

THE CHINESE CULTURAL PERCEPTIONS OF INNOVATION, FAIR USE, AND THE  
PUBLIC DOMAIN: A GRASS-ROOTS APPROACH TO STUDYING  
THE U.S.-CHINA COPYRIGHT DISPUTES

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A Dissertation

Submitted to the Graduate College of Bowling Green  
State University in partial fulfillment of  
the requirements for the degree of

DOCTOR OF PHILOSOPHY

December 2008

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## ABSTRACT

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The purpose of this dissertation project was to explore the Chinese cultural perceptions of copyright and the Chinese historical understanding and social practices of innovation, fair use, and the public domain so as to provide a grass-roots approach to studying the recurring U.S.-China copyright disputes. Guided by the theoretical frameworks of the theory of reasoned action, strategic and tactical resistance, and hegemony as well as Hofstede's individualism-collectivism cultural dimension, the researcher has conducted 45 in-depth interviews of Chinese copyright holders and consumers for data collection and used hermeneutics and thematic analysis to examine the data. The research findings are as follows: (I) Just a small number of the participants, who are lawyers, editors, and authors, offered complete and insightful understanding of the concepts under discussion while the majority who are university teachers, college and high school students, as well as business people and farmers demonstrated very vague understanding of the concepts. (II) Copyright piracy is so common in China that it is hard not to follow the stream. (III) As for the reasons for piracy, the study indicated that (i) the Chinese copyright legal system lacks a matching cultural environment; (ii) the levels of Chinese income and copyright awareness call for adjusted U.S. strategies of intellectual property rights (IPR) and flexible prices of intellectual property (IP) products at the Chinese market; and (iii) at odds with the modern concept of copyright are the Chinese tradition of sharing with one another, taking from others and the public without any sense of guilt, and disfavoring criminal litigation of copyright infringement as a result of the Confucian pursuit of social harmony. (IV) To awaken and enhance the national awareness of copyright protection in China, the study showed that: (i) if

the government is really serious about copyright piracy, ordinary people will also take copyright protection seriously; (ii) most Chinese need to be educated about copyright and IPR via media, schools, and law enforcement; and (iii) more emphasis on national innovation can bring about the self-motivated driving force to protect copyright from domestic innovators as stake-holders.

(V) To resolve the U.S.-China copyright disputes, the study revealed three kinds of suggestions: (i) maximum patience and genuine help with the Chinese creation of the cultural environment for the enforcement of the copyright law; (ii) flexible prices of copyright products at the Chinese market; and (iii) following the golden mean to promote innovation and protect copyright. The adopted theoretical frameworks have proved useful in interpreting the meanings of the research findings and their scope and applicability have been either expanded or reconfirmed. As the first qualitative study of the U.S.-China copyright disputes based on the Chinese cultural perceptions of innovation, fair use, and the public domain, this study fills a void by enriching the body of knowledge on copyright disputes between the United States as the biggest developed country and China as the largest developing country.

This dissertation is dedicated to Bowling Green State University and all my professors and friends. It is Bowling Green State University that has provided me with an opportunity to realize my dream of this doctoral pursuit. It is all those professors and friends who have taught me, helped me, and advised me that make my dream come true.

## ACKNOWLEDGMENTS

This dissertation project has provided me with a rare opportunity for both personal and professional growth. It is my privilege to have had this experience, and I am deeply indebted to quite a number of people who have encouraged and supported me throughout this challenging and rewarding research process.

First and foremost, I wish to express my greatest appreciation to my committee members without whom this dissertation would not be possible. Dr. Oliver J. Boyd-Barrett, my advisor and chair of my committee, thank you for guiding and supporting me during the whole process of my project. Your insightful, detailed, and timely comments on my drafts have motivated me to move forward on the right track. Dr. Dominic Catalano, thank you for your knowledgeable and insightful guidance regarding the scopes for more authorial interpretation and assessment and for identifying the ways and reasons participants connect to the issues under study. Dr. Victoria Smith Ekstrand, thank you for your initial inspiration and continuous encouragement of me to pursue my interest in copyright and other related components of intellectual property rights. It is your professional expertise, invaluable guidance, and high expectation that have pushed me clear-headed and highly spirited along this lengthy path of my academic endeavor. Dr. Canchu Lin, I can never thank you enough for your availability to help clear my confusions occasionally and gear my train of thought in the right direction. Thank you for teaching me the useful research methodologies and assisting me with the correct application of the relevant research methods.

I am also deeply indebted to quite a number of people who have supported and assisted me throughout my graduate study. My heart-felt thanks go to Dr. Alberto Gonzalez for his encouragement in my academic pursuit and insightful suggestions regarding the blueprint for this project. I am grateful to Dr. Lynda Dee Dixon and Dr. Catherine Cassara-Jemai for leading me

and keeping me on the right track of graduate study and academic pursuit. I am also grateful to Dr. Michael Butterworth and Dr. Stephen M. Croucher for their completely fresh and inspiring teaching styles and valuable help with my paper writing and teaching demonstration rehearsal. I am especially grateful to Dr. John Makay, Dr. Jeoffrey Howes, Barbara Laird, and Drs. Wally and Diane Pretzer for their great assistance with my publications. My utmost gratitude goes to Dr. John Warren, Dr. Timothy Pogacar, Dr. Kristie Foell, Dr. Christina Guenther and Dr. Radhika Gajjala for their concerted efforts to obtain assistantships for me year after year. I am deeply indebted to them for their excellent leadership and willingness to accept me as their colleague. My heartfelt thanks definitely go to Dr. Jeffrey Grilliot, Paul Hofmann, and Anne Saviers in the Center for International Programs for their efforts to bring me to BGSU, offer endless care and support during my stay here, and share my happiness in my academic and professional achievements. I am also extremely grateful to Victor Ten Brink and his wife, David Bartholomew and his wife, Julie George and Deb Hendricks and many others for their hospitality, generosity, and assistance during my graduate study in Bowling Green, Ohio.

