

## What underlies 'Made in China': Intellectual Property Rights in China

Sudeshna Chatterjee, independent researcher

In China, intellectual property rights (IPR) remain ambiguously defined and inadequately enforced. The common allegation against China is that the government does not adequately enforce IPR. Sale of illegal DVDs, computer software and books often invite the wrath of the international community, especially the United States. This should be in no way taken to indicate that there is an overt apathy on the part of the state in ensuring IPR protection. Although the current legislations on IPR in China are recent, the Chinese state has initiated important efforts to enforce them since the 19<sup>th</sup> century. However, with the arrival of the Communist regime, there was a halt in the development of IPR norms, given that the state acquired economic exploitation rights. It was only with Deng Xiao Ping's efforts to modernize the economy that IPR protection became important again. In 1978, IPR was reintroduced as a part of the Four Modernizations Program.

Why then does China continue to have a poor record on IPR? Should IPR and its violations still be a matter of great concern? A recent study conducted by the United States International Trade Commission reveals that counterfeiters who violate IPR work in four primary groups: criminal organizations, business enterprises, universities and surrounding bookstores and consumers themselves. What could possibly be contributing to such rampant counterfeiting is probably the ineffective enforcement by existing mechanisms to enforce IPR. It is not that the Chinese state has remained absolutely indifferent to ensure IPR protection; however, it is that the way in which the system functions due to its political environment and forces which act on it, that compels it to yield unsatisfactory results.

IPR enforcement in China can be categorized primarily along four dimensions: first, administrative enforcement, outside the court system in forms of imposition of fines or seizure of the concerned goods. However, the problem with administrative enforcement is that the fines are low and sometimes paid to the agencies rather than the victim and there is widespread confusion over jurisdiction. Second, criminal prosecution: the Chinese government has categorized and declared several acts of IPR violation as criminal activities. Nonetheless, these laws are ambiguously defined and there is no clarity as to when these violations become criminal. Third, civil litigation: individuals/civilians are empowered to

move court in case of IPR violation. However, the absence of an independent judicial system hinders the process. Lastly, customs enforcement in China seeks to prevent the export of illegal goods. However, its performance has been far from satisfactory, as infringement still continues and several goods pass untracked.

Despite these problems, intellectual property rights in China have evolved in a definite direction since the end of 1970s, to ensure greater protection. Even though compensation amounts are not even comparable to those in developed countries, to even expect that is unfair, by virtue of China being an emergent, developing economy. However, the problem is far from resolved. It is possible to identify crucial factors that might help in a more comprehensive understanding of the problem. What makes matters complicated is the deep-rooted nature of the problem. There is an elaborate network that fuels the phenomenon, rooted in specific geographical locations such as Hebei, Henan, Jiangxi, Anhui, etc. Simply the creation of more laws and structures are not so important as are efforts to identify the network and bring perpetrators to book, by a firm hand. IPR violations continue in China, not so much because of ineffective state action, as from ineffective enforcement of existing structures, fuelled by probably China's socialist political and economic system. Apart from traditional hindrances to fair trials in a socialist regime that assails China's IPR settlement cases in courts, socialist economy by virtue of its inherent principle to exploit patent rights for national treatment, led to atleast a halt in strict development of IPR norms, if not paving the way for overt exploitation of IPR. Thus, naturally it becomes difficult to reverse the trend that was once set by rigid communist ideology of the government to justify IPR exploitation by the state. Third, it is true that IPR protection in China is in a fragile state; nonetheless, much of the hue and cry about it only reaffirms the conventional Western stand to portray everything about China as a threat. Infact, very little is said about India, where IPR protection is worse, and which was accorded the lowest position in the Intellectual Property Protection Index of 2011, out of all BRIC countries.

The Chinese economy and polity rest at a crucial balance at present: gradually, principles of socialism are being forgone to open up to the world market and increasingly benefit from it. At this juncture, it is crucial for the Chinese state to take IPR violations seriously. When much of her development is contingent on foreign capital, the least the state can do is to ensure ways to maintain its healthy flow. Protection of IPR then becomes not only necessary as a principle of fair economic exchange, but also to ensure continuation of China's own economic growth.

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