table 1: IIPA Estimated Levels of Piracy and U.S. Trade Losses in China from 1995 to 2007

Year	Levels of Piracy (%)	Trade Losses (in millions of U.S. dollars)	Year	Levels of Piracy (%)	Trade Losses (in millions of U.S. dollars)
1995	87.25	2,323.0	2002	92.50	1,849.3
1996	82.50	2,309.3	2003	93.10	2,859.2
1997	80.75	2,792.3	2004	90.90	2,530.9
1998	84.00	2,553.5	2005	89.00	2,643.9
1999	93.00	2,137.7	2006	83.10	2,430.0

2000	91.75	978.7	2007	90.00	2,975.2
2001	90.50	1,932.5	2007	90.00	2,975.2

Source: IIPA Special 301 Reports, 2001, 2003, and 2008

From the above table, we can see that from 1995 to 2007, the piracy rate in China grew from 80.75% to as high as 93.10%, and the U.S. trade losses due to piracy in China range from \$978.7 million to \$2,975.2 million. The Chinese side refutes the U.S. statistics and claims they are exaggerated. For instance, the Chinese government released a survey result of 45.5% piracy rate in 2005 and a 2% annual decline as provided by the Chinese Institute of Publishing Science (XinhuaNet 2006:1). Thus, there is a tug-of-war during the bilateral negotiations while the United States has been pushing China in the establishment of its IPR regime and reinforcement of its copyright law. The purpose of the present paper is to examine the U.S. hegemonic role in imposing its copyright standards as a universal rule onto the Chinese who hold fundamentally different cultural perceptions of copyright in terms of innovation, fair use, and the public domain.

Existing literature on the U.S.-China copyright disputes and the U.S. role in the implementation of its IPR standards in the Chinese contexts can be roughly categorized into the following three aspects:

Historical IPR practices in China

China has not been alien to IPR in its history. First, even pre-modern China developed an IPR practice in tune with its cultural, commercial, and technological evolutions such as the Civil Servant Examination system, family craft secret, and the inventions of paper and printing. Exclusive rights were granted on creative intellectual products associated with creativity and monetary investment. Second, pre-modern China's IPR practices, which are immature compared with those of pre-modern Europe, accommodated the IPR and the public interests. While there was a strong property-focused approach in the IPR rhetoric created by the London booksellers in the early 18th-century England, more emphasis was laid on "the benefits of the society and the interests of the community in creative works in the Chinese history" (Shao 2006: 10).

With the expansion of the commercial publishing industry following the invention of the printing technology in China in the 9th century, copyright protection came into being as an exclusive right granted to authors to protect their reputations against plagiarism and unauthorized reprinting. However, copying enjoys a long tradition in China and does not carry a stigma. Thus, "copying a masterpiece was historically considered an art form in its own right while Chinese students have been taught for centuries to copy their teachers as accurately as possible before attempting to create" (Yatsko 2000: 213). Furthermore, free publishing and reprinting earlier books flourished throughout the major part of China's publishing history. Even the government made public a decree in the tenth century, which stated: "If anyone wishes to transcribe the Classics, he must copy the printed editions offered by the government" (Cherniack 1994: 20). Obviously, the classics, which were the main sources of learning, could be printed and reprinted freely by anybody. In fact, books other than the classics were also largely available for reprinting and copying, thus expanding and enriching the public domain in China (Shao 2006).

Both foreign scholars like Swanson (2005) and Chinese scholars like Yuan (2001) noticed this phenomenon and pointed out that Chinese artists historically sought to mimic acknowledged masters in painting and calligraphy because the act of copying did not necessarily carry negative connotations. Wingrove (1995) also noted that the Chinese educational system has been mostly based on the principle of copying. For over 2,000 years in imperial China, the highest academic attainment was demonstrated by faultless reproduction of the classical works of the past. At a very young age, Chinese children were taught to memorize and copy the classics.

Nevertheless, due to its domestic needs in the transformation from a labor-intensive society to a knowledge-oriented economy and its membership commitment to the WTO, China has been shaping its IPR practice in accordance with the strategy of one base, two goals, and three principles. The *one base* of China's IPR system is to respect and reasonably protect IPR. The *two goals* are: China's IPR regime will first benefit the transmission of knowledge and second facilitate human beings to share the welfare of knowledge accumulation. The *three principles* are: first, China's IPR system will be in line with the status quo; second, the public interests will take precedence over private rights; and third, national interests will take priority over private ones (Shao 2006). From the above, we see that since ancient times the Chinese have emphasized the functions of creative works for the benefits of the society and the interests of the community. The immature IPR system in the past and the strategy of one base, two goals, and three principles today both aim at transmitting information and sharing knowledge, in which individual interests of creators or authors usually give way to those of the group.