Last, but not the least, I'd like to thank Chin-Chung Chao for helping me with the coding of the interview transcriptions and analysis of the raw data. My thanks also go to my family, relatives, and friends in China for their great concern and valuable support. To Dr. Wally Pretzer and Precious Yamaguchi, I show my utmost gratitude for their combined efforts to make my dissertation as error-free as it can be. In one word, I owe any possible success and honor of this project to all those mentioned above, many others that have not been mentioned, and the 45 interview participants!

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## LIST OF ACRONYMS

GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
CD	Compact Disc
CPC	Communist Party of China
DMCA	Digital Millennium Copyright Act
DVD	Digital Versatile Disc
FAO	Foreign Affairs Office
FDI	Foreign Direct Investment
GII	Global Information Infrastructure
GRE	Graduate Record Examination
HS	High School
HSRB	Human Subject Review Board
IACC	International Anti-Counterfeiting Coalition
ICC	International Chamber of Commerce
IIPA	International Intellectual Property Alliance
INTA	International Trademark Association
IP	Intellectual Property
IPR	Intellectual Property Rights
KMT	Kuomintang or the Nationalist Party
MA	Master of Arts
OCR	Out-of-Cycle Review

Ph.D.	Doctor of Philosophy
PRC	People's Republic of China
R&D	Research and Development
RMB	Renminbi or Chinese Yuan (7.28 RMB = 1 U.S. dollar)
ROC	Republic of China (Taiwan)
SAR	Special Administrative Region
SPA	Software Publishers Association
TOEFL	Test of English as a Foreign Language
TRA	Theory of Reasoned Action
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UCC	Universal Copyright Convention
UN	United Nations
USTR	U.S. Trade Representative
WTO	World Trade Organization

## CHAPTER I INTRODUCTION

### Background

To end his paper entitled “The Escalating Copyright Wars,” Yu (2003) cited the following imaginary conversation between two people using maritime radios:

Speaker One: Please divert your course 15 degrees to the north to avoid a collision, over.

Speaker Two: Recommend you divert YOUR course 15 degrees, over.

Speaker One: This is the captain of a U.S. Navy ship. I say again, divert your course, over.

Speaker Two: No, I say again, divert YOUR course, over.

Speaker One: This is an aircraft carrier of the U.S. Navy. We are a large warship. Divert your course now! Over.

Speaker Two: This is a lighthouse, your call. (p. 949)

The above conversation vividly depicts the belligerent tone of the U.S. copyright holders towards the copyright consumers in the current copyright wars. According to Yu (2003), professor at Drake University Law School, peer-to-peer networks via Madster, AudioGalaxy, iMesh, etc., are proliferating, and the U.S. entertainment industry has been fighting the copyright wars with such strategies as lobbying, litigation, self-help, education, and licensing. It seems that the entertainment industry is winning the wars with the help of the copyright-protection technologies and the enactment of the Digital Millennium Copyright Act (DMCA) by the U.S. Congress in 1998. However, the enactment and the implementation of the DMCA have “raised serious concerns about free speech, privacy, academic freedom, learning, culture, democratic discourse, competition, and innovation” (p. 913). As a result, this statute has been widely criticized among

legal experts, academic researchers, and technology developers (Ginsburg, 1999; Lunney, 2001; Nimmer, 2000; Samuelson, 1999; Zimmerman, 2001). Litman (2001) also made the critique that the DMCA “seeks for the first time to impose liability on ordinary citizens for violation of provisions that they have no reason to suspect...[in order to] prevent piracy” (p. 145). The sharpest criticism of the DMCA is that it has violated the very spirit of the copyright law by upsetting the balance between the copyright holders’ interests and the general public’s access to protected materials (Yu, 2003, p. 912). The end results of this process are predicted in the words of Boyle (2003) that “we are in the middle of a second enclosure movement,” which refers to the “enclosure of the intangible commons of the mind” (p. 37) as compared to the English enclosure movement of the 15<sup>th</sup> century when common land was turned into private property.

Externally, the United States “has been aggressive in pushing for a universal intellectual property regime” (Shao, 2006, p. 4). In 1962, the Office of the United States Trade Representative (USTR) was established on the basis of the U.S. Trade Expansion Act in order to guard U.S. trade interests abroad. To promote strong protection of its intellectual property rights (IPR), i.e., the legal rights relating to products of human creativity and innovation, the U.S. Congress established the Special 301 process through the Omnibus Trade and Competitiveness Act in 1988, which mandated that the USTR submit to the Congress an annual report on unfair trade practices in foreign countries pursuant to Section 301 provisions of the Trade Act of 1974. As the Executive Office of the U.S. President, the Office of the USTR is headed by the U.S. Trade Representative who is a Cabinet member at the ambassador level and serves as the president’s principal trade advisor, negotiator, and spokesperson on trade issues (“Mission of the USTR,” p. 1). The USTR annually collects and reviews the adequacy and effectiveness of the U.S. IPR protection in almost 100 countries all over the world. By identifying those countries

infringing upon its IPR and taking necessary retaliatory measures against them, the United States intends to protect its economic interests by safeguarding the IPR of its nationals in the rest of the world.

Taylor (1997) noted that the United States has been practicing trade liberalization by shifting alternatively between multilateralism and unilateralism since the end of World War II. When it was necessary to pursue the multilateral path, the United States used its economic power and political clout to help establish such international organizations as the General Agreement on Tariffs and Trade (GATT) and the Agreement of Trade-Related Aspects of Intellectual Property Rights (TRIPS) to oversee the relevant laws and rules and guarantee its benefits. To ensure a stable trade and economic world environment after World War II, the GATT was created in 1947 together with the International Monetary Fund (IMF) and the World Bank, which has completed eight rounds of multilateral trade negotiations. The outcome of the GATT is a multilateral agreement, the functions of which were taken over by the World Trade Organization (WTO) during the final Uruguay round of negotiations from 1986 to 1994 over such new areas of services, capital, and intellectual property. Briefly, intellectual property (IP) refers to the creations of the mind including inventions, symbols, names, images, and designs used in business and literary and artistic works.

