

Changing Attitudes to Intellectual Property Rights in China: The Nexus between Chinese Culture and the Rule of Law

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Abstract

Many aspects of intellectual property rights (IPR) in China are canvassed in the literature. In this treatment of IPR, the cultural architecture of IPR is often promoted as the paramount explanation of the piracy of intellectual property in China. Notwithstanding culture's influence, the recent experience of Taiwan, a country with a similar cultural profile to that of China, suggests that China has the potential to establish a functional regime for IPR. This development, however, requires appropriate incentives and new norms for IPR.

This paper identifies and analyses aspects of the cultural, social, economic, historical, and political architecture of IPR in China. While not downgrading the influence of culture on attitude formation, the experience of Taiwan indicates that the piracy of IPR

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can be reduced significantly from its present level in China. According to Martin Dimitrov, when a community of lawyers, academics, holders of IPR, and other stakeholders actively commit to educating citizens about the need to respect IPR, new norms arise to modify attitudes. Following Dimitrov's three-stages of legitimising IPR, a model for the establishment of a functional IPR regime in China is offered. Elements of Peter Yu's 12-steps as a path to an effective IPR regime are integrated into the model. Initially, legislative amendments result from foreign pressure, without which domestic policy-makers would simply fail to engage proactively with the process of enforcing IPR. In the following stage, the government uses law-enforcing agencies to ensure compliance with the new IP laws. Here, the actions of the professional community and stakeholder reinforce the new norms for IPR. The initial stages require the willpower of the government, improvements in the administrative processes, the development of culturally contextualised information, and a vigorous public education campaign. In the final stage, the new norms for IPR become self-enforcing simply because citizens conform as a matter of routine.

At the present time, facilitating factors in the Chinese environment of IPR now outweigh the inhibiting factors. By energetically pursuing a strategic partnership approach and implementing the steps outlined in this paper, the strong possibility exists that new norms for IPR can be established in China in the immediate future.

Introduction

Intellectual property rights (IPR) are awarded by various formal authorities for particular categories of intellectual endeavour and are protected by specific laws. For example, rights by way of patents are granted to people for unique inventions, designs, and constructions. Other rights include control of trademarks for words and symbols applied to specific products and services. Copyright is a form of protection for a wide range of work that appears in a tangible form, which might include published or unpublished material. For example, photos, works of art, HTML codes, and books may be protected by copyright. Clearly, IPR have serious economic and political implications. This is especially the case in newly developing countries (NIC) as well as emerging market economies (see Komen, Cohen, & Lee, 1994). Consequently, the political, economic, and legal aspects of IPR in China have been well canvassed in the literature (*cf.* Dimitrov, 2002; Yu, 2001).

Within this body of literature, the influence of Chinese culture has also been employed to explain the piracy of intellectual property (IP). In other words, the residual influence of Confucian values still works against the full implementation of measures to protect the holders of IPR. Notwithstanding culture's influence, any country will amend and rigorously enforce its IPR legislation when appropriate incentives and pressures are present in the environment. For example, the experience of Taiwan since the late 1980s, a country with a similar cultural profile to China, provides a different ending to the story about the influence of culture on attitudes toward IPR. This experience suggests that culture's influence is not necessarily the decisive factor.

Between 1990 and 2000, Taiwan achieved some measured success in implementing its IPR regime because of external incentives and pressures from the United States (US) coincided with an internal program to change domestic attitudes (Dimitrov, 2002). In particular, the rigour in which Taiwan pursued its reforms was consistent with its need to avoid the impact of economic sanctions. Through a series of initiatives, Taiwan improved its law enforcement institutions and prosecutorial process. For example, many initiatives tackled corruption directly. The number of public administration corruption Berrell, M., & Wrathall, J., 'Changing Attitudes to Intellectual Property Rights in China: The Nexus
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cases rose from 256 in 1960 to 6,159 in 1995. It is now advantageous in Taiwan to be a law abiding official than a person indifferent to IPR. Taiwan now rates 28th out of 98 countries on a global Corruption Index – China rates 58th in the same index. The number of judges also rose from 303 to 1,252 in the same period. Other initiatives included IPR seminars conducted by government ministries and the *Mr. Copyright* character that promoted the virtues of IPR through the mass media (see Dimitrov, 2002).

Against this background, aspects of the social architecture of IPR in China are identified and discussed, although the discussion is descriptive rather than analytical and more general than specific. Martin Dimitrov's (2002) three-staged model and Taiwan's experience in IPR since the mid-1980s are used as the basis for a likely scenario for the implementation of a functional IPR regime in China. This model includes foreign pressure as one impetus for in-country initiated legislative amendments. Without this external pressure, domestic policy-makers will fail to engage proactively in the development, implementation, and enforcement of IP laws. Once genuine engagement is forthcoming, a government will be well placed to effectively use and direct its law-enforcing agencies more comprehensively to ensure compliance with newly promulgated laws.

