

## **The Politics of Piracy: Intellectual Property in Contemporary China**

By Andrew Mertha

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Napster. Emule. Grokster. In recent years, piracy has become synonymous with peer-to-peer software programs. Americans are familiar with this digital type, where individuals use the internet to illegally download digital copies of books, movies and software. However, most of the piracy occurring around the globe does not take this digital form. Andrew Mertha shed light on an increasingly important piracy battle in the globe's most populous nation in his book, The Politics of Piracy: Intellectual Property in Contemporary China. The Chinese piracy situation goes beyond what the newscasts and newspaper articles report, and includes a large underground yet conspicuously open black market for counterfeit (pirated) goods sold to a Chinese public eager to consume the inexpensive imitations, disregarding the blatant violation of the intellectual property rights belonging overwhelmingly to western corporations.

The organization of the book provides for a smooth and easy reading experience. The author divides the book into seven chapters. These divisions allow the reader to simply read a particular chapter of interest without the need to depend on information in those that precede it. The first chapter, entitled, "Foreign Pressure and China's IPR Regime," introduces the problems that face China concerning piracy. In addition, this introductory chapter outlines the topics that will be covered in subsequent chapters. Of

particular note, Mertha lays the groundwork for discussing the three types of intellectual property: patents, copyrights and trademarks. In each discussion he provides brief descriptions, which tend to be superficial in nature, in hopes to engage readers who do not have the requisite background. Although these descriptions do not have the depth that they should, their inclusion is understandable and justified to expand the book's appeal.

Through historical research, his interviews with numerous Chinese governmental insiders, and his often hilarious anecdotal accounts of his time in China, Mertha manages to give this difficult and what some would call "vanilla" subject some zest, allowing the reader to clearly see the problems the Chinese currently have and will face in the future dealing with piracy between bursts of internal laughter and gasps. Throughout the book, Mertha intertwines two problems within his discussion as being the main reasons for the piracy situation: the dichotomy between the external pressures of Western governments and the conflicting Chinese societal norms; and the bureaucratic regime present in the Chinese government that makes the process of developing intellectual property laws lengthy and complicated, and lacking sufficient enforcement measures. Of personal interest, is how these two problems have shaped the development and implementation of copyright law in China.

Mertha asserts that Copyright law in China did not manifest from the government's interest to protect the rights of Chinese authors and artists. Instead, he argues that the external pressures from the United States in the form of Most Favored Nation trading status and other perks were used as the "carrot" to cajole the Chinese government to create copyright laws that served to primarily protect the rights of

Western authors and artists. This external influence can be seen in the struggle within the Chinese government to legislate a copyright law after the 1979 Agreement on Trade Relations between the United States of America and the People's Republic of China. This agreement, in addition to recognizing the importance of the protection of trademarks, copyrights and patents for the two countries, also provided that China and the United States would protect the copyrights of citizens of the other country with equivalent protection that would be found domestically. At this time China had no copyright laws, thus it could not fulfill its obligation to this agreement without legislation implemented primarily to protect American interests.

After six years, China was still without any form of copyright protection as the proposed legislation was relegated to investigative committees. Mertha sees this delay as resulting from the resistance of the influential State Science and Technology Commission, which believed that any kind of copyright law would hinder the free flow of ideas that would inhibit Chinese growth and prevent it from leaving the ranks of developing nations. The United States added more pressure on China in 1988 by requiring China to commit to passing copyright legislation if they wanted to renew an important bilateral trade agreement. This tactic was a sufficiently large carrot for the Chinese, because within three years the Copyright Law officially became the first copyright law in China's history. Despite developing this law, Mertha is quick to note that it alone has not precluded the piracy problem.

On a societal level, the Chinese government's love of bureaucracies make it difficult for the copyright law to be successfully implemented from the national

government down to the village level. Mertha skillfully explains each level of the Chinese copyright bureaucracy and how they interact with each other in the larger scheme with an ease that only an individual with his expertise and experience in China could achieve. He also includes diagrams that clearly show that despite having the task of ensuring the copyright protection to copyright owners, depending on the level in the bureaucracy, copyright officials report to different authorities, creating a disjointed copyright regime. For example, copyright officials in the Provincial Government report directly to the National Copyright Administration, while officers at a sub provincial (prefecture, county and town/village) level report to the Ministry of Culture. This authoritative split does not aid in solving the problems of piracy.

Piracy, Mertha notes, is typically best fought at the county and town/village levels; however the mindset of the Ministry of Culture prevents it from protecting the rights of copyright owners as the Copyright Law of 1991 had sought. The Ministry of Culture is more interested in ridding the nation of “illegal” materials such as pornography and antigovernment publications, than doing the same with equally infringing copyrighted materials. Although the Chinese government touts that these sweeps to cleanse the nation of antigovernment and pornographic materials have aided in the reduction of piracy, Mertha finds that most copyrighted piracy is not of this variety and consists of politically neutral infringing materials like VCDs, DVDs and CDs. He further notes that the counterfeiters with their network of allies are always one step ahead of the government, because they greatly outnumber the government agents and employ lookouts to prevent capture when an anti piracy sweep is occurring.

Mertha provides different “enforcement scenarios” that could possibly resolve the copyright piracy problem in China. The first scenario is detailed in the “Winter Action” of 1996 – 1997, in which the Chinese waged a full scale campaign against copyright piracy. This anti-piracy effort is noted due to its relative success in apprehending targeted counterfeiters through use of large financial incentives for informants and the use of enforcement agents outside of the national Copyright Administration. Mertha points to the success of this action as resulting from the interaction of Chinese military and security forces with the Chinese copyright regime. He also suggests that to reduce piracy within China, the use of security and military forces would have to take a significant role for success to be achieved, but this is unsustainable.

Another of the scenarios Mertha provides involves the role of foreign and Chinese Non Governmental Organizations (“NGOs”) have taken in solving the piracy problem. He notes that Chinese corporations that are effected by piracy, notably the print publishing, software and audio-video publishing industries, have banded together to form local anti-piracy alliances. The role of these alliances is to report any signs of infringing activities to the appropriate authorities so action can be taken. Mertha has found that in some instances these alliances pay the salaries of the government copyright officials. Mertha further details the presence of NGOs like the Motion Picture Association of America (MPAA), the United States Information Technology Office (USITO) and the International Federation of the Phonographic Industry (IFPI) in China to monitor the piracy situation. These organizations work with the Chinese government to educate

officials at the local level and Chinese citizens about the value of protecting copyrights in China.

Mertha does an extraordinary job of detailing the history and development of intellectual property law in China. His knowledge and breadth of research is truly impressive and could only have been achieved by someone that lived in China and cultivated his relationships while there. Although the subject matter can be difficult to grasp, Mertha injects each chapter with personality to make it an enjoyable read. The current importance of intellectual property law and the growing piracy problem in China makes this book a must read for anyone seeking a well written and well researched piece that will increase their knowledge in this subject.