The TRIPS agreement was established in 1995 as a comprehensive multilateral agreement on IP by introducing a series of global minimum standards for protecting and enforcing nearly all kinds of IPR. As one of the specific agreements annexed to the WTO Agreement, all incoming members of the WTO must commit themselves to observing the standards of TRIPS. When finding other trading partners uncommitted to multilateral trade agreements as expected, the United States will turn to TRIPS if the infringement of other

countries upon the U.S. copyrighted products can be resolved through the WTO dispute settlement system. Otherwise, it will unilaterally pick up its self-help legislative tool of the Special 301 provisions to identify and investigate those countries that do not offer adequate protection for U.S. IPR and take retaliatory actions such as economic sanctions or trade wars when necessary (pp. 1-6). The main reason for the U.S. efforts is that in the United States today, the value added income by the total copyright industries reached \$1,388 billion or 11.12% of the current U.S. gross domestic product (GDP) as of 2005 (Siwek, 2006, p. 14).

The USTR collects information from the American embassies and consulates, the Central Intelligence Agency, and IPR associations and issues its annual “Special 301 Report” pursuant to the Trade Act of 1974. The IPR associations consist of the International Intellectual Property Alliance (IIPA) representing 1,900 members, the Software Publishers Association (SPA) representing 1,200 members, the International Trademark Association (INTA) representing 2,500 members, and the International Anti-Counterfeiting Coalition (IACC) representing 160 members. Institutionalized within Special 301, these IPR associations have become “experts in providing persuasive information to the USTR” (Mertha, 2001, p. 33).

Annually, the USTR reviews the protection of the U.S. IPR in its trading-partner nations and announces the results in its annual “Special 301 Report.” Depending on the violations of the Special 301 provisions, countries are categorized and put on the list of Watch List, Priority Watch List, Section 306, and Priority Foreign Country. *Watch List* nations have particular problems with respect to IPR protection, enforcement, or market access for U.S. individuals or businesses relying on intellectual property. The *Priority Watch List* singles out those countries which have the same problems as those on the Watch List but are the focus of increased bilateral attention concerning the problem areas. Under Section 306 of the U.S. legal act, the USTR monitors a



country's compliance with bilateral intellectual property agreements. If the country fails to satisfactorily implement an agreement, the USTR may apply trade sanctions. *Priority Foreign Country* refers to a foreign country that has the most onerous acts, policies, or practices that deny adequate and effective IPR and fair and equitable market access to the U.S. nationals relying upon IP protection (USTR Special 301 Report, 2006, p. 15). The USTR Special 301 decisions on China for the past ten years can be seen from the following table:

Table 1-1: USTR Special 301 Decisions on China

<b>Year</b>	<b>Decisions</b>	<b>Year</b>	<b>Decisions</b>
1989	Priority Watch List	1999	Section 306 Monitoring
1990	Priority Watch List	2000	Section 306 Monitoring
1991	Priority Foreign Country	2001	Section 306 Monitoring
1992	Not on the list	2002	Section 306 Monitoring
1993	Priority Watch List	2003	Section 306 Monitoring
1994	Priority Foreign Country	2004	Section 306 Monitoring
1995	Not on the list	2005	Priority Watch List; Section 306 Monitoring
1996	Priority Foreign Country	2006	Priority Watch List; Section 306 Monitoring; Considering WTO Dispute Settlement
1997	Section 306 Monitoring	2007	Priority Watch List; Section 306 Monitoring; Pursuing WTO Dispute Settlement
1998	Section 306 Monitoring	2008	Priority Watch List

Source: USTR Special 301 Reports, 1989-2008

As can be seen from the above table, China has been put on the *Priority Watch List, Section 306*

*Monitoring, Priority Foreign Country, and WTO Dispute Settlement Pursuit* almost every year from 1989 to 2008. China is now the world's third largest trading power and the fourth biggest export market for the United States. Since 2001, U.S. exports to China have grown five times faster than they have to the rest of the world; however,

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

Thus, China's protection of the U.S. IPR has attracted increasing concern and efforts from the USTR and its represented businesses. Since the 1980s, there has been extremely high pressure on China for its ineffective protection of the U.S. IPR from the U.S. side during several rounds of U.S.-China IPR negotiations in 1991, 1994, and 2004, to name just a few.

According to Xue (2005), when the Chinese government strongly denounced the U.S. criticisms in the first round of negotiation in 1991, the USTR announced that it was drafting a sanction list to charge 100% tariffs to 106 categories of goods imported from China. Realizing that the U.S. side was serious, China softened its position and eventually accepted most of the U.S. demands including updating its IPR regime. In the 1994 negotiation, the Chinese government was furious at the U.S. negotiators' criticisms over its IPR enforcement system by claiming the U.S. demands as "flagrant intervention into China's internal affairs" (Gao, 1994, p. 9). The response from the USTR was the announcement of a punitive plan for \$180 million. Again, China had to agree to reform its domestic enforcement mechanism and promised to crack

down on factories suspected of making pirated CDs, DVDs, and other counterfeit products.

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

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

Due to the reported losses of its IPR like the above in China, the United States and China have been involved in repeated rounds of negotiations and recurring disputes over China's inefficient protection of U.S. copyrighted products. The Chinese government has been making compromises and cooperating with the U.S. side in a variety of ways. It has established its IPR regime and completed its IPR laws and regulations, kept cracking down on IPR violators now and then through nationwide enforcement campaigns, and launched cross-country IPR education programs. Nevertheless, the enforcement has not been persistent, and the results have been far less than satisfactory to the U.S. copyright holders and the USTR negotiators.