The initial stage requires a strong administration combined with the effective and timely dissemination of culturally contextualized information about IPR. The second stage entails mounting a vigorous public education campaign about the economic benefits of IPR. At this stage, the commitment of the community of lawyers, administrators, academics, teachers, community leaders, holders of IPR, and other stakeholders must actively commit to educating China's citizens about the need to respect IPR. With this commitment, new IPR norms arise to modify existing attitudes. In the final stage, laws become self-enforcing simply because citizens conform as a matter of routine. Consequently, piracy falls to the level of the advanced industrial countries. Elements of Peter Yu's (2000) 12-step plan for establishing an IPR regime are interspersed below with Dimitrov's model. However, Yu's initial step requires discarding coercive policies. In this light, the use of external pressure as a catalyst in the reform of IP legislation should

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be carefully considered. Nevertheless, the application of both approaches necessitates a sound understanding of how various political, economic, historical, and cultural influences shape the formation of Chinese attitudes about IPR and the rule of law. Furthermore, the different motivations the stakeholders of IPR, including the government of China and its major trading partners need to be recognised. Acceptable protection for the holders of IPR can only stem from such knowledge.

China's Legal Road to Protecting IPR

While China's accession to the World Trade Organization (WTO) is complete, the enforcement of IPR remains rudimentary. Commercial counterfeiting remains a low cost business proposition in a society that views such infringements as relatively harmless crimes (Riley, 1997). It is estimated that the piracy of IP in China costs the US\$2 billion in lost revenues annually (Yu, 2000). In China's inadequate legal environment, the protection of IPR looms large when decisions about foreign direct investment (FDI) are made. Nevertheless, progress to date in drafting laws to protect IPR is impressive given the social, economic, political, and cultural architecture in which these developments occurred.

By 1980, China had submitted its instrument of accession to the World Intellectual Property Rights Organisation (WIPO), subsequently becoming a member. Further progress in IP laws facilitated China's integration into the global community (NSP, 1997). However, it has not all been smooth sailing for China. Continued pressure from the WTO, through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), reinforced the nexus between a functional regime for IPR and sustained economic growth (Zheng, 1997b). Initial legal provisions for protecting IP included the *1982 Trademark Law* and the *1984 Patent Law*. More recently, the *1990 Copyright Law* was enacted. In 1987, the concept of IP was defined in Chinese civil fundamental law and became a right of citizenship (NSP, 1997). However, applying the principles of copyright within entrepreneurial industries like the computer software industry presented

specific problems because China had no precursor laws governing the protection of computer programs. Furthermore, allied laws were ambiguous (Willard, 1996a, 1996b).

Regulations in the 1990s enhanced China's reputation internationally in terms of protecting the holders of IPR by subscribing to the standard international conventions (*cf.* Feng, 1997; Lam, 1995; Riley, 1997; Zheng, 1997a, 1997b). Of particular significance was the thorough and wide-ranging 1995 China-US agreement on IP (Cooper & Chen, 1995), which reduced the distinctions between foreign and domestic interests in commercial law (*cf.* Berkman, 1996; Riley, 1997). Even so, elements of the legislation appeared inequitable because foreigners only received copyright protection if their works were first published in China or its territories. Other concerns included the fact that state-level authorities could make limited copies of computer programs for non-commercial activities (Willard, 1996a, 1996b).

To further confound the enforcement of IPR in China, these processes can be either administrative or judicial. The collection of evidence to support legal cases is laborious without official assistance (Riley, 1997). Consequently, administrative enforcement is sometimes preferred because it is more cost effective than either civil or criminal proceedings (Dimitrov, 2002). State instrumentalities have also implemented a practical range of initiatives including using source identification data codes to prevent the duplication of CDs and VCDs (*cf.* NSP, 1997). Authorities also recommend that foreign investors take preventative measures to protect their IPR (Lovenworth & Dittrich, 1996), including being circumspect in the marketplace, issuing clear warnings to infringers, and mounting well-placed media campaigns.

Various *Copyright Law* and *Software Regulations* permit consensual arbitration or mediation as methods for settling disputes about software and copyright infringements, although these disputes have only recently emerged as concerns of Chinese courts. For cases involving computer software, court involvement is novel. In 1991, the Basic and Intermediary Courts in China handled some 150 first instance copyright cases. By 1999, the total number of cases heard had increased to 750. In terms of resolve, among the Berrell, M., & Wrathall, J., 'Changing Attitudes to Intellectual Property Rights in China: The Nexus between Chinese Culture and the Rule of Law'.

1,777 final executions of District Court judgements in IPR cases, only 22% of the defendants were found to be innocent of the charge (Dimitrov, 2000). The Beijing First Medium Court dealt with its first complex computer software matter in 1995, a case now considered as a watershed in software copyright enforcement in countries (NICs) (Zheng, 1997a). In this embryonic environment, recent IPR legislation is not well understood by the various stakeholders and remains to be comprehensively tested in the People's Courts (Riley, 1997).

By 2000, the implementation of several substantial agreements regarding IPR had given China the foundation for building a functional IPR regime. Among the significant agreements were the Memorandum of Understanding on the Protection of Intellectual Property (1992), the Agreement Regarding Intellectual Property Rights (1995), and the China Implementation of the 1995 Intellectual Property Rights Agreement, June 17, 1996 (see Yu, 2000). However, Yu cautioned that despite a general improvement in the protection of IPR in periods immediately following the implementation of a new round of legislation, a further wave of piracy ensued once the attention of foreign governments was diverted elsewhere. Gregory Feder (1996) noted that this cycle of China transgressing and the US subsequently complaining and demanding appropriate responses was part of the trade wars between China and the US. The threat of the US withdrawing China's Most Favoured Nation status was made on several occasions. Arguably, both governments pursued their own agendas – China to gain increased levels of FDI and the US to gain access to Chinese markets. This balancing act mediated the responses of both parties. Nevertheless, the situation improved with the 1997 US-China Summit that planted the seeds of a constructive strategic partnership model for future bi-lateral relations between these countries (see Yu, 2000). This strategic partnership approach reduced the level of intimidation that flavoured US responses to IPR transgressions in China. This decrease in aggressive and heavy-handed tactics is consistent with Yu's 12-step approach to establishing an enduring and equitable regime for IPR in China. The hybrid model for an IPR regime is discussed below in the light of expanding constructive strategic partnerships.

