

# The Quest for Thought Protection:

## CHINA'S INTELLECTUAL PROPERTY RIGHTS' ENFORCEMENT REGIME TO IMPROVE WITH INCREASED EDUCATION TO THE PUBLIC

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WHEN CHINA JOINED THE WORLD TRADE Organization (WTO) in 2001, the nation agreed to transform its closed economic system and to accept global business practices. This agreement included a pledge to comply with the WTO's Trade Related Aspects of Intellectual Property Agreement (TRIPs) and to amend Chinese laws and regulations regarding the protection of international intellectual property rights (IPR). In response to China's accession, many developed WTO member countries, including the United States, expressed concerns over China's compliance with TRIPs, and argued that China's current laws and enforcement policies could not provide the IPR protection necessary for participation in global trade. Although China has been strengthening its copyright, patent, and trademark laws since 2001, developed WTO nations today remain apprehensive about China's IPR

pled with a disinterested Chinese public, may indefinitely disable the Chinese government from effectively enforcing IPRs. Although many WTO members are contributing funds and training Chinese government officials to assist China with its IPR enforcement, these efforts are often *ad hoc* and lack uniformity. If the United States and other WTO members are truly concerned with China's enforcement regime, they need to encourage increased training assistance from both the private and public sectors in order to satisfy the patent need for more effective and coordinated action.

### The Problem: Lack of Enforcement

IT IS INDISPUTABLE THAT PIRACY AND COUNTERFEITING in China are rampant. The piracy rate in China remains one of the highest in the world, at over 90 percent.<sup>4</sup> In 2001, the U.S. Department of State reported that 92 percent of the software in China was counterfeit. Similarly, the Business Software Alliance (BSA) claimed that China is at the top of the list for the biggest dollar losses due to piracy. According to BSA, in 2002, China was responsible for more than US\$2.4 billion in lost revenue due to pirated products, up from US\$1.6 billion in 2001.<sup>5</sup> Also, domestic piracy of optical media (including CDs, VCDs, and DVDs) remains extremely high.<sup>6</sup> To make matters worse, a boom in online purchasing has created a new industry in the packaging, labeling, and transportation of counterfeit products purchased and traded via the Internet.<sup>7</sup> Despite China's attempt to "crack down," counterfeiters continue to produce large volumes of fake products in China for export to other countries.<sup>8</sup> This influx of cheap, low-quality counterfeit products hurts international companies in various ways, mainly by decreasing the demand for legitimate brand-name products and high quality goods in the Chinese market. Similarly, widespread counterfeiting hurts consumers by driving up prices for brand-name products so that legitimate companies can continue the expensive fight against piracy.<sup>9</sup> In addition to lost profits, piracy discourages foreign companies from investing in China, as potential investors question their ability to recover their investments in a market with weak IP protection.

Although U.S.-China IPR relations have historically resulted in a pattern where U.S. threats to impose trade sanctions are followed by short-term increases in compliance by the Chinese government,<sup>10</sup> after its accession to the WTO, China took immediate steps to tackle its IPR problems. In 2002 and 2003, U.S. experts

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enforcement regime. These countries argue that while China's reforms comply with TRIPs on paper, ineffective enforcement policies have created little incentive for long-term reform.<sup>1</sup> More specifically, the United States recognizes the efforts made by China to comply with the TRIPs agreement, but claims that the "continuing unacceptably high levels of piracy and counterfeiting require more effective and coordinated action."<sup>2</sup>

Even if the United States is correct in its assertions, a question remains: who will effectively coordinate this action? The Chinese government recently expressed that it lacks the knowledge and the necessary skills to combat piracy alone.<sup>3</sup> In fact, China admits to having difficulties in effective implementation and enforcement of its newly reformed IP laws. Further, Chinese consumers consistently demonstrate disinterest and ignorance about the importance of IPR protection. Thus, the government's lack of knowledge, cou-

carefully reviewed amendments to China's IP laws, and while they found room for improvement, they described the amendments as "major improvements that move China generally in line with international norms."<sup>11</sup> However, experts contend that China's intellectual property infringement problems lie not in inefficient lawmaking, but rather in inefficient administrative and criminal enforcement mechanisms. Indeed, the Chinese government has demonstrated an incredible commitment in bringing IPR laws into compliance with WTO requirements, but this kind of leadership does not result in effective enforcement at the local level.<sup>12</sup> As evidenced

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by enduring high piracy levels, even perfected IPR regulations are of little value if local IPR violators are not deterred. Moreover, if China is to truly live up to the commitments of the WTO, it must eliminate the many administrative loopholes that exist and provide effective civil and criminal remedies that will deter IP infringers.