The statistics of the piracy rate in China and the U.S. trade losses can be obtained from the annual Special 301 Reports of the International Intellectual Property Alliance (IIPA). Formed

in 1984, IIPA is a private sector coalition that represents approximately 1,900 U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. From the IIPA Special 301 Reports of 2001, 2003, and 2008 (IIPA Special 301 Reports, 2001, p. 41; 2003, p. 44; 2008, p. 2), we can achieve the detailed statistics of the piracy rate and estimated U.S. trade losses from 1995 to 2007 as summarized in the following table:

Table 1-2: IIPA Estimated Levels of Piracy and U.S. Trade Losses in China

<b>Year</b>	<b>Levels of Piracy (%)</b>	<b>Trade Losses (in millions of U.S. dollars)</b>
1995	87.25	2,323.0
1996	82.50	2,309.3
1997	80.75	2,792.3
1998	84.00	2,553.5
1999	93.00	2,137.7
2000	91.75	978.7
2001	90.50	1,932.5
2002	92.50	1,849.3
2003	93.10	2,859.2
2004	90.90	2,530.9
2005	89.00	2,643.9
2006	83.10	2,430.0
2007	90.00	2,975.2
2007	90.00	2,975.2

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

Earlier, it has already been mentioned that IIPA is one of the U.S. IPR associations that supply the USTR with information concerning foreign market access and foreign protection of U.S. copyrighted materials. From the above table, we can see that from 1995 to 2007, the piracy rate in China grew from 80.75% to 90.10%, and the U.S. trade losses due to piracy in China range from \$978.7 million to 2,975.2 million. Although the Chinese side has not provided us with such detailed reports and statistics, it refutes the U.S. statistics and claims they are exaggerated. It released a survey result of 45.5% piracy rate in 2005 and a 2% annual decline as provided by the Chinese Institute of Publishing Science (XinhuaNet, 2006, p. 1).

### Purpose and Research Questions

The purpose of this dissertation project is to explore the Chinese cultural perceptions of copyright and the Chinese historical understanding and social practice of innovation, fair use, and the public domain so as to provide a grass-roots approach to studying the recurring U.S.-China copyright disputes. The project will be based on existing literature and first-hand in-depth interview raw data. Relevant literature on the Chinese perceptions of IPR in general and the recurring U.S.-China copyright disputes in particular can be roughly categorized into the legal and administrative perspectives (Berrell & Wrathall, 2007; Croix & Konan, 2002; Guvenli & Sanyal, 2003; Mertha, 2001; Ross, 1996; Xue, 2005; Yu, 2001), the developmental and innovative perspectives (Chen & Puttitanun, 2005; Grossman, 2004; Lai, 1998; Liao, 2006; Montgomery & Fitzgerald, 2006), and the historical and cultural perspectives (Endeshaw, 2005; Kwong, et al., 2003; Pagano, 2007; Shore, et al, 2001; Yang, 2003; Lehman, 2006). As a critique of the literature, Mertha (2006) commented that the literature focusing primarily on the development within China's legal regime often misses the point as the power of IPR enforcement and the propensity towards piracy lie outside the legal realm. It is the external pressure from both

top-down demands of the USTR and lateral efforts of foreign companies that result in China's promulgation of its IPR laws and regulations and the establishment of the IPR regime.

Enforcement effectiveness, which is overwhelmingly observed outside the courtrooms and the offices of the IPR bureaucracies, hinges on attitudes and behavior of local agencies and the ordinary Chinese consumers.

To follow up Mertha's study so as to help resolve the U.S.-China copyright disputes from a long-term point of view, I plan to explore the root reasons for the Chinese copyright infringement. Meanwhile, I intend to address the necessity to awaken the national awareness of the significance of protecting both domestic and foreign IPR by addressing the deeply rooted Chinese cultural perceptions that are historically at odds with the U.S. perceptions of IPR protection. Just as Mun (2003) stated, "throughout history, notions of intellectual property rights have reflected cultural values, which are inseparable from cultural and traditional values" (p. 3). While Americans today consider copyright piracy illegal and punishable as a crime, the Chinese have treated intellectual sharing and artistic copying as a virtue and normal learning process. This indicates that the significance of historical events, social norms, and the cultural differences can be the major reasons for the widespread resistance among the Chinese against the unexpected enforcement of copyright laws.

Similar events occurred in U.S. history. According to Anderson (2007), the United States did not officially recognize foreign copyrights for over 100 years from 1790 to 1891, during which time "U.S. publishers were completely free to reprint whatever foreign texts they thought would sell" (p. 14). Besides, technology piracy was "often undertaken not only with the full knowledge, but often with the aggressive encouragement of officials of the federal and state governments" (Ben-Atar, 2004, p. 1). For instance, Alexander Hamilton, the U.S. Secretary of

Treasury advocated plundering technology from Europe and attracting skilled immigrants along with the infusion of their technology. According to Varian (2005), the above U.S. history suggests that “increased per capita income will likely lead developing countries to increased adherence to international intellectual property norms” (p. 124). The historical example of the United States also indicates that countries in different stages of development tend to choose different degrees of copyright protection.

Before China launched its policy of reform and opening up to the outside world in 1979, “there was no formal IPR system in place (1949-1979)” (Xue, 2005, p. 294). To attract foreign investment, China committed itself to protecting foreign investors’ patents, copyrights, and trademarks in bilateral trade agreements such as the Agreement on Trade Relations between the United States of America and the People’s Republic of China of 1979. Nevertheless, the Chinese government was unprepared for “Western countries’ insistence on China’s IPR protection,” and “was surprised to discover that the U.S. government required all bilateral agreements on technology, culture and trade to incorporate specific provisions on IPR protection” (p. 294). It is true that China has established its IPR regime and the relevant legal infrastructure under the U.S. pressure. In reality, however, China has been reluctant to fully enforce these laws for fear that the implementation of these laws may stifle its own energy of creativity. Therefore, it is right for Mun (2003) to remark that the development stages of a country include not only the economic sector but also the complex historical, political, and cultural forces.