Non-legal Factors and the Development of Attitudes to IPR

So many non-legal factors come into play in shaping Chinese attitudes toward IPR that only a succinct and cursory treatment of a few factors is possible here. The factors reviewed below, nevertheless, offer particular insight into how Chinese attitudes to IPR have developed and the implications of these attitudes for an IPR regime in China (*cf.* Wrathall, 1998). For example, the association of Western democratic ideals and the rule of law, which drives Western attitudes to IPR, has no parallel in Chinese history (Campbell & Wiles, 1979). The Chinese experience engenders preferences for inherently hierarchical and authoritarian political structures, accompanied by the use of personal power and the blending of political ideology with economic reality. Today, maintaining this balance is a principal task of the Chinese leadership. However, it must be emphasised that the role of government is actually a determining factor in establishing any regime for IPR. The ingrained response by Chinese society to authority structures may actually be advantageous in terms of developing a regime for IPR. The Chinese Government can and does make important choices to the extent that *rule of law* is frequently displaced by *rule by law*. The one-child policy is surely a testament to the power of rule by law. While rule by law may well be critically debated in the West, its implication for a workable IPR regime in China is positive.

In an economic context, the spectacular growth of the Chinese economy required high levels of determination tempered with pragmatism, which is evident in the leadership's recognition that economic success is contingent upon technology transfer (Lam, 1995). This residual desire to develop, implement, and enforce IPR legislation enabled significant progress in making foreign copyrights, patents, and trademarks safer (Birden, 1996). Despite these positive developments, China remains a complex environment. On the one hand, the Chinese leadership's commitment to modernization with its quest to attract appropriate foreign technology is unequivocal (Lam, 1995; Nolan, 2001). On the other hand, China has a unique mixture of Marxism and capitalism, which braces and drives its economy. This quandary encapsulates much of China's recent history (Hampden-Turner & Trompenaars, 1997).

Western market economies protect and maintain individual rights via a complex matrix of laws regulating business transactions and IPR. These regulations allow individuals and entities to reap fully the benefits bestowed by participation in a competitive market economy, although China's emerging market economy differs from most Western economies in quite distinct ways. Firstly, the cultural values of China are overwhelmingly community based and co-operative compared to Western ideals that espouse individualism and competition (Hampden-Turner & Trompenaars, 1997). Notwithstanding China's pragmatism in developing a market economy in which we might be tempted to substitute 'capitalist' for 'entrepreneur', China's resolve to keep economic development consistent with basic Chinese cultural values is both resolute and constant. In reality, this resolve is aimed at securing practical rather than moral ends.

History also casts its influence in thinking about IPR. Historically, Confucian and Legalist thought proffered opposing views about the importance of the role of law and morality in Chinese society. The Legalists advocated rule by law with an over reliance on sanctions and punishments. In contrast, the Confucians advocated rule by propriety and emphasised morality, the importance of the family, and the use of education and persuasion to encourage people to behave appropriately. Arguing against engaging formal legal processes, the Confucians pursued informal, moral, and social rules of conduct. Dispute resolution through mediation and compromise was the preferred path (Bhatia & Chung, 1974). From the Han Dynasty, Confucian thought dominated Chinese intellectual history for many centuries. The implication of a proprietorial and consensus-seeking philosophy on the formation of attitudes toward IPR is significant.

Modern history also shaped legislative responses to IPR. During the 1840s, a quasi-capitalist economic structure in China was an incentive for legal reforms aimed at stimulating foreign trade. Statutes like the *Da Qing* Copyright Law (1910) in the late Qing Dynasty sought to protect authorship in its broadest interpretation (Lam, 1995). Although this authentic copyright law was short lived when the Qing government fell one year later (Willard, 1996a, 1996b), pressures for legal reform continued into the Republic Berrell, M., & Wrathall, J., 'Changing Attitudes to Intellectual Property Rights in China: The Nexus
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of China period. In 1915, a second copyright law was implemented and in 1928, the Guomindang Government established a new copyright law, which remained in effect until the Communist takeover in 1949. Both were only slight modifications of the original (Kolton, 1996). By the mid-1930s, a modern legal system, strongly influenced by the European legal system, began to take shape.

From 1949 onward, the Chinese Communist Party's on-going program for the creation of a socialist legal system was interrupted periodically by political and economic instability. Political movements like the Great Leap Forward made any sustained development of the legal system virtually impossible. In fact, under Mao Zedong's leadership, internal policy directives ruled the day (Berkman, 1996). All proposals concerning IPR ended in this period and efforts to protect not only intellectuals but also IP floundered under Mao's anti-intellectualism. The Cultural Revolution (1966-76) sealed that fate of IPR for almost two decades (*cf.* Lam, 1995; Zheng, 1984). The legal system itself came to be regarded with contempt and distrust while the polity was encouraged to view the law as entirely the prerogative realm of government. Under Mao, the law became a tool for social and political engineering. In this inhospitable environment, the issue of IPR was dead (Berkman, 1996). The Marxist inspired vision of a classless society reduced the need for a complex legal system. Hence, even at the present time, a lack of resolve in protecting the holders of IPR is consistent with deep-seated Chinese political beliefs and philosophies built up over several generations.