### **Administrative Enforcement**

The general consensus among U.S. experts is that China needs harsher and more effective administrative penalties. Although the Chinese government prides itself in its anti-counterfeiting and anti-piracy campaigns that often result in a large seizure of infringing materials, these campaigns only illustrate the central government's veiled attempts to crack down on piracy. In 2002, regular announcements on state-run television showed the seizure and destruction of thousands of counterfeit products branded with the Olympic Games logo.<sup>13</sup> The central government assured the world that crackdowns on these products would continue, and that the Olympic Games logo would remain protected until and throughout the 2008 Olympic Games in Beijing. However, as is usually the case in China, these announcements failed to mention any arrests that resulted from these seizures. This is because administrative efforts often end with the seizure of infringing materials, and the infringer remains free. Some experts even contend that the seized products are not destroyed, but rather are handed back to the infringer to put back on the market. U.S. trade officials argue that China's goal must not end with the seizure of counterfeit products,

but should also include increased fines and criminal penalties that will effectively deter violators from future infringement. These officials assert that administrative penalties are weak because authorities use the market price of the counterfeit product to determine the fine, rather than the actual retail price of the infringed product.<sup>14</sup> As a result, infringers consider these weak administrative penalties as a mere cost of doing business; these fines thus do not serve as an effective deterrent against infringement. Further, few enforcement measures are available to ensure that fines are paid.

### **Criminal Enforcement**

Chinese administrative authorities receive further criticism for their failure to refer administrative cases to the Supreme People's Court for criminal prosecution. Experts repeatedly urge authorities to refer more infringement cases to prosecutors and to the police in order to increase criminal punishments. However, further conflicts arise at the criminal enforcement level.

In order to bring a criminal action against an infringer, there must be evidentiary proof of a high amount of counterfeit sales.<sup>15</sup> Therefore, seized counterfeit products discovered in a warehouse, which have yet to be sold, do not result in criminal culpability in China. U.S. experts have repeatedly argued that Chinese criminal enforcement policies would be more effective if they also applied to the manufacture, storage, distribution, and use of counterfeit and pirated goods.<sup>16</sup> Another problem with China's criminal enforcement policies is that the monetary threshold for criminal liability is extremely high. For example, to bring a criminal action against a counterfeiter, sales must total US\$24,000 for enterprises and US\$6,030 for individuals. Enterprises and individuals with total sales below these numbers are only subject to an administrative fine. These high thresholds have inevitably resulted in a low rate of criminal prosecution. Even when authorities do pursue criminal liability, prosecutions often result in punishments that are too lenient to effectively deter future infringement.<sup>17</sup> A higher number of criminal prosecutions would result if China lowered its threshold or criminalized the manufacturer and distribution of counterfeit products.

A further barrier to criminal enforcement is Chinese police officers who often express disinterest in pursuing piracy cases and who lack the requisite training and resources to investigate cases effectively.<sup>18</sup> Because the prosecution of IPR crimes requires coordination among a large number of Chinese agencies on both the national and local levels, police officers must first communicate with several judicial agencies to obtain permission to arrest a counterfeiter. This basic yet complex process may explain why police officers tend to avoid the pursuit of IPR violators altogether.

U.S. officials contend that China will not meet WTO and TRIPs enforcement requirements until it prosecutes a higher percentage of infringers, resulting in a greater number of convictions. These improvements may require additional training for police

officers and improvements in the bureaucratic process to initiate criminal prosecutions. When such improvements are made, China will have a more effective administrative and criminal enforcement regime to deter future infringements.