Cultural Differences between China and the United States

Culture "consists of patterns, explicit and implicit, of and for behavior acquired and transmitted by symbols, constituting the distinctive achievements of human groups, including their embodiments in artifacts" (Kroeber & Kluckhohn 1952, 47). Value is regarded as "a conception, explicit or implicit, distinctive of an individual or characteristic of a group, of the desirable which influences the selection from available modes, means, and ends of action" (Kluckhohn 1951: 395). Thus, cultural values can be understood as those shared conceptions of the desirable that are characteristic of a particular group of people. For the present study, culture is involved in the most deeply held beliefs and values of both Chinese and Americans in terms of their traditional understanding of copyright and social practices of copyright protection and copyright infringement.

Scholars (Cohen 1997; Lehman 2006; Steidlmeier 1993) claimed that differences in cultural values have probably been the largest obstacles for China to overcome in its ineffective IPR protection efforts. Steidlmeier (1993) posited that intellectual property protection is very much rooted in the Western cultural values of liberalism and individual rights. Such Western focus

contrasts sharply with the Asian emphasis on social harmony and cooperation. Cohen (1997) agreed with Steidlmeier by saying that China's cultural tradition itself (both communist and pre-communist) has been at odds with Western measures providing protection to IPR. Following the same line of argument, Lehman (2006) remarked that the crux of the U.S.-China IPR dispute is "a basic incompatibility between modern Western views of intellectual property and traditional Chinese ethical and social thought" (1).

Furthermore, the lack of the concept of private rights in the Chinese traditional culture exerts direct impact on copyright protection in China. Even today, many people in China still do not regard the fruits of individual creativity as belonging exclusively to the creator. To them, all creative works belong to the society as a whole. Quite a large number of Chinese have vague ideas about copyright protection, especially those living in the rural areas, who account for over 60% of the total population in the country. This attitude is believed to "have led to major piracy that will be likely to continue with the public's ignorance of their rights" (Peng 1999: 11). What needs mentioning here is that it is in March 2007 that China passed its property law, which finally grants equal protection to public and private properties (Xinhua, 2007).

U.S. Pressure and Chinese Response

Before the 20th century, China had no formal copyright system (Neigel, 2000). When China began implementing its policy of reform and opening up to the outside world in 1979, it had its first encounter with IPR issues upon negotiating with the United States and signing the Sino-US Trade Agreement. Since the 1980s, the USTR has been negotiating with China to gain more access to the Chinese market and urge Beijing to better protect the U.S. IPR in China. Several times, the U.S. government has been threatening China with "a series of economic sanctions, trade wars, non-renewal of the Most Favored Nation Status, and opposition to [China's] entry into the WTO" (Yu 2001).

China has been responding to the U.S. pressure first with resistance and then with compromises. The first incident that revealed U.S.-China tension over IPR was about the drafting of China's copyright law, which underwent more than twenty drafts over ten years within the context of U.S.-China IPR negotiations in the 1990s. According to Xue (2005), when Beijing strongly denounced the U.S. criticisms in the first round of negotiation in 1991, the USTR announced that it was drafting a sanction list to charge 100% tariffs to 106 categories of goods imported from China. Realizing that the U.S. side was serious, China softened its position and eventually accepted most of the U.S. demands including updating its IPR regime.

Since 2004, the Bush Administration has repeatedly threatened to sanction China for media piracy, and the USTR went to China to deliver the threat. To ease the tension, Chinese Vice-Premier Wu Yi visited Washington D.C. in April 2004 and made a series of important commitments on behalf of the Chinese government to significantly reduce IPR infringement throughout the country. The USTR (2005) has been monitoring the implementation of these commitments closely through a Joint IPR Working Group and reported the result in its out-of-cycle review (OCR) in 2005, which reported:

Overall piracy rates in China have not declined significantly since WTO accession, and in some sectors have increased from already extremely high levels. Out-of-cycle review submissions report estimated U.S. losses due to piracy of copyrighted materials alone ranging between \$2.5 billion and \$3.8 billion annually. (16)

Due to the reported losses of its IPR like the above in China, the United States and China have been involved in repeated rounds of negotiations and recurring disputes over China's inefficient protection of U.S. copyrighted products. When commenting on the above phenomenon, Croix and Konan (2002) remarked that the "one-size-fits-all" IPR standards sometimes produce too much IPR protection and too early in some developing countries, which is likely to be a source of continued international conflict between the developed and developing countries. Lessig (2004) also confirmed that over-regulation in the U.S. IPR system stifles creativity and smothers innovation. Naturally, it is observed that the Chinese end-users use "nationalism, with core values of patriotism and Confucianism" to "resist global copyright enforcement" (Lu & Weber 2008: 89). There is also "a consensus among educated modern Chinese that IPR as currently defined by the West or as imposed on developing countries, are unjust" (Lehman 2006: 7).