In one sense, Marxist-Leninist ideology converges with Confucian thought to reinforce the low status of IPR in the larger order of things. By providing a strong and compelling cultural basis for the relegation of individual autonomy to the interests of the state, Confucius and Marx make strange bedfellows. According to Fung (1996), a Confucian heritage and a traditional antipathy for individual profiteering are accommodated by a Marxist approach to economy and society. Aspects of the social architecture combined with a recent history of radical politics in which the use of personal power and authority reinforced the legitimacy of rule by law reinforce this accommodation.

However, in the face of cultural, social, political influences that militate against a comprehensive system of commercial law and IPR, the economic imperatives of the previous two decades have forced China to contemplate a different road. Following Mao's death and the downfall of the Gang of Four, the need for greater levels of FDI gained acceptance throughout China and within its leadership. As a result, Deng Xiaoping set the country on a course of profound economic reform, which embraced an Open Door policy. Along with trying to refurbish the remnants of the superseded legal system, new legislation for protecting IPR were rebuilt, "virtually from scratch." China emerged from its self-imposed legal exile in the late 1970s to face the daunting task of creating a transparent and modern legal environment to foster FDI (Pun, 1996; Tay & Leung, 1995). However, in one sense, this progress resonates with an uneasy compromise. This is because traditional attitudes, values, and sentiments constantly vie with the economic imperatives and pragmatic determination that drives the new environment. Deng Xiaoping did promote Western ideas about economy as acceptable as long as they fit *quo quing* (with the Chinese way of doing things). Finding this middle ground produced in a tidal wave of FDI that currently eclipses all NICs in their quest to attract foreign currency (Shenkar, 1995). Although this growth in FDI is of stellar proportions, significant difficulties remain.

The bulk of the substantive problems for IPR can be located in administrative and enforcement processes. Additional levels of scrutiny are necessary because in some circumstances, the cultural architecture of IPR holds sway. For example, Chinese civil servants often "administer in the Confucian tradition of sage leadership", doing what they believe to be best (Hampden-Turner & Trompenaars, 1997). In addition, a pivotal decision in 1979 by the Central Government "to enhance local autonomy in order to promote the transformation from a planned to a market economy" further obscured the apparatuses of administration and enforcement. While initiatives include the creation of the Special Economic Zones to cultivate FDI, the growing level of decentralisation created another layer of bureaucracy to smother IPR. In fact, the Chinese leadership seemed to have seriously miscalculated the effect of the decentralisation of its power, which weakened its grip on the administrative and enforcement processes. The result

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was a significant loss of control in important areas, the “rise of regionalism and corruption, and the enormous growth in power of local officials”. Westerners are still bewildered by the ways in which local agencies interpret, administer, and ultimately enforce laws in what is ostensibly a uniform legal code. This aspect of China’s judicial system is also a weak link in the economic chain (Berkman, 1996).

In this period, new commercial laws developed in a typically pragmatic manner. They accommodated the perceived needs of foreign investors by emphasising Western legal ideas and concepts within the context of *quo quing* (cf. Tay & Leung, 1995). While *quo quing* was a guiding principle, some laws were incompatible with deeply rooted cultural values. They were also at odds with Chinese legal history and accepted business practices (Carver, 1996). The enforcement of IPR remains a thorn in the side of US-China negotiations (cf. Chen, 1995; Deng, Townsend & Robert, 1996; Greenberger, 1996; Ling, 2003; Yu, 2000; Zheng, 1997a, 1997b). The magnitude of this problem is partially due to the less tangible nature of IPR and the inherent difficulty associated with detecting transgressions. These difficulties become even more significant with the development and expansion of information and communication technologies generally (Levinson, 1997). However, we also need to consider the deep-seated cultural beliefs that make the whole notion of IPR seem like a foreign concept.

The Cultural Architecture of IPR

Axial principles residing at the deep level of Chinese society brace the cultural architecture of IPR. These principles by definition require no elaborate rationale because they consist of the timeless and self-evident truths (Hall, 1976). They are germane to the formation of essential ideas about society, culture, and religion. Claude Levi Strauss (1977) alluded to the pervasive power of these principles by suggesting that the surface level information of a society was a mediated representation of these deep-seated beliefs.

Understanding the axial principles impelling Chinese attitudes toward IPR can assist in the application of Dimitrov's and Yu's ideas concerning IPR to the Chinese environment.