### Other Barriers to Successful Enforcement

China's IPR enforcement regime is further impeded by problems with local protectionism, lack of an independent judicial review, and judicial incompetence and inexperience. The problem of local protectionism is a result of the gradual decentralization of the Beijing central government and the gradual allocation of authority to Chinese local officials.<sup>19</sup> Local authorities, charged with addressing cases of local IPR violations, often fail to communicate with other localities to ensure consistency in IP rulings, causing contradiction and inconsistency in IP-related decisions. Local officials concerned with revenues and profits for the region will often overlook or even facilitate piracy because of its potential economic gains, and may forego allocating funds to local administrative agencies in charge of IPR enforcement. Experts contend that local officials frequently intervene in court decisions to protect local interests, often denying a foreigner's IPR claim if it falls upon an infringer that is producing revenue for the locality.



Another challenge to an effective enforcement regime is the lack of an independent judicial review. WTO agreements require that member countries sustain a judicial review that is independent from the government. Chinese Civil Law provides that Courts should conduct trials independently, impartially, and without intervention or influence by administrative authorities. However, China's judicial decisions are highly susceptible to both economic pressures from local officials and political influences from the central government. Unlike judges in the United States, Chinese

judges do not have the luxury of tenured positions, and are gravely aware that the government can remove them from the bench at any time. Local judges, in particular, often lack independence from government directives, contributing to the inefficiency of IPR enforcement. Other reasons cited for this dependency are judicial incompetence and insufficient knowledge and expertise of intellectual property law. A shortage of published opinions further impedes knowledge of IP issues, leading to unpredictable and contradictory judicial decisions.<sup>20</sup> Thus, the lack of judicial expertise, coupled with the courts' dependence upon administrative authorities, further weakens China's ability to implement an effective enforcement regime.

### Recent Improvements

In China's defense, it has taken steps to improve its enforcement regime. In October of 2003, China created a new IPR Leading Group (the Group) under the leadership of Vice Premier Wu to focus solely on IPR issues. U.S. officials agree that the establishment of the Group signals a concerted effort by China to improve its IPR enforcement regime. China has also initiated many positive reforms within the judicial system. In 1999, the Supreme People's Court ordered that judicial appointments be based on

merit and experience, rather than politics or favoritism, as was previously the practice. Furthermore, since 1992, several municipalities and provinces have created IP courts to recognize the specialization necessary for IPR cases. The theory behind assigning judges specifically to IPR cases is that they will quickly learn the intricacies of IPR issues and will ultimately deliver accurate and consistent judicial decisions.

Despite these improvements, developed countries continue to criticize China's inability to implement a solid and effective IPR enforcement regime. However, these countries should realize that China's lack of IPR protection is not solely the result of bad faith by the Chinese government, but rather stems from a combination of cultural, economic, and social factors. First, the concept of intellectual property is recent in China, and it is only in the last decade or so that Chinese leaders have started to emphasize the

value of improving IPR enforcement. Second, it is difficult for the Central Government to successfully improve its enforcement regime because of China's numerous provinces and localities. Finally, the profitability of piracy and counterfeiting can impede reform efforts. The international community, especially the developed WTO member countries, should create a more thorough and intensive plan for technical assistance to help China overcome the barriers to effective enforcement, and to ensure that China complies with the IPR requirements under the WTO framework.

## Possible Solution: Educate the Chinese Public

KNOWLEDGE WAS NOT PERCEIVED AS A FORM OF PROPERTY in traditional Chinese thinking. Rather, the concept of ideas was viewed, and still is, as communal and familial. The term "intellectual property" is still foreign to most Mainland Chinese, who may not appreciate the necessity to protect ideas and inventions. While Western laws reflect the ideals of property as a source of economic utility and protection, China's General Principles of Civil Law bar individuals from owning real property.<sup>21</sup> Only recently was a constitutional amendment to protect private property endorsed by the Communist Party and submitted to the National People's Congress.<sup>22</sup> If passed, Chinese law will allow private individuals to own real property for the first time. Given the fact that the Chinese have only recently begun to realize the benefits of real property ownership, it will most likely be difficult for many of them to fathom owning rights to intangible intellectual property. Whereas the United States and other developed countries are accustomed to the benefits of thought protection, and readily understand the concept that protection of ideas creates incentive for innovation, the people of China do not. Some scholars even contend that the Chinese perceive IPR enforcement as a foreign initiative that only benefits companies from abroad.<sup>23</sup> The Chinese public needs to be convinced, through active education and training, that IPR protection can be beneficial for China and its people.