Obviously, much ink has been spilt on the hegemonic role of the United States in imposing its universal IPR standard and its setbacks in countries like China. However, there has been little study based on qualitative in-depth interview data concerning the Chinese cultural perceptions of copyright in terms of innovation, fair use, and the public domain among the copyright holders and consumers for studying the Chinese cultural context, into which the United States has been trying with little success to universalize its IPR standards. With the present study, I intend to fill the gap and provide insightful findings to inspire possible strategies that can deal with copyright disputes between the United States as the biggest developed country and China as the largest developing country in the world.

Theoretical Framework and Research Method

Before discussing the theoretical framework and research method, it is necessary to clarify some key concepts and the reasons for exploring the Chinese cultural perceptions of copyright in terms of innovation, fair use, and the public domain. For this study, cultural perceptions refer to the Chinese understanding and interpretations of copyright in particular and IPR in general as a result of their cultural background or social environment. Copyright means the legal protection of literature, music, arts, maps, and technical drawings, motion pictures as well as computer programs and domain names. Innovation is defined as the complicated process in which the expression of a new idea is fixed and brought to the market to provide incentives for the copyright owners to produce further creative works and to ensure future creativity among the public. Fair use occurs when the copyrighted material is used in a reasonable manner, which requires no consent of the copyright owner. The public domain can be understood as those creative materials that are not or no longer protected by copyright laws. Although copyright covers more than the above three aspects, innovation is chosen because it is at one end of the balance in the objectives of both the

U.S. and Chinese copyright laws. Sufficient understanding and appropriate application of fair use and the public domain are essential for keeping the balance of protecting the benefits of the copyright holders and the public's access to knowledge for sustainable innovation.

As an overall guidance for this paper and an in-depth exploration of the U.S. role in the U.S.-China copyright disputes, I will adopt Robert Cox's (1981) frame of action as the theoretical lens. As for the research method, besides relying on the critical review of the existing literature, I will use thematic analysis to analyze the transcripts of the first-hand in-depth interviews. In the following section, I will discuss the theory and method respectively.

Frame of Action

According to Liao (2006), "Discussion about China's response to the global IPR regime is incomplete without addressing hegemony, which has a crucial role in setting the rules of international regimes and the creation of a methodical rules-based international order in international affairs" (Liao 2006: 180). Other scholars (Halbert 2005; Shao 2006; Xue 2005) shared the idea that it is for the purpose of expanding its economic interests and global power that the United States has been pressing China to substantively revise its patent, copyright, trademark laws and other IPR systems and repeatedly restructure its IPR enforcement mechanisms. Thus, it is useful to examine the hegemonic role of the United States in the U.S.-China copyright disputes through the theoretical lens of the theory of hegemony.

The modern usage of hegemony as a concept comes from the Italian Marxist and social theorist, Antonio Gramsci. Gramsci (1971) posited that a dominant party, in hegemonic conditions, can "exercise a balancing and arbitrating function between the interests of their group and those of other groups, and succeed in securing the development of the group which they represent with the consent and assistance of the allied groups" (148). In the context of the developed West, consent is maintained not merely via coercion, but more importantly through "the negotiated construction of a political and ideological consensus which incorporates both dominant and dominated groups" (Strinati 1995:165). In other words, consent is achieved via the process by which the dominant classes propagate their values and ideology by means of social institutions such as mass media, religious organizations, and schools. As a result, the dominant values and ideology are so ingrained in people's minds that they not only limit people's vision but also enable that ideology's growing importance.

Drawing upon Gramsci's notion, Robert Cox (1981) was trying to put his thought of hegemony in the global context. To Cox, successive dominant powers in the international system have shaped a world order that suits their interests as a result of their coercive capabilities and broad consent even among those disadvantaged. Countries like the U.S. are dominant powers in the international system, which have successfully globalized their hegemonic ideas such as free trade all over the world. To explicate the changes in the world order, Cox proposed his thought of the *frame of action*, which comprises ideas, material capabilities, and institutionalization.

Ideas

Ideas are those shared notions or thought patterns of the nature of social relations and those of collective images of social order held by different groups of people. As the ideas are historically conditioned, they can predict behaviors when conflicts arise between states on such occasions as negotiation, confrontation, or war.