However, critics of the Chinese copyright legal system and law enforcement often overlook the impact of culture on current efforts to enforce IPR in China. Recently, Chen, and Maxwell (2007) made a thorough study of the successful fight against copyright infringement in Taiwan in the period from 1985 to 2000. One of their significant findings is that the Taiwanese

“relied not only on law to implement intellectual property reform, but more importantly on ‘cing li fa’” (p. 680). “Cing li fa” can be literally translated as “emotional laws,” which are actually not legal regulations but measures that emphasize the necessary process of adjusting the people’s emotional feelings in their understanding and acceptance of the implementation of some legal act they have never heard of. As an illustration, Taiwan has successfully and effectively adopted a “culturally sensitive mechanism to change citizen perceptions about the importance of intellectual property protections” (p. 684).

Based on their empirical study of the Chinese subjects, Kwong, Yau, Lee, Sin, and Tse (2003) found that the consumers’ intention to purchase pirated intellectual products is closely connected with their attitude toward piracy. They posited that, “the root cause for this piracy does not lie in the supply side but in the demand side” (p. 224). To solve the piracy problem in the long run, one needs to help consumers adjust their views of and attitudes toward IPR. When they understand the significance and necessity of copyright protection and become stakeholders or potential stakeholders of IPR, consumers may change their attitudes and support the protection of IPR.

As mentioned earlier, IPR refers to “the legal rights corresponding to intellectual activity in the industrial, scientific, and artistic fields” (Nasheri, 2005, p. 81). Liao (2006) noted that the protection of IPR mainly includes patents, copyrights, industrial designs, geographical indications, trademarks, and unique items like plant varieties and design specifications for integrated circuits for specific business needs (p. 184). Generally, IPR is understood to comprise three major dimensions of copyright, patents, and trademarks. While copyright protects creations in the fields of literature and the arts, such as books, paintings, music, films, software, patent protects technological inventions, and trademark protects such distinctive features as brands,



symbols, and shapes. Maskus (1993) identified two general types of IPR: industrial and artistic. While the former refers to industrial and commercial inventions of value, the latter includes artistic and literary works. Industrial IPR is protected via patents, trademarks, service marks, trade names, and laws against unfair business competition. Artistic IPR is protected by means of copyright.

For the purpose of this project, the present dissertation will just focus on the artistic IPR or copyright. To be specific, copyright refers to rights given to creators for their literary and artistic works. Traditionally, copyright covers the protection of literature, music, arts, maps, and technical drawings as well as motion pictures. Today, computer programs and domain names are also under the protection of copyright. In addition, moral rights and neighboring rights are closely related to copyright. Moral rights are rights used to claim authorship and to object to certain modifications and other derogatory actions in relation to the piece of work. As Bettig (1996) explained, moral rights refer to “rights of actual creators of intellectual and artistic works to be recognized as ‘authors’ and to prevent copyright owners from seriously altering a work so as to harm its integrity and the ‘author’s’ reputation” (p. 241). In the United States, moral rights are partially protected in the Visual Artists Rights Act of 1990 instead of the copyright law. Neighboring rights refer to rights that protect the interests of performers, production firms, publishers, and broadcasters.

The purpose of the copyright laws in both the United States and China is to protect the benefits of the copyright holders and guarantee the public access to knowledge for sustainable creativity or innovation. The balance should be kept well; otherwise, just as copyright expert Kenneth Crews remarked, copyright protection “promotes creativity and publication, while inhibiting research and learning” (cited in Dickinson, 1996, p. 1). The present study will focus on

the Chinese cultural perceptions of three important copyright dimensions of innovation, fair use, and the public domain.

By the Chinese cultural perceptions, I mean the Chinese understanding and interpretations of social phenomena around them as a result of their cultural background or social environment. For this study, innovation is defined as the complicated process in which the expression of a new idea is fixed and brought to the market to provide incentives for the copyright owners to produce further creative works and to ensure future creativity among the public. Fair use means the use of copyrighted material in a reasonable manner without the consent of the copyright owner. The public domain refers to creative materials that are not or no longer protected by copyright laws. There are differences in the American and Chinese interpretations of fair use and the public domain, which will be taken into consideration in the discussions in the latter part of the dissertation.

Although copyright covers more than the above three aspects, the aspect of innovation is chosen because it is at one end of the balance in the objectives of copyright. Sufficient understanding and appropriate application of fair use and the public domain are essential for keeping the balance of protecting the benefits of the copyright holders and the public's access to knowledge for sustainable innovation. However, the reality is that the prospect of innovation is being continuously affected by the increasingly one-way orientation toward the copyright-holder-centered approach in the United States and other developed countries. In China, the ordinary people have just begun to become aware of the significance of copyright protection. Thus, the Chinese lack of knowledge concerning IPR in general and legal judgment of what fair use is and how to make use of the public domain in particular may be part of the contributing factors for the lingering rampant copyright piracy in China.

To discuss copyright piracy, we need to define the meaning of copyright piracy. According to Wang and Zhu (2003), from the open sea to cyberspace, piracy has always been around. Copyright piracy refers to the illegal or unauthorized reproduction, distribution, and use of copyrighted materials. There are two forms of IPR infringement. One is piracy and the other is counterfeiting. While the two terms are often used interchangeably, piracy refers to theft of IPR by means of copying the original but counterfeiting means the copying of the product's trademark or unique outlook of package. According to Kwong et al. (2003), with piracy, customers knowingly purchase pirated goods, while with counterfeiting, customers are deceived into thinking that the products they buy are genuine. Today, with computer programs under copyright protection, the scope of piracy is extended to include the unlicensed use of software by customers. Such software piracy is sometimes referred to as softlifting, which comprises unauthorized copying of software, the purchasing of unauthorized software copies, and the practice of loading several computers with software licensed for use on one computer only as well as downloading copyrighted content from the Internet without permission.