It will, of course, be difficult convincing individuals that their main source of income - selling counterfeit goods - is "immoral." In large cities like Beijing, it is not unusual to see teenage children selling pirated goods in the markets. These children may be of school age, but they have found that dealing in pirated goods from early morning until the late evening can be a successful business and a way to support their families.<sup>24</sup> Convincing these children that it is illegal to own and sell fake products will be most difficult when it deprives their family of food and shelter. Moreover, the widespread availability of such cheap products provides many young people with "name brand materials" that they can actually afford. This heightened demand increases the incentive to create and sell fake products.<sup>25</sup> The hard fact is that intellectual property infringement is lucrative. Although the United States and other developed states continue to pressure the Chinese government to

break this cycle of infringement, it is often easier for a government to turn a blind-eye to small-scale infringement when increases in enforcement expenditures may end up depriving already poor individuals of their only source of income.<sup>26</sup>

## Hong Kong: A Public Education Model

As a Special Administrative Region of China since 1997, Hong Kong is in an excellent position to impress upon China the importance of IPR protections, and to encourage the use of its IPR education model. In 2002, the BSA awarded Hong Kong the "Champion Cyber Award" in recognition of the government's continued legislative and leadership efforts in protecting IPR.<sup>27</sup> Hong Kong is continuously praised by its trading partners, including the U.S., as a model for other countries struggling with piracy problems.

Such praise may be the result of Hong Kong's effective and extensive efforts to educate the public on the importance of IPR protections.

The Intellectual Property Department of the Special Administrative Region of Hong Kong (IPD) has a widespread educational program that is used to educate the public, particularly schoolchildren, as to the importance of intellectual property rights.<sup>28</sup> Rather than warn about possible punishments for infringement, IPD has developed a new approach to convince the public that buying fake goods is neither fashionable nor in good taste. Advertisements and television

commercials show purchasers of fake goods being snubbed by individuals that appreciate authentic, high-quality goods. This campaign, in essence, seeks to reverse the mentality that counterfeit purchasers are "cool," and depicts infringers as outcasts of society because of their poor taste. In addition to public service announcements, IPD visits area schools to teach about the importance of IPR, and has developed a computer game entitled "Anti-piracy Action Team," as well as a series of comic books geared towards younger people to increase their interest in the protections of IPR.

In addition to educational efforts, IPD has initiated a "No Fakes Pledge" in Hong Kong. This pledge allows storeowners to hang a sign in their window to indicate that they only sell legitimate products. Over 1,800 storeowners hang such pledges in their windows, and Hong Kong residents are encouraged to shop in these stores. The "No Fakes Pledge" was created to increase the morale in protected, legitimate goods and to decrease the desire for



fake, lower-quality goods. IPD also organizes annual conferences to educate Small to Medium Business Enterprises (SMEs) about obtaining IPR protections for their companies.<sup>29</sup> Certainly, this dedication to educating the public has contributed to the acclaim of Hong Kong's intellectual property protection model. A 2003 IPR survey revealed that 90 percent of the people in Hong Kong are aware of IPR and feel that intellectual property protections are necessary.<sup>30</sup> In response to such statistics, IPD demonstrated its continued dedication to educating the public by stating, "[a]lthough respondents are showing more understanding of the value of intellectual property, there are still too many people who can't resist buying and using pirated and counterfeit goods. We shall need to strengthen our education efforts."<sup>31</sup>

Undoubtedly, educational efforts in China will be more difficult, as the mainland is significantly larger than Hong Kong, and eastern thoughts on idea sharing are far more engrained in the minds of the Mainland people. Furthermore, the problem of local protectionism is not an issue in Hong Kong. There are many other factors that distinguish Hong Kong's and Mainland China's educational efforts and enforcement regimes. However, at a time when the Chinese government seems most willing to reform, an increase in public education is a worthy goal. Developed countries like Hong Kong and the United States, who are more experienced in IPR protection, should therefore strengthen their efforts to help China educate its citizens about the importance of IPR.

### Developed States: Cooperation in Educational Efforts

An effective enforcement regime takes extensive planning and monetary funds. China needs an incredible amount of assistance in order to comply with demanding pressures from developed states. Although there are numerous educational programs in China on IPRs, these programs are often *ad hoc* and unsuccessful, targeting high-end officials and business owners that may directly profit from the counterfeit market. For example, the World Intellectual Property Organization (WIPO) has many programs to educate enforcement officials on the importance of IPR protection. These programs seek to demonstrate effective enforcement procedures and policies in developed countries.<sup>32</sup> However, these programs overlook an even greater problem in China - the lack of IPR education among the public. An increase in programs for the uninformed public will prove more successful than programs limited to officials who may in fact profit from continued IPR infringement.