Because the rule of law remains problematic in China, deeply embedded ideas in the cultural architecture often hold sway over well-developed regulatory measures concerning IPR (Carver, 1996; Haley, 1991). This embedded nature of some important ideas is reflected in Hofstede's (1994) description of culture as "the collective programming of the mind". Deep-seated values about IPR coalesce within a uniquely Chinese "cultural and institutional matrix" (Haley, 1991), although only a brief review of these values is possible here. In China, religious and spiritual traditions influence attitudes toward IPR. For example, Confucius (551-479 BCE) held that people improve themselves through ritual, meditation, and tangible actions and conceived of accomplished people living harmoniously in a society governed by benevolent, righteous, and moral leaders (Chinnery, 1996). The principles of harmony, stability, and hierarchy were particularly valued (Creel, 1949; Nivison & Wright, 1959; Wright, 1960). Five cardinal relationships, including the hierarchical relationship between father-son was reinforced by filial piety, the giving of due deference, respect, and loyalty to one's parents. Such hierarchical relationships emerged as the cornerstones of the harmonious society (Chinnery, 1996), reducing the necessity to engage formal laws in conflict resolution. The core of the five cardinal relationships emphasised morality as a means of maintaining the social order. The prevailing moral and social codes valued negotiation, mediation, and compromise (Chen, 1993). Yielding and compromising became virtuous traits with the overt actions of moral people promoted as the "most effective form of persuasion" in Chinese society (Folsom & Minan, 1989). Therefore, the traditional Chinese legal system tapped the relationship network and exemplary behaviour as interventions to curb anti-social desires (Lazar, 1996). The Confucian contempt for the profit motive at the expense of benefits to the wider society also influenced attitudes to IPR (Kolton, 1996). However, given that the individual should always be prepared to sacrifice personal gain for public good, the power of this deep-seated belief may facilitate a public education campaign designed to promote the virtue of IPR.

The Taoist vision of rustic, self-contained simplicity with a focus on the individual is another religious tradition in China. Although Confucian and Taoist traditions coexisted as motivating forces, this was perplexing to the Western mind unable to appreciate the Chinese capacity for ambiguity - Confucian values could be embraced in work and family affairs while Taoist values could be embraced in artistic and leisure pursuits (Chinnery, 1996). While being divergent traditions, both are “inherently antithetical” to IPR (*cf.* Lam, 1995). Buddhism too is at odds with blatant industrious behaviour and entrepreneurship. Therefore, it is doubtful that Buddhism would actively embrace a complex legal system designed to support either economic interests or IPR. While obvious differences exist between Confucianism, Taoism, and Buddhism, these traditions co-exist and complement one another in the Chinese worldview. This integration reflects, *inter alia*, a tolerance for ambiguity, the exemplar of tangible moral action, and a secular worldview. In this light, the cultural architecture of China is clearly secular and practical (Hampden-Turner & Trompenaars, 1997), although at another level, the cosmological forces of *Yin* and *Yang* are seen to bind the universe. In this coupling, *Yang* “symbolises morality and benevolence” while *Yin* is the symbol of “formal law and justice”. Since order is maintained through the balance of these forces, formal law should complement morality and benevolence. This aspiration for a balanced environment inhibited the development of IPR simply because “legal structures could not always override moral considerations” (Lazar, 1996). This reluctance to fully engage lengthy legal processes and avoid direct confrontation relegates the formal enforcement of IPR as an action of last resort. Hence, the relation-based systems largely obviate the need for complex contractual relationships. This preference serves to reinforce the scepticism amongst the Chinese about the value of Western legal processes generally (*cf.* Gannon & Associates, 1994).

While values *per se* are amorphous constructs, the behaviours of people across cultures can be outwardly observed. Given that cultures remain constant, behaviour can be generalised in several dimensions, providing a path to uncovering deep level motivations concerning IPR (see Adler, 1997; Deresky, 2000; Hall, 1976; Hofstede, 1994; Lane, DiStefano & Maznevski, 2000; Kluckhohn & Strodtbeck, 1961; Trompenaars, 1993). Berrell, M., & Wrathall, J., ‘Changing Attitudes to Intellectual Property Rights in China: The Nexus 14 between Chinese Culture and the Rule of Law’.

For example, Australian society exhibits low-context behaviour whereas Chinese society behaves in a high-context manner. High-context cultures bend to the influences of the wider external environment. Thus, when problem solving, a Chinese manager might refer to the specifics of a situation and the influence of long-term relationships to identify a suitable solution. Decisions might also be based on whether the people affected are insiders or outsiders, and by reference to tacit knowledge. Explicit forms of knowledge have greater impact on shaping behaviour in high-context cultures (see Hall, 1976). In low context cultures, more universal principles hold sway and people external to or even independent of the in-group might be approached in the problem solving process.

Others have also observed different orientations between cultures in interpersonal relationships, environmental relationships, and manner in which people went about their business. In addition, a person's response to temporal matters, causality, space, and cosmology induce different behaviours (Kluckhohn & Strodtbeck, 1961; *cf.* Adler, 1997). Further observable differences between cultures include how people deal with the desirability of hierarchical distributions of power as well as the importance of relationships between individuals and groups (Hofstede, 1994). In condensing the major themes from Western scholarship, we might generalise that high-context Chinese society is predisposed to: (i) work in harmony with people in an environment bound by collective and group pursuits; (ii) view family and not work as the focus of one's being; (iii) have an orientation to present and immediate future; (iv) feel conformable in public space; (v) less systematically analyse links between causes and effects; (vi) exhibit a high tolerance of ambiguity; and (vii) view the world as rhythmical and infinite (Adler, 1997: 19-38).

The collectivist dimension of Chinese society has particular implications for the social architecture of IPR. Collectively induced relationships are tightly structured and reflect group rather than individual needs (Ramamoorthy & Carroll, 1998). The requirement for formal regulations become less apparent in the face of moral norms and informal means of control in the Confucian tradition of stressing duties over rights (Goodman & Segal, 1991). Hence, the collective nature of Chinese society is at odds with a Western view of IPR – a view that may ultimately be “inherently irreconcilable” given that the Chinese Berrell, M., & Wrathall, J., ‘Changing Attitudes to Intellectual Property Rights in China: The Nexus 15 between Chinese Culture and the Rule of Law’.