Material capabilities

Material capabilities refer to material conditions composed of technological and organizational capabilities and natural resources, which can be productive and destructive potentials.

Institutionalization

Institutionalization is a means of stabilizing and perpetuating a particular order through human institutions. Such institutions reflect the power relations and the collective images that are consistent with these power relations (131-137). Beeson and Higgott (2005) commented that Cox's discussion about the interplay among ideas, material capabilities, and institutionalization can be adopted to crystallize the dynamic process, in which the U.S. interests and values are reflected in a rule-governed, normatively-informed post-war international order. The theory of hegemony or Cox's frame of action will be useful for this study because it can help clarify the U.S. dominant roles in its application of Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) internationally and the USTR Special 301 bilaterally. Established in 1995, the TRIPS Agreement introduces a series of global minimum standards for protecting and enforcing nearly all kinds of IPR. Since the TRIPS Agreement is annexed to the WTO Agreement, all incoming members of the WTO must commit themselves to observing the standards of TRIPS.

In-Depth Interviews and Thematic Analysis

For this project, I used a pre-designed semi-structured in-depth interview guide with about a dozen questions in both English and Chinese. Both English and Chinese versions of the interview questions had been back translated and checked by Chinese and English native speakers for accuracy. Differences had been detected, and necessary revisions were made before actual field use.

Via snow-ball sampling, I recruited my participants. According to Babbie (2002), *snow-ball sampling* refers to "the process of accumulation as each located subject suggests other subjects" and is "appropriate when the members of a special population are difficult to locate" (179). As I was targeting representative copyright holders and different types of IP consumers in

Mainland China, where the topic of copyright piracy is still sensitive, snow-ball sampling really fitted the purpose of this study. Through my former colleagues, students, and friends in the selected cities in China, I recruited my participants with letters of informed consent, which explain the purpose of the study and the voluntary and anonymous nature of the study. The participants cooperated and kicked the snow-ball rolling and introduced other participants.

As for data analysis, I first transcribed all the recorded interviews and then used thematic analysis to generate emerging themes. Braun and Clarke (2006) defined thematic analysis as "a method for identifying, analyzing, and reporting themes within qualitative data" (79). Themes are defined as "units derived from patterns such as conversation topics, vocabulary, recurring activities, meanings, feelings, or folk sayings and proverbs" (Taylor & Bogdan 1989: 131). According to Leininger (1985), we can identify themes by "bringing together components or fragments of ideas or experiences, which often are meaningless when viewed alone" (60). To determine the emerging themes, I examined each transcript and every field-note entry by highlighting the relevant information. As the themes emerged, I identified and categorized the relevant portions of the transcripts and parts of the field-notes into the classified folders. I was doing so by following the "cut up and put in folders approach" proposed by Lindlof (1995: 225). Then, I further examined the classified data and combined them into any necessary number of sub-themes so as to obtain a comprehensive view of the information. Finally, by referring back to the theoretical framework, I tried to build a valid argument for the themes.

Findings

From May 2, 2007 to May 24, 2008, I have been to Beijing, Shanghai, Xi'an, Chengdu, Nanjing, and Weinan in China as well as Chicago in the United States and Montreal in Canada for my data collection partially as planned and partially thanks to conference opportunities. In total, I have interviewed 45 participants, all of whom are Chinese from Mainland China. I interviewed most of them in China and some at conferences in the United States and Canada. Of the total number of 34 provincial level administrative districts in China, the participants for this project came from 25 districts, amounting to 73.53%. Among the 45 participants, 22 are males and 23 are females, accounting for 48.89% and 51.11% respectively. The age of the participants ranges from 19 to 62. As for the education level of the participants, 18 are high school or BA students, 19 are MA students or graduates of MA, and eight are doctoral students or graduates of Ph.D, which amount to 40%, 42.22%, and 17.78% respectively of the total. Regarding the professions of the participants, the figures are 10 high school graduates and college students accounting for 22.22%; nine teachers, 20%; six editors, 13.33%; five graduate students, 11.11%; three business people, 6.66%; two farmers, two authors, and two directors, 4.44% each; and one lawyer, one researcher, one translator, one secretary, one worker, and one engineer, 2.22% each. Three people are part-time lawyers and four people are part-time directors. A thematic analysis of the transcripts has revealed the followed emerging themes:

Interpretations of the Copyright Piracy Phenomenon and the U.S.-China Copyright Disputes