Although copyright piracy takes place “in every country, at every level, with the involvement of consumers, designers, manufacturers, salespeople, and governments” (Cisler, 2006, p. 377), copyright piracy harms not only the owners of intellectual property but also ordinary consumers, workers, and taxpayers. For instance, Siwek (2007) reported that piracy conservatively cost the U.S. industries collectively at least \$25.6 billion in lost revenue in 2005. The U.S. economy loses 373,375 jobs with American workers losing \$16.3 billion in earnings annually. The Federal, state and local governments lose at least \$2.6 billion in tax revenues annually (p. 2). China, as mentioned earlier, is regarded as one of the main contributors to the above losses.

Facing the IPR losses due to copyright piracy in China, the United States has been coercive in its strategies but ineffective as far as the expected results are concerned. As Bird (2006) pointed out, “coercion as a dominant long-term strategy, however, cannot eliminate intellectual property infringement,” which may be demonstrated by the staggering volume of copyright piracy in China “at ninety percent across all copyright sectors” (pp. 333-334). To address the crux of the issue, we need to face the real challenge of understanding “why ‘copying’ as a form of theft—a view widely held by Western copyright holders—is not more widely shared by members of the public” in China (Piquero, 2005, p. 41). To make the Chinese grass-roots voices heard during future negotiations over the recurring U.S.-China copyright disputes, I plan to conduct a series of in-depth interviews among the Chinese copyright holders and consumers of IP products and seek answers to the following research questions:

RQ1: What are the Chinese cultural perceptions of copyright, innovation, fair use, and the public domain in relation to copyright protection and copyright infringement?

RQ2: What common themes and implications can we draw from the Chinese cultural perceptions of copyright protection and copyright infringement in relation to the recurring U.S.-China copyright disputes?

### Rationale

This study aims to explore the Chinese cultural perceptions of copyright and the Chinese historical understanding and social practices of innovation, fair use, and the public domain so as to provide a grass-roots approach to studying the recurring U.S-China copyright disputes. To this end, I plan to apply the theoretical frameworks of theory of reasoned action, strategic and tactical resistance, and hegemony. For data collection, I will conduct in-depth interviews of Chinese copyright holders and consumers in and from the major areas of China. To analyze the

transcribed raw data, I will use the research methods of hermeneutics and thematic analysis to locate the common themes from the relevant historical contexts. The project is worthwhile and significant in the following aspects.

First, besides a few studies such as Mertha's (2001) dissertation from the perspective of politics and trade policies, Kwong et al's (2003) quantitative study of the Chinese consumers' attitude towards purchasing pirated CDs, and Lao's (2006) paper examining the impact of various factors on software piracy in China, there has been no study based on qualitative in-depth interview data concerning the Chinese cultural perceptions of innovation, fair use, and the public domain among the copyright holders and consumers for studying the U.S.-China copyright disputes. Thus, this project will fill the gap and enrich the body of knowledge on strategies to deal with copyright disputes.

Second, for thousands of years, the concept of individualized or private IPR has been nonexistent in the Chinese history though the Chinese themselves have been creative and innovative in many aspects. To some extent, my interviews and research findings will further awaken individual awareness of the significance of protecting the copyright of not only the U.S. and other foreign IP products but also those of the Chinese themselves. Only when more and more grass-roots or ordinary people acquire the awareness of the importance of protecting IPR and support the legal punishment of IPR violators, can the Chinese as a whole recognize the necessity to implement proper copyright protection and the urgency to settle the U.S-China IPR disputes.

Third, since the mid-1980s, the United States has been accusing the Chinese for the infringement of U.S. IPR. Under increasing U.S. and other foreign pressure, China has passed its Copyright Law, Trademark Law, and Patent Law and established the relevant agencies since

the 1980s, thus completing the infrastructure of its IPR regime. China also acceded to relevant international IPR regimes, and signed a series of bilateral agreements with the United States since 1991. However, over the years the United States has been almost consistently dissatisfied with the Chinese in their enforcement of the IPR laws. The reasons are twofold: on the one hand, the United States has been adopting a one-size-fits-all approach to dealing with the IPR disputes with China without necessary compromises; on the other hand, there are some long-cherished and deep-rooted cultural factors in China that are at odds with the Western conceptions of IPR. Just as Yu (2001) noted, "to understand the roots of the century-old U.S.-China IPR conflict, one must focus on the significant political, social, economic and cultural differences between China and the West" (p. 11). To a certain extent, the findings of the present study about the Chinese cultural perceptions of copyright will assist the U.S. and Chinese copyright decision makers in their readjustment of the mutual agreements between the two countries and the settlement of the U.S.-China copyright and, further, IPR disputes.

Finally, my research findings of what the ordinary Chinese think about copyright protection and how copyright infringement in China should be dealt with may present some insightful understanding of the reality of a developing country like China. China, like many other developing countries, is faced with resolving the U.S.-China copyright disputes at the beginning stage of its economic development. By exploring the Chinese cultural perceptions of innovation, fair use, and the public domain in relation to the U.S.-China copyright disputes, I am undertaking an intercultural case study. This study is meant for better communication between the United States as the biggest developed country and China as the largest developing country.