International agreements cite cooperation as a key factor in developing IPR protection regimes. Article 69 of the TRIPs agreement indicates that WTO member states should be willing to

exchange information on implementation strategies that each country has undergone in the fight to enforce IPR.<sup>33</sup> The U.S. Department of State argues that the U.S. government should develop a "unified, mid-to-long term strategic plan for capacity building in [China], to replace the *ad hoc* and therefore haphazard efforts that are currently underway."<sup>34</sup> It also urges member states that have a strong interest in IP enforcement in China, such as the United States, the European Union, and Japan, to collaborate in their efforts to assist China.

Recent threats by the United States to impose sanctions on the Chinese for IPR violations, however, are not conducive to increasing intellectual property protections in the Mainland. Instead of forcing the Chinese to improve their record on IPR



protection, threats may instead support the view by the Chinese public that IPR protection is for the benefit of foreign participants. Imposing sanctions could further alienate the mainland public and force more individuals to depend on the lucrative business of counterfeit goods. Alternatively, the United States and other developed countries should take an increasingly active involvement in China to provide more resources and educational tools to the Chinese people. By supporting government reform, the public interest in IPR will grow, thereby improving China's IPR enforcement regime.

### Private Sector: Bolstering China's Stake in an Efficient IPR Enforcement Regime

Realizing the benefits of improved IPR protection in China, American businesses are working to guide their Chinese counterparts in further reformation of its IPR enforcement regime. Enterprises like Microsoft Corporation are determined to influence Chinese attitudes about intellectual property rights protection

through the development of manufacturing enterprises, research facilities, and training programs at Chinese universities. Having faced major problems due to China's widespread software piracy,<sup>35</sup> Microsoft has vowed to work with local government agencies and partners to decrease infringement by focusing on education and enforcement.<sup>36</sup> By taking advantage of China's desire to develop its skill in information technology,<sup>37</sup> Microsoft can simultaneously promote interest in protecting Microsoft products.

Microsoft's latest investments include US\$750 million in joint ventures with China's software industry, and US\$24 million each year for a three year-period to develop research and educational programs at Chinese universities.<sup>38</sup> Microsoft has also joined with interested local manufacturers to convince local governments to help promote the use of licensed software.<sup>39</sup> Although agreements between Microsoft and Chinese entities do not specifically address protections of intellectual property rights, Microsoft claims it is important to ensure that China has a solid domestic market for intellectual property development and the ability to export software.<sup>40</sup> Obviously, Microsoft is a self-interested party, since improvements in China's IPR enforcement regime will subsequently cut Microsoft's losses due to piracy. However, through its educational investments, Microsoft hopes to increase awareness among the Chinese public in order to improve the overall efficiency of the Chinese IP protection regime.

Microsoft is not alone in its effort to educate through private investment. Other large companies, familiar with protecting intellectual property rights, hope to provide beneficial guidance to China as well. In 2001, Shure Electronics assisted Chinese officials in raiding a company in Shenzhen that had created over US\$120,000 worth of fake "Shure" microphones to be exported out of the country.<sup>41</sup> To demonstrate dedication to the piracy fight, Shure then participated in a public ceremony with China's Quality and Technical Supervision Bureau, where all seized microphones were destroyed, and promised to invest "every last penny" to reduce counterfeit production in China.<sup>42</sup>

Undoubtedly, not all companies can afford to invest in China, and fewer can afford to provide education assistance without risking millions of dollars to piracy.<sup>43</sup> But for large, wealthy American companies, the long-term potential in China's market is clear: China is ripe for investment, and encouraging IP protection among China's businesses can only result in long-term benefits for foreign companies. Even smaller companies can participate by licensing intellectual property rights to Chinese nationals via joint ventures. American companies can benefit by partnering with Chinese businesses who understand the system and are able to navigate the controlling Chinese bureaucracy.<sup>44</sup> At the same time, Chinese companies will learn about the benefits of IPR protection, and thus reinforce the voice of the local business community in demanding greater enforcement of and penalties for IPR infringement.