Copyright piracy refers to the illegal or unauthorized reproduction, distribution, and use of copyrighted materials including such literary and artistic works as books, papers, movies, music, songs, and paintings. To the author of this paper, participants' interpretations of their social behavior in relation to copyright protection are shaped by their past individual or group experiences. Below are some participants' interpretations of the copyright piracy phenomenon in China and the U.S.-China copyright disputes. Example 1:

It is hard to say about the U.S. report about the copyright piracy level in China because the standards are different in the two countries. What is copyright infringement to the Americans may be fair use to the Chinese like the 30% legal copying in textbook compiling and free downloading of movies, songs, and music. Thus, the 90% copyright infringement rate may be too high. (P-03; p-03 stands for Participant #3, *ibid*)

P-03 is a university press editor. She is critical of the IIPA report that the copyright piracy rate is over 90% in all major copyright sectors in China. She pointed out that there is a difference in the standards of judging what copyright piracy is and what is not in the two countries. Example 2:

In any country, the law is made on the basis of the economic status. This does not mean that low economic development in a country will give green light to its nationals for a higher piracy rate. However, the establishment and enforcement of the law, including the copyright law are directly related to the economic situation of the country. For instance, Microsoft is selling its Windows system in China at the same price as it sells the product at the U.S. market. For an average Chinese consumer, the price of one Window system equals half of his or her annual income. Thus, just as the U.S. copyright standards are too high and meet various oppositions, the Microsoft products are so expensive for the ordinary Chinese consumers that they have to think of other ways. (P-42)

P-42 is an editor and lawyer of a big state-owned press. To him, the economic basis of a country determines the establishment and enforcement of the copyright law. He is critical that both the U.S. copyright standards and the prices of the U.S. copyrighted products are too high for China and the Chinese customers. Therefore, ineffective enforcement of the copyright law with rampant copyright infringement has been witnessed in China. Example 3:

As a writer myself, I know the hard work behind the genuinely created or innovated piece of work. Therefore, I don't buy pirated IP products. However, unawares, I have consumed some IP products that are not legally manufactured or sold. You know high-tech has also been extensively used in the piracy industry. It is reported that the U.S. Trade Representative, Charlene Barshefsky, was stopped in the U.S. customs because she had carried some counterfeit dolls after her WTO negotiation trip from Beijing. If Madam Barshefsky could have been trapped, let alone me or any other ordinary consumers.... The Chinese government is aware of this phenomenon. More importantly, it is aware that copying will not make itself competitive. There have been nationwide

campaigns of awakening people's awareness of the significance of copyright protection and advocating innovation and creativity. That is a signal to demonstrate that the Chinese government is taking copyright infringement seriously. (P-08)

From the viewpoint of a writer, P-08 started with his determination before the omnipresent piracy phenomenon in China. Then, he pointed out that it is really hard not to consume pirated copyright products in China. What is hopeful in the ideas of P-08 is that, just as the United States could turn at a certain historical point from a nation of piracy to one that gradually accepted and protected copyright, China will follow up and there are signs of this progress.

Major Reasons for Copyright Piracy in China

As a complicated world phenomenon, copyright piracy in China has become a hot issue for scholars from around the globe. Following are the major ideas of the participants concerning the reasons for the common practice of copyright piracy in China. Example 4:

I teach law. To me, any law is part of culture and culture specific. Any legal regulations are culture specific, and they require the matched cultural environment. Culture and law go hand in hand. In China, you have the IPR laws, but you don't have the cultural environment. The laws have become an empty system, and there is a mismatch between the two levels.... Laws are necessary but not enough. You need to address the basic point by changing people's perceptions and integrating copyright laws as part of the Chinese culture. (P-45)

P-45, a law professor, made an enlightening statement by saying that "culture and law go hand in hand," but the IPR laws in China just have an empty system. Therefore, to change people's perceptions and persuade them to accept copyright protection, the copyright law needs to be integrated into the Chinese culture. Before the cultural environment for IPR is created in China, it will be hard for the Chinese to change their attitudes towards copyright protection. Example 5:

I think the American businesses need to set a different price when they sell their IP products at the Chinese market. After all, the income levels and living expenses are quite different in the two countries. For example, the estimated per capita GDP of the United States in 2006 is \$44,000, while the per capita GDP of China in 2006 is just a little bit over \$2,000. Windows Vista is sold at the unit price of \$300, which is far beyond the affordability of most Chinese consumers. Therefore, Microsoft and other U.S. businesses need to learn from Dell which sells its computers at different prices to different consumers at different markets. Recently, some American companies, which are targeting the Chinese market, are producing a kind of compressed DVD with about half a dozen movies on one disk at the price of just \$2. This is certainly an effective way to prevent piracy and sell legal copies of movies and music. (P-10)