Constitution specifies that individual rights can be revoked (Fung, 1996). The collectivist bend shapes business communication in that it is geared to highlighting group welfare, co-operation, social harmony, and the collective (Weldon & Jehn, 1996). In this light, proposals that imply IPR belong to individuals or entities fall outside the discourses on collectivism. Therefore, regardless of the economic benefits accruing from these rights, “the concept of an individual holding exclusive rights in an article of intellectual property or a trademark, as well as the money-seeking tendencies and excessive individualism such rights might foster, are troublesome” ideas in China (Fung, 1996).

The Chinese rationale for copying famous art works “affirms the pervasiveness of the philosophical notion of social sharing” and highlights the importance attributes to the aspirations of society. Owners of the original works do not normally seek redress for copyright infringements - replication may be a positive contribution towards establishing and reinforcing the “author’s master status” (Lam, 1995). In a similar vein, the duplicating of a technology followed by a value-added improvement is a widely accepted business practice in East Asia. This practice generally involves “seizing upon inner-directed technologies originating in the West and refining these for Asian and Western markets via outer-directed customer orientation, which combine the best of East and West”. This type of strategy is not only highly successful but is also perfectly consistent with East Asian cultural values. In this environment, trademarks, patents, processes, industrial design, and easily copied computer software all come under risk.

The role of *guanxi* in the social architecture of IPR warrants a special mention. In its broadest sense, *guanxi* refers to instrumental-personal ties that can range from strong personal loyalties through to what some Westerners perceive as corrupt practices (*cf.* Blackman, 1997; Tsui & Farh, 1997; Walder, 1986; Xin & Pearce, 1996; Yeung & Tung, 1996). *Guanxi* also applies to family and friendship relations as well as to social connections based implicitly on mutual interests, particularly those directly related to business. In this context, socio-economic status and family origins cement interpersonal relationships in both the social and business worlds. Relationships based on *guanxi* are endemic in China. While they are logical business strategies, these networks are

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employed openly (Hwang, 1987; Lockett, 1988). As an accepted business practice, *guanxi* uniquely influences the character of China's legal system and mediates responses to complex Western-style legal provisions surrounding IPR.

Recent studies also confirm other differences in cultural orientations that have implications for establishing an IPR regime in China (*cf.* Berkman, 1996; Brook & Luong, 1997; Hampden-Turner & Trompenaars, 1997; Lam, 1995; Lazar, 1996; Robbins, Millet, Cacioppe, & Waters-Marsh, 1998; Riley, 1997; Trompenaars, 1993; Westwood & Chan, 1991; Yuen, 1992). Of particular importance are the high power-distance orientation of Chinese society, its orientation to quality of life issues, and the role of status. China's high power-distance orientation produces personal and autocratic leadership styles in both politics and business (Westwood & Chan, 1991). For example, the extent to which IPR extend equally is unconsciously modified by a belief that sees a privileged class legitimately wielding those laws to "govern foreigners and tradesmen". However, members of this class do not necessarily following these laws (Riley, 1997). Historically, the law was a domestic matter to be adjudicated over by the ruler. The 'last emperor' Mao Zedong and the subsequent paramount leader Deng Xiaoping were implicitly driven by this supposition (*cf.* Berkman, 1996). Hence, in matters of IPR, personal power often outweighs the opinion of the judiciary. In fact, personal power of Government officials or their supervisors may ultimately defeat any due processes.

The quality of life orientation of Chinese society subtly casts the values of relationship building, sensitivity, and concern for others (Robbins *et al.*, 1998). While IPR disputes often require quantifiable outcomes, foreigners eschew the less tangible results of a resolution preferred by Chinese society. The particularistic orientation of the society values the "obligations of relationships and unique circumstances". In matter pertaining to IPR, this tolerance for ambiguity stands in contrast to the strict adherence to legal provisions accepted by Westerners (*cf.* Trompenaars, 1993; Yuen, 1992). With a clear preference for the strength of relationships rather than contracts, the broader principles of IPR are subsequently viewed by Chinese society as relatively unimportant within the range of business activity. This worldview also affects the drafting of legal provisions, Berrell, M., & Wrathall, J., 'Changing Attitudes to Intellectual Property Rights in China: The Nexus 17 between Chinese Culture and the Rule of Law'.