### Organization

IPR is an international issue, and copyright piracy is a complicated phenomenon. Thus, in

Chapter I, I have clarified my study background, purpose and research questions, as well as the significance of the present research. Chapter II first clarifies the key concepts in the thesis statement of this study so as to facilitate the categorization of the relevant literature, and then it categorizes and critiques the relevant literature in order to determine the basis and gap for the present study. Chapter III describes the research methods, including the ontological and epistemological foundations of this qualitative research, the specific procedures of the in-depth interviews for data collection, and the rhetorical methods for data analysis. Chapter IV describes the in-depth interview participants, analyzes the transcriptions of the in-depth interviews, and elaborates on the research findings. Chapter V discusses the theoretical frameworks and the research findings to examine how well they can help interpret and support each other. Chapter VI, the final chapter, provides the answers to the research questions by summarizing the research findings and highlighting their implications. It also discusses the limitations of this study and makes suggestions for future research.

## CHAPTER II LITERATURE REVIEW

As briefly mentioned in Chapter I, there are three major categories of relevant literature on the Chinese cultural perceptions of innovation, fair use, and the public domain in relation to copyright and the recurring U.S.-China copyright disputes. The first category of literature comes from the legal and administrative perspectives, the second the developmental and innovative perspectives, and the third the historical and cultural perspectives. The functions of the literature review in Chapter II are twofold. First, I will define and clarify the key concepts in the purpose statement of this study so as to facilitate the categorization of the relevant literature. Second, I will categorize and critique the relevant literature in order to determine the basis and gap for my research.

### Key Concepts

It is the purpose of the present study to explore the Chinese cultural perceptions of copyright and the Chinese historical understanding and social practices of innovation, fair use, and the public domain to provide a grass-roots approach to studying the recurring U.S.-China copyright disputes. As the concepts of copyright, copyright piracy, and intellectual property rights (IPR) as well as the issue of the U.S.-China copyright disputes have already been clarified in Chapter I, here I will just elucidate perception, innovation, fair use, and the public domain.

### *Perception*

Copyright piracy is a common phenomenon in China. The U.S.-China copyright disputes have been recurrent in the past decades mainly because the two peoples in China and the United States perceive copyright differently and there exists a systematic misunderstanding between the two sides. As discussed in the previous chapter, the concept of copying as a form of theft which is prevalent in the United States and other Western countries is not widely shared by the general



public in China. Just as Ji (2006) remarked, “a closer look at the United States and China reveals that they are not unified actors, but have diametrically opposing views toward IPR” (p. 2). By systematic misunderstandings, I refer to misunderstandings that arise from more fundamental discontinuities in the very structures, positions and perspectives of the groups involved, instead of a lack of knowledge, information, or correctable misperceptions (Ezrahi, 1999). Thus, it is necessary and important to give a clear definition of perception.

Perception is the process by which organisms interpret and organize sensation to produce a meaningful experience of the world. The word *perception* originated from *perceptio* in Latin, and it literarily means receiving, collecting, or apprehending with the mind or senses (Lindsay & Norman, 1977). According to *Webster’s Dictionary* (1913), perception can be defined in either physical or social terms: physically, it means to become aware of through the senses of sight, hearing, smell, touch, and taste; socially, it means to gain understanding of, making interpretations of, and revealing attitudes towards some social phenomena.

There exist perceptual differences among different peoples in both the physical and social realms. In the physical world, individual perceptual differences involve the presence or absence of a particular sense and the actual level of this particular sense. In the social realm, people’s interpretations of social events or phenomena are shaped by their past individual or group experiences and cultural backgrounds. For example, in one experiment, the Japanese and Euro-American participants were tested on their attention and perception. The findings indicate that East Asians focus on attending to and perceiving the context more holistically while Euro-Americans tend to focus their attention to and perception of objects more analytically (Kitayama, Duffy, Kawamura, & Larsen, 2003).

In the social realm, people in different cultures or societies may, for example, perceive

time differently. As Hall (1983) indicated, “societies organize time in at least two different ways: events scheduled as separate items—one thing at a time—as in North Europe, or following the Mediterranean model of involvement in several things at once” (p. 45). Hall gave the terms “polychronic time” or “P-time” for doing many things at once and “monochronic time” or “M-time” for doing one thing at a time. Comparatively speaking, the Americans are more monochronic while the Chinese are more polychronic. For the present study, I define the Chinese cultural perception as the Chinese understanding of copyright, copyright protection, and copyright infringement and the Chinese interpretation of the connection between appropriate copyright protection and the adequate understanding of innovation, fair use, and the public domain.

### *Innovation*

According to the American economists Scherer and Ross (1990), innovation refers to the process of inventing or creating something new and better, or providing cheaper and better goods and services, which includes entrepreneurship, investment, development, and diffusion. To be specific, entrepreneurship is the stage in which people commercialize an invention, organize the process, and attract initial financial support. Investment is the stage in which capital funds are risked for profits. Development is the stage in which the invention is made ready for commercial marketing. Diffusion is the stage in which other competitors follow into the commercial market.

In the copyright laws of both China and the United States, there are provisions that state the two countries’ positions and goals of protecting copyright and promoting innovation. On the U.S. side, the legal basis for the copyright is Article 1, Section 8 of the U.S. Constitution, which empowers the Congress “to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and

discoveries” (Leval, 1990, p. 1108). The U.S. Supreme Court summarizes the objectives of the copyright law as stimulating activity and progress in the arts for the intellectual enrichment of the public as indicated below:

[The Constitution’s grant of copyright power to Congress] is a means by which an important public purpose may be achieved. It is intended to motivate the creative activity of authors and inventors by the provision of a special reward.... The monopoly created by copyright thus rewards the individual author in order to benefit the public. (Leval, 1990, pp. 1107-1108)

It is clear that the balance between the protection of copyright and the promotion of innovation is promulgated in the U.S. Constitution and Supreme Court interpretations. Similar position and goals of protecting the benefits of copyright holders and promoting innovation are also stated in the first article of the Chinese copyright law. In Article 1 of Chapter I of the Copyright Law of the People’s Republic of China, we read:

This law is enacted, in accordance within the constitution, for the purposes of protecting the copyright of authors in their literary, artistic and scientific works and the copyright-related rights and interests, of encouraging the creation and dissemination of works which would contribute to the construction of socialist spiritual and material civilization, and of promoting the development and prosperity of the socialist culture and science. (China Patent Agent, 2001, p. 1)

Thus, we see innovation promoted as *the progress of science and the useful arts* in the U.S. Constitution and advocated as *the creative activity of authors and inventors* in the Supreme Court’s interpretations. As for China, innovation is advocated in the very beginning of its copyright law, which aims at *encouraging the creation and dissemination of works*. For the

present study, I define innovation as the complicated process in which the expression of a new idea is fixed and brought to the market to provide incentives for the copyright holders to produce further creative works and to ensure future creativity among the public.