P-10, a teacher, emphasized the necessity for the American business people to adjust their prices at the Chinese market. To this end, she compared the striking gap of income levels between the American and Chinese consumers. Besides, she also hinged her hope on the progress of technology like the compressed DVD with half a dozen movies for just two U.S. dollars. Example 6:

Culturally, the Chinese have been greatly influenced by Confucianism, which advocates hierarchical human relationships and the conception of family and collective belonging. Strict hierarchical system emphasizes rule and obedience, which is unfavorable for the exploration of individual creativity by sticking to inherited traditions and requesting unconditional obedience. The concepts of family dependence and collective belonging also deprive individuals of possessing fame or honor and private ownership of inventions or innovations. In a sense, the Chinese have the assumption that what belongs to us can be shared with you and what is yours may be offered to us as well. Consequently, the Chinese people take it for granted to take ideas and techniques or, in today's term, IPR from others. (P-04)

To P-04, the strict hierarchical system, which emphasizes inherited traditions, unchallengeable rule, and unconditional obedience, affects individual creativity. The Chinese tradition and social habit of free sharing and taking are also counter to the conception of copyright, which is mostly based on individual and private ownership. What is most noteworthy is that, because of the tradition of sharing, most Chinese take it for granted to take others' creative works without the necessity of obtaining permission.

Suggestions for Resolving the U.S.-China Copyright Disputes

The purpose of this project is to explore the Chinese cultural perceptions on copyright in order to help resolve the U.S.-China copyright disputes in one way or another. Here are some suggestions.

Example 7:

The IPR issue is closely related to a country's real situation, economic development, educational level, and cultural background. As it is not fair to evaluate all the students with one exam paper, it is also irrational to assess the copyright protection level of all countries with one standard. The United States has been criticizing China for pirating its IP products, but there is a reality the Americans must face. Copyright protection is an issue of the spiritual aspect. In China, most of the people have just solved their basic issues of living. (P-29)

Example 8:

Talking about copyright, even today only those who work in colleges and other relevant institutions in China have some knowledge of the concept. Most of the college students, ordinary citizens, and the farmers in the rural areas don't know much about it. Many of them, especially those in the rural areas, have not even heard of it. Without taking this reality into consideration, what the Americans require will certainly meet with oppositions of various forms. (P-41)

Example 9:

I think the U.S-China copyright disputes will become fewer and fewer. As the Americans become more and more familiar with the reality of China, they will readjust their IPR policies and standards in China so that what they demand is easily understood and accepted. On the other hand, the Chinese are also becoming increasingly familiar with the significance and necessity of copyright protection, protection of not only the foreign IPR but also the Chinese IPR. As time goes by, there will be fewer differences and more commonalities between the two countries regarding IPR protection. (P-06)

In the above, three participants offered their suggestions. P-29 clarified that most Chinese have just solved their basic surviving issues and hoped that the United States could understand this reality and use different standards of IPR in China. P-41 reemphasized the reality point from another perspective by saying that only the highly educated few began to become aware of copyright while many Chinese, especially those in the rural areas have not even heard of the concept of copyright yet. Finally, P-6 expressed his optimistic expectation that the U.S.-China copyright disputes will gradually be eliminated when the two countries begin to understand each other more and better.

Discussion

Having talked about the emerging themes as the research findings, I will now reexamine the findings by referring back to the theoretical framework. A close examination shows that the emerged themes provide sufficient supporting evidence to the idea, material capabilities, and institutionalization of Cox's frame of action and reveal, at the same time, some noteworthy differences.

Ideas

Idea here refers to the shared notion of the United States in their IPR policy in China. From the theme of the interpretations of the copyright piracy phenomenon and the U.S.-China copyright disputes and the theme of the suggestions for resolving the U.S.-China copyright disputes, we can cite the following two examples.