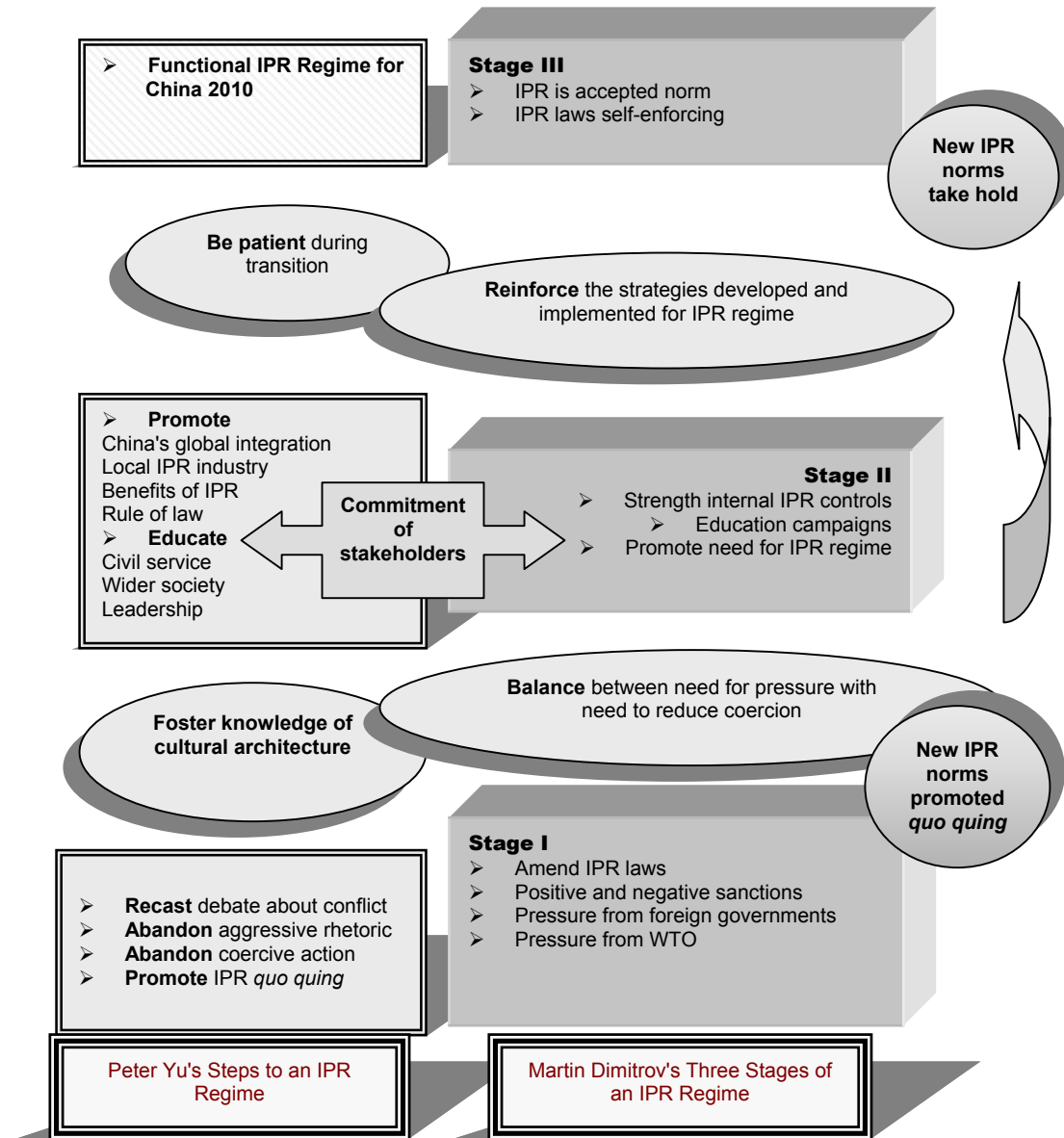
which often contain ambiguous terms. One of the more amorphous is “the public interest”. The vagueness of this term allows the government to declare something against public interest without defining that interest (Lam, 1995).

Chinese society is also a culture characterised by ascription, where status attributed by birth, kinship, gender, age, education, and connections is all-important. The tendency for power and influence to be vested in individuals, based on kinship or connections, overrides the authority or influence of the rule of law. Hence, IPR may not bring with them the same level of authority as that which exists in the West (Hampden-Turner & Trompenaars, 1997).

A Model for Establishing a Functional IPR Regime

The identification of the architecture surrounding IPR suggests that the process of establishing a regime for IPR in countries antagonistic toward Western legal structures will be both lengthy and complex. Nevertheless, the experience of Taiwan indicates that attitudes can be changed when suitable incentives and facilitating factors are present. Therefore, new norms for IPR based on respect, virtue, and pragmatism can emerge and take hold in the new environment. IPR norms arise out of specific social contexts rather than being entirely shaped by culture *per se*. Norms arise out of society's preference for doing things in a particular way or from regulatory measures that dictate how things should be done. Norms can also be established and maintained through a combination of these processes. Yu's 12-steps approach implicitly recognises the balance between facilitating and inhibiting factors in the Chinese environment in the context of emerging IPR norms. An amalgamation of the main ideas articulated by Dimitrov and Yu is sketched below. Without diminishing the importance of the cultural milieu, the model indicates that new IPR norms can be cast without altering the fundamentals of the cultural architecture (see Dimitrov, 2002).

Figure 1: Steps and Stages for a Functional IPR Regime



The model above illustrates the need to consider not only the legal architecture of IPR in China but also the political, social, cultural, and economic architecture. It also recognises the complexity of moving through each of the stages and steps recommended above, although each stage of the model is not seen as being mutually exclusive. Notwithstanding the difficulty of the exercise, the foundations of a functional IPR regime in China are achievable in the coming decade. However, in order to realise these ends, Berrell, M., & Wrathall, J., 'Changing Attitudes to Intellectual Property Rights in China: The Nexus 19 between Chinese Culture and the Rule of Law'.

all stakeholders must work in within a strategic partnership model to satisfy the needs of the holders of IPR as well as the political, economic, and social objectives of the Chinese government and its trading partners.

In terms of facilitating factors, the Chinese traditions of virtue, duty, and the pursuit of learning provide a strong basis for an education program to promote the norm of respect for IPR. In the context of external pressure from China's trading partners and the WTO, this input may still be necessary for the immediate future despite Yu's call to reduce bullying or intimidating tactics as a prerequisite step. Legitimate external pressures do actually require genuine responses.