## Conclusion

DESPITE INCREASING CRITICISM, CHINA HAS IMPROVED its implementation and enforcement of WTO requirements. It has already amended its trademark, patent, and copyright laws, and has initiated reforms to its judicial system. However, most efforts to defeat counterfeiting and piracy have proven ineffective, and stronger assistance by developed WTO members is necessary to help China comply fully with its international intellectual property obligations. The United States and other developed nations must continue to assist in educating the Chinese public about the importance of IPR protection, both financially and by sharing their own educational strategies.

Private sector participants can also contribute to Chinese IPR enforcement reform, especially through the formation of joint ventures with local Chinese entities. While U.S. and other foreign enterprises may profit from cheap labor and efficient manufacturing, they will also contribute to educating their Chinese counterparts about the importance and value of intellectual property rights protection, who in turn will be more likely to urge government officials to improve China's existing IPR enforcement and protection regime.

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## ENDNOTES: *Hillary Hollingsworth*

- <sup>1</sup> See *2002 Special 301 Report*, (U.S. Trade Representative 2002), available at <http://www.ustr.gov/reports/2002/special301-306.htm> (accessed on Nov. 5, 2003) [hereinafter *2002 USTR*].
- <sup>2</sup> See *Id.*
- <sup>3</sup> See *World Trade Organization: Observations on China's Rule of Law Reforms*, (U.S. General Accounting Office 2002), available at [www.cecc.gov/pages/hearings/060602/westin.pdf](http://www.cecc.gov/pages/hearings/060602/westin.pdf) (accessed on Oct. 15, 2003) [hereinafter *2002 GAO Report*].
- <sup>4</sup> See *A Practical Guide for US Companies: Protecting Your Intellectual Property Rights in China*, (U.S. Department of Commerce 2003) at <http://www.mac.doc.gov/China/IPRNEW.html> (accessed on Oct. 12, 2003).
- <sup>5</sup> Paul Roberts, *Software Piracy Slows Education, Legal Crackdown Help in Some Regions*, *Vendors Say*, PC World (June 4, 2003), at <http://www.pcworld.com/news/article/0,aid,111016,00.asp> (accessed on Oct. 13, 2003).
- <sup>6</sup> See *2002 USTR*, *supra* note 1.
- <sup>7</sup> See Andrew Evans, Note, *Taming the Counterfeit Dragon: The WTO, TRIPs and Chinese Intellectual Property Laws*, 31 Ga. J. Int'l & Comp. L. 587, 594 (2003).
- <sup>8</sup> See *2002 USTR*, *supra* note 1.
- <sup>9</sup> See Evans, *supra* note 7, at 596.
- <sup>10</sup> See *id.* at 597 (explaining that on three different occasions in recent years, the U.S. has threatened economic sanctions against the Chinese for failing to enforce intellectual property rights).
- <sup>11</sup> *2003 Report to Congress on China's Compliance WTO Compliance*, (U.S. Trade Representative 2003), available at [www.ustr.gov/regions/china-hk-mongolia-taiwan/2003-12-18-china.pdf](http://www.ustr.gov/regions/china-hk-mongolia-taiwan/2003-12-18-china.pdf) (accessed on Feb. 2, 2004) [hereinafter *2003 USTR*].
- <sup>12</sup> *Id.*
- <sup>13</sup> See Tom O'Bryne, *China's Campaign against Brand Piracy*, *The World Today* (Aug. 16, 2002), at <http://www.abc.net.au/worldtoday/s650903.htm> (accessed on Feb. 5, 2004).
- <sup>14</sup> See *2003 USTR*, *supra* note 11.
- <sup>15</sup> See *id.*
- <sup>16</sup> *Id.*
- <sup>17</sup> See *id.*
- <sup>18</sup> See *id.*
- <sup>19</sup> See Evans, *supra* note 7, at 591.
- <sup>20</sup> See Angela Gregory, *Chinese Trademark Law and the TRIPs Agreement - Confucius Meets the WTO*, in *China and the World Trading System: Entering the New Millennium*, 321, 329-330 (Deborah Z. Cass, et al. eds., 2003).