Example 10:

Without taking into consideration China's reality and the gradual process the Chinese people need to adjust their awareness and understanding, the United States is aggressive in imposing its high standards of copyright protection into China. No wonder the result is far from satisfactory. Perhaps it is just interested in selling more IP products in China and in better protecting its IP products; however, the United States needs to realize the fact that China really has a very big market with plenty of trade partners, who are competing for bigger access into the Chinese market. The Chinese government and ordinary people will be sincerely grateful if the United States is also sincerely helping China regulating its IPR regime in the Chinese contexts. (P-02)

Example 11:

Although the IPR situation has been improving in the past several years in China, the United States is still criticizing China because it is using its own legal standards to evaluate the Chinese reality. China and the United States are two countries with many differences in the understanding and protection of copyright. For instance, the fair use regulations are different in the copyright laws of the two countries. It is absurd for the Americans to demand that the Chinese should observe the U.S. law. The American people would feel the same if China were to ask the Americans to obey the Chinese law. (P-42)

From the above two examples, we can see that, in the eyes of the participants, it is the shared idea or notion of the United States to obtain bigger access into the Chinese market and get better protection of its IP products in China. P-02 pointed out that the United States is *aggressive*, and P-42 remarked that the United States is assessing the Chinese reality with an American standard. China and the United States are two countries "with many differences in the understanding and protection of copyright" (P-42), so "it is absurd for the Americans to demand that the Chinese should observe the U.S. law" (P-02). With plenty of trade partners to choose for its attractive market, China has been making compromises with reservations. In other words, China has been playing the role of a consented, disadvantaged country under the U.S. pressure in order to join WTO and boost its economy.

Material capabilities

Material capabilities here refer to the technological and organizational capabilities and natural resources with which the United States is investing in the implementation of its IPR policy. In this regard, only the United States has had the resources to review the adequacy and effectiveness of the IPR protection in over 70 to 90 countries in the past decades. As for its review of China, the United States kept putting China on the Priority Watch List and categorizing China under Section 306 from 2000 to 2007. Although real economic sanctions and trade wars have not broken out between China and the United States during the

IPR disputes in the past decades, there have been about half a dozen rounds of negotiations between the two countries since the 1980s, involving large quantities of financial expenses and manpower each time. Some participants have also noted the U.S. hegemonic practice due to its position and wealth.

Example 12:

There already exists a big trade deficit between the United States and China, and the U.S. side has been responding to this very critically. However, to my understanding, the main reasons for the trade deficit are: first, China has been exporting more but cheap products to the United States, but the United States is doing just the opposite; second, due to ideological and political reasons, the United States doesn't want to sell the high-tech products China needs. (P-06)

According to Li and Li (2007), the U.S. trade deficit with China reached \$250 billion accounting for almost one-third the record of \$765 billion U.S. trade deficit in 2006. The United States imported \$288 billion of goods from China but only exported \$55 billion in the same year. Therefore, the ideas of P-06 are noteworthy in that the United States would rather sacrifice economically than give in an inch ideologically regarding its shared notion.

Institutionalization

Institutionalization in this context refers to the means of stabilizing and perpetuating the WTO/TRIPS world order through U.S. institutions. As supporting evidence, we may first listen to the remark of an interview participant.

Example 13:

The United States uses its political and economic clout to make a series of standards and regulations for such international organizations as WTO, TRIPS, and the World Bank. It makes sure that if you intend to join these organizations, you must accept the U.S. hegemonic rules and regulations. (P-42)

As an editor and lawyer, P-42 is familiar with the U.S. role in the establishment of rules for international organizations like the TRIPS. To him, the rules and regulations imposed by the United States and other developed nations into these international organizations are hegemonic in nature. Through an institutionalized network composed of the American embassies and consulates, the Central Intelligence Agency, and IPR associations, the USTR obtains its information concerning the protection of the U.S. IPR and market access for U.S. nationals depending on IP products in foreign countries. The IPR associations, including the IIPA, Software Publishers Association, International Trademark Association, and International Anti-Counterfeiting Coalition, accumulate their information by seeking reports from the relevant U.S. industries in countries like China. In order to attract expected U.S. governmental attention, these industries oftentimes exaggerate figures in their reports. As Yu (2002) noted, the reported losses in IP in China "are estimated under the assumption that the Chinese would be able to afford and would be willing to purchase the pirated goods at the retail price set by Western manufacturers" (Yu 2002: 11). Recently, the United States Government Accountability Office (GAO) analyzed the USTR China compliance reports and stated that, the reports "lack any summary analysis about the number, scope, and disposition of reported issues that would facilitate understanding of developments in China's trade compliance..." (GAO 2008: 1). Commenting on the USTR reports, Shao (2006) also remarked that, "the loud voice of the U.S. interests...is to a great extent 'imperialistic' and 'unfair'" (5).

From the above, we can see that all the three elements of idea, material capability, and institutionalization in Cox's frame of action have received supporting evidence in the interview transcriptions. First, it is the shared notion of the United States to obtain bigger access into the Chinese market and obtain better protection of its IPR there without the intention to genuinely assist China with its IPR protection. Second, with its incomparable material capabilities, the United States annually investigates and reports the IPR practice in U.S. terms in almost 100 countries, expends countless manpower and resources during the U.S.-China IPR negotiations, and tries to maintain its shared notion at huge costs of its bilateral trade with China. Finally, as for institutionalization, the USTR has established both an internal interagency mechanism and an external network composed of the U.S. embassies, consulates, the CIA, and IPR associations in the administration of its IPR policies.