A strong internal education program, contextualized to the Chinese culture, would also encourage less threatening behaviour by countries such as the US. The inclination for pragmatic solutions also suggests that the coercive phase would be short lived if the Chinese economy suffered. In addition, more informed knowledge available globally about the social, cultural, economic, and political environment of China will help Westerners understand Chinese society and the motivating forces therein. The Chinese Embassies abroad must disseminate knowledge of this type by taking roles that are more active in its distribution.

The role of rule by law in establishing a regime for IPR may also be a facilitating factor in China although this is a contentious proposition given calls to establish IPR as an integral component of a regime governed by the rule of law. The Chinese government has demonstrated on numerous occasions that its will alone is sufficient to implement precarious programs of reform capable of altering the economic face of China. In fact, the will of the Chinese government may be a determining factor in the fate of IPR in this decade. It is also wise and prudent to respect IPR in a country that has a burgeoning IPR industry. As this industry expands, the advocates of IPR also increase, providing additional facilitating factors. In addition, a growing band of domestic IPR holders are now making their presence felt in the new economy by lobbying officials and maintaining local associations. As holders go about the task of seeking compensation

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and redress from local transgressors, their growing influence cannot be underestimated (Ling, 2003). In addition, the role in private sector in Taiwan also suggests that local IPR holders can have a significant impact on creating new norms of respect for IPR (cf. Dimitrov, 2002; Ling, 2003). As IPR become *quo quing*, respect for the idea will rapidly develop.

Tighter management and control of China's law enforcement institutions as well as its prosecutorial and administrative processes would also reduce corruption and steer China on a course similar to Taiwan. This would result in an immediate improvement in China's rating on the global corruption scale. China has also facilitated increased for IPR by creating several basic and intermediary courts to handle IPR cases. The communication between the government and the court system has also improved considerably since 2000 with internal education campaigns about IPR. However, such best practice remains confined within the economically advantaged areas like Shanghai and there is an urgent need to expand these programs into regional and rural areas. This regaining control over the processes damaged by the unchecked decentralisation of power and the rise of the local official during the 1980s would significantly improve the IPR regime. This, of course, entails occupying lost territory and taking away from the Provincial governments activities that are now seen as their rightful tasks. This is an internal battle yet to be fully waged.

In terms of restraining factors, the cultural architecture remains a powerful but not necessarily a determining factor in the future of IPR in China. Certainly, the collectivist nature of Chinese society, its attitude to power distance, the use of personal power, and *guanxi* will all continue to fuel current attitudes to IPR until new IPR norms take hold. Dimitrov (2002) makes it clear that the piracy of software programs, for example, is not a Confucian tradition; rather, it is a social norm. Therefore, much of the cultural architecture that currently facilitates the exploitation of IP will transform itself into facilitating factors as the new IPR norms take hold.

However, continued scepticism of the legal system and its associated institutions will likely remain high until the process becomes generally more transparent. For example, Berrell, M., & Wrathall, J., 'Changing Attitudes to Intellectual Property Rights in China: The Nexus 21 between Chinese Culture and the Rule of Law'.

Ling (2003) notes that local protectionism emerges in cases involving IPR transgressions and that some provincial and rural authorities are loath to take legal action because it may actually reduce economic activity. Another inhibiting factor is the fines applied to IPR judgements. Plaintiffs complain vigorously that the judgements they receive are neither adequate nor just under the present circumstances (Ling, 2003).

Conclusion

In our opinion, the facilitating factors in the Chinese environment of IPR now outweigh the inhibiting factors, a view that is perhaps at odds with the cultural pundits. Nevertheless, by energetically pursuing a strategic partnership approach and implementing the steps outlined in the model above, the possibility exists of establishing new norms for IPR in China in the immediate future. The cultural architecture of IPR in China can be co-opted to produce new foundation norms for navigating a path that was previously a slippery slope. As Dimitrov and Yu point out, it is a comparatively uncomplicated proposition to identify the cultural architecture as the main perpetrator of IP piracy in China. In particular, the Confucian tradition and a politically driven cynicism of Western institutions combine with an attitude that questions the legitimacy of the rule of law to make IP piracy seem like the thing to do. The high-context behaviour of the polity reinforces this position. However, the role of culture in this process must be interpreted in the light of the evolution of social norms. IPR norms are products of a particular social environment rather than clones of the cultural architecture. Therefore, while cultural factors are still important influences, they are not determining because of the potential to develop new and positive norms for IPR.

According to Yu (2001), facilitating factors in the environment include the strategic partnership model, which has now achieved measured success in rebalancing the relationship between China and the US. This balance will have a flow on affect for China's other trading partners. Ling (2003) also reports that the impact of globalisation is now positively influencing IPR in China. Given this window of opportunity, the bulk of the tasks ahead should be undertaken in the context of the second stage of the model. Berrell, M., & Wrathall, J., 'Changing Attitudes to Intellectual Property Rights in China: The Nexus 22 between Chinese Culture and the Rule of Law'.

The third stage is a logical outcome of the successful implementation of the steps at Stage II. Having weakened the impact of the cultural culprit thesis, the path ahead has been cleared for a functional IPR regime in China as an outcome of improved strategic partnerships among all IPR stakeholders.

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