- <sup>21</sup> See 1987 General Principles of Civil Law of the People's Republic of China art. 80; see also Evans, *supra* note 7, at 590 (explaining that the Maoist government outlawed private property ownership because of traditional Marxist views that considered the renunciation of private property as necessary for economic development).
- <sup>22</sup> See *China Acts to Protect Private Property*, *International Herald Tribune* (Dec. 22, 2003), at <http://www.iht.com/articles/122431.html> (accessed on Feb. 13, 2004).
- <sup>23</sup> See Myron Brilliant, *US and Japanese Commercial Interests Converge over China's IPR Regime*, (US Chamber of Commerce 2002), at <http://usinfo.state.gov/regional/ea/iprcn/japanfeature.htm> (accessed on Oct. 12, 2003).
- <sup>24</sup> Author's personal observations (Oct. 2003).
- <sup>25</sup> See Gregory, *supra* note 20, at 331 (explaining that counterfeiters are taking advantage of the profits created from young peoples' increased desires for "designer labels").
- <sup>26</sup> See *id.* at 332 (arguing that until governments come to realize the importance of IPR protection, the short-term economic advantages of counterfeiting will continue to outweigh the high costs of enforcement).
- <sup>27</sup> See Press Release, *Hong Kong Praised for Protecting Intellectual Property*, (Nov. 14, 2002), at <http://www.info.gov.hk/gia/general/brandhk/1114063.htm> (accessed on Feb. 9, 2004).
- <sup>28</sup> See Memorandum from the Intellectual Property Department of Hong Kong, *Intellectual Property Promotion and Education Programmes*, (2003), (on file with author) (internal document explaining that the IPD has visited over 457 secondary schools and covered 163,995 students in its efforts to promote IPR education).
- <sup>29</sup> See *id.*
- <sup>30</sup> See *Intellectual Property Protection Awareness Up*, (Jan. 15, 2004), at <http://www.news.gov.hk/en/category/businessandfinance/040115/html/040115en03005.htm> (accessed on Feb. 10, 2004).
- <sup>31</sup> *Id.*
- <sup>32</sup> See *Promoting Effective Enforcement of IPR*, (WIPO), at <http://www.wipo.org/aspac/en/activities/enforcement.htm> (n.d) (accessed on Nov. 15, 2003) (explaining that with the assistance of WIPO, China has held more than 30 training classes and seminars, with a total attendance of over 3000 people).
- <sup>33</sup> See *Agreement on Trade Related Aspects of Intellectual Property*, Apr. 15, 1994, art. 69.
- <sup>34</sup> *First Steps: A US Chamber Report on China's WTO Progress*, (U.S. Chamber of Commerce 2002), available at <http://usinfo.state.gov/regional/ea/iprcn/voices9.html> (accessed on Oct. 12, 2003).
- <sup>35</sup> See Lisa Gill, *Microsoft Fights Piracy, Open Source in China*, (June 27, 2002), at [www.newsfactor.com/perl/story/18415.html](http://www.newsfactor.com/perl/story/18415.html); see generally Evans, *supra* note 2, at 595 (explaining that software companies suffer from piracy because consumers tend to associate the "frequently shoddy and defective goods produced illegally" with their brand name product).
- <sup>36</sup> See *Microsoft's Investment in China Spans the Last Six Years*, (Nov. 5, 1998), at [www.microsoft.com/presspass/features/1998/11-5mschinalab.asp](http://www.microsoft.com/presspass/features/1998/11-5mschinalab.asp) (last accessed on Oct. 17, 2003) [hereinafter *Microsoft's Investment*].
- <sup>37</sup> *Id.*
- <sup>38</sup> See Gill, *supra* note 35.
- <sup>39</sup> See *Microsoft's Investment*, *supra* note 36.
- <sup>40</sup> See Gill, *supra* note 35.
- <sup>41</sup> See Press Release, *Shure Supports China's Drive to Uphold Intellectual Property Rights*, (Mar. 8, 2001), at [http://www.shure.com/news/pressreleases/pr-china-rights\\_030801.html](http://www.shure.com/news/pressreleases/pr-china-rights_030801.html) (accessed on Nov. 21, 2003).
- <sup>42</sup> *Id.*
- <sup>43</sup> See Brilliant, *supra* note 23.
- <sup>44</sup> See Gregory, *supra* note 20, at 343.