However, one critical difference between the theory and the research findings lies in the fact that China, as a disadvantaged country in the U.S.-dominated IPR world order, has given its consent with reservations by strategically cooperating with the United States in some areas and tactically opposing the United States in other areas during the U.S.-China IPR disputes. As mentioned earlier, the essence of the theory of hegemony is that the dominant power maintains its rule in the international system via broad consent even among those disadvantaged and hegemony manifests itself in the fact that the dominant values and ideology should be *ingrained* in the minds of the dominated. Now the dominant values and ideology come from the United States, a comparatively young country in the eyes of the Chinese. Most Chinese take great pride in their long history and rich culture, so it is no easy job to engrain the American values and ideology onto the Chinese overnight even though they have to make compromises due to their WTO commitment and the potential benefits from the implementation of the IPR standards of the TRIPS. Thus, in a theoretical sense, the present study has advanced the theory of hegemony by redefining the key term *consent* as consent with reservations or strategic consent and tactical resistance. In a practical sense, if the United States expects full consent from China, it needs to readjust its IPR policies in China and genuinely facilitate China to establish not only its IPR regime but also the matched and coherent cultural environment.

Implications

The implications of the research findings of the present study are three-fold. First, this study demonstrates that the U.S.-China copyright disputes are not a simple trade issue. Without considering the Chinese historical background, cultural environment,

and economic development, the USTR may issue its annual special 301 reports with the similar piracy rate in China and U.S. trade losses due to the piracy in the coming five or ten years. The USTR has proven itself disqualified for resolving the U.S.-China copyright disputes because it mainly represents the interests of those U.S. businesses in China. To satisfactorily settle the U.S.-China copyright disputes today and similar IPR disputes between the United States and other countries tomorrow, either the USTR must take a holistic approach or its job should be taken over by a more qualified agency that represents the national interests of the United States.

Second, this study indicates that, unless it intends to keep the status quo, the USTR needs to readjust its IPR policies toward developing countries including China by reflecting upon its past strategies and subsequent results. It is all right to satisfy the interests of the lobbyists representing businesses in foreign lands; however, the national interests should be the priority. Moreover, lobbyists also expect to see satisfactory job results. Due to its poor job records, the USTR had its annual reports assessed by the United States Government Accountability Office recently. If the status quo continues, the lobbyists or other institutions will make other assessment of the USTR in the near future.

Finally, as a more influential participant with its position and expertise during the negotiations over the U.S.-China copyright disputes, the United States needs to shoulder more responsibilities to make the appropriate IPR policies. In the past decades, the USTR has been playing with this clout in a coercive manner and provoked growing distrust and retaliation. Consequently, the Chinese feel that the United States is just aggressively trying to gain greater access into their market and forcing Beijing to better protect the U.S. IPR in China. In addition, the Chinese find the USTR indifferent to the Chinese consumption reality and the Chinese government's need to deal with both the traditional forms of hardcopy pirating and modern types of soft-lifting in cyberspace. Furthermore, more and more Chinese are also beginning to doubt whether the U.S. IPR policy "strikes the right balance between the protection of the copyright holders' benefits and the promotion of the free flow of information and the preservation of the public domain in the interest of potential future creators" (Yu 2002: 47).

To conclude, in the process of integrating China into the international IPR system, the United States should replace its hegemonic and stern face with a friendly and cooperative countenance. It does have a lot to learn from countries like China which has been encouraging more free flow of information and the preservation of the public domain. To strike the right balance between protecting the copyright holders' benefits and the interests of the general public, China and the United States need to follow either the Confucian golden mean or Aristotle's doctrine of the mean, both of which emphasize the desirable middle between two extremes of excess and deficiency.

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Dr. Dexin Tian is Professor of Liberal Arts, School of Liberal Arts, SCAD-Hong Kong. His teaching and research interests lie in Intercultural and Organizational Communication as well as Intellectual Property Rights from the cultural perspective.

Author's Address

Dexin Tian,
Department of Liberal Arts,
SCAD-Hong Kong,
Sham Sui Po, Hong Kong.
E-mail: dxtian@yahoo.com

Journal of Intercultural Communication, ISSN 1404-1634, issue 23, June 2010.
URL: <http://www.immi.se/intercultural/>.