### *Fair Use*

Fair use refers to the use of copyrighted material in a reasonable manner without the consent of the copyright owner. In the Copyright Act of 1976 of the United States, Section 107 lists certain reproduction of a particular work as *fair use*, such as criticism, comment, news reporting, teaching, scholarship, and research. As it is hard to distinguish between fair use and infringement, Section 107 provides a list of four factors to be considered in determining whether or not a particular use is fair:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work. (Copyright of 1976, 2003. p. 18)

By the same token, the Copyright Law of the People's Republic of China lists the following twelve cases as fair use provided that due credit is indicated by mentioning the name of the author and the title of the work in the:

1. use of a published work for the purposes of the user's own private study, research or self-entertainment;
2. appropriate quotation from a published work in one's own work for the purposes of introduction to, or comments on, a work, or demonstration of a point;
3. reuse or citation, for any unavoidable reason, of a published work in newspapers, periodicals, at radio stations, television stations for the purposes of reporting current events;
4. reprinting by newspapers or periodicals, or re-broadcasting by radio stations or television stations, or articles on current issues relating to politics, economics or religion published by other newspapers, periodicals, or broadcast by other radio stations, television stations or any other media except where the author has declared that the reprinting and re-broadcasting is not permitted;
5. publication in newspapers or periodicals, or broadcasting by radio stations, television stations or any other media, of a speech delivered at a public gathering except where the author has declared that the publication or broadcasting is not permitted;
6. translation, or reproduction in a small quantity of copies, of a published work for use by teachers or scientific researchers, in classroom teaching or scientific research, provided that the translation or reproduction shall not be published or distributed;

7. use of a published work, within proper scope, by a State organ for the purpose of fulfilling its official duties;
8. reproduction of work in its collections by a library, archive, memorial hall, museum, art gallery or any similar institution, for the purposes of the display, or preservation of a copy, of the work;
9. free-of-charge live performance of a published work and said performance that neither collects any fees from the members of the public nor pays remuneration to the performers;
10. copying, drawing, photographing or video recording of an artistic work located or on display in an outdoor public place;
11. translation of a published work of a Chinese citizen, legal entity or any other organization from the Han language into any minority nationality language for publication and distribution within the country; and
12. translation of a published work into Braille and publication of the work so translated.

The above limitations on rights shall be applicable also to the rights of publishers, performers, producers of sound recordings and video recording, radio stations and television stations. (China Patent Agent, 2001, pp. 6-7)

Comparing the promulgation of fair use in the legal provisions of the United States and China, there are at least two major differences. First, the four factors or principles of fair use in the U.S. copyright law were carved out when the U.S. courts were deciding on some “unauthorized use of copyrighted materials for important social objectives” (Buttler, 1999, p. 1309). Thus, the U.S.

legal provisions on fair use provide more general guidelines for possible cases but make finer distinctions between commercial and noncommercial uses in the four factors of purpose, nature, amount, and effect. Oppositely, the Chinese legal regulations are more specific with twelve possible cases spelled out and the scope of fair use can reach the reproduction of a whole book in small quantities for classroom use and translation and publication of published materials of Chinese citizens from the Mandarin into minority languages as well as the translation and publication of published works of Chinese citizens into Braille. Second, while State organs in China can legally make use of published works for official purposes, the State or governments are not mentioned in the U.S. fair use legal provisions. For the present study, the simple and straightforward definition of “fair use” at the beginning of this section will be adopted. However, both the U.S. and Chinese interpretations, especially the differences in their interpretations of the fair use doctrine, will be taken into consideration in the discussions of the following chapters for comparison and contrast.

### *The Public Domain*

The public domain can be generally defined as consisting of works that are either ineligible for copyright protection or that have already expired copyrights. No one owns the public domain, and the information in the public domain is available for the public to use as the foundation for new creative works free of charge and without prior authorization. According to Litman (1990), the public domain means “a commons that includes those aspects of copyrighted works which copyright does not protect” (p. 3). Samuelson (2001) defined the public domain as “a sphere in which contents are free from intellectual property rights” and she categorized the following types of works and information that make up the public domain in the United States:

1. Scientific principles, theorems, mathematical formulae, laws of nature, etc.;

2. Scientific and other research methodologies, statistical techniques and educational processes;
3. Ideas, concepts, discoveries, theories and hypotheses;
4. Facts, information, data, know-how and knowledge;
5. Laws, regulations, judicial opinions, government documents and legislative reports;
6. Innovations qualifying for intellectual property protection, in which either no rights are claimed or in which rights have expired;
7. Innovations that fail to qualify for intellectual property protection because they do not meet the requirements for patent, copyright or trademark protection; and
8. Words, names, numbers, symbols, signs, rules of grammar and diction, and punctuation. (p. 84)

Similarly, the notion of the public domain is also clearly stated in Article Five of the Copyright Law of the People's Republic of China, which includes:

1. Laws, regulations; resolutions, decisions and orders of State organs; other documents of a legislative, administrative or judicial nature; and their official translations;
2. News on current affairs; and
3. Calendars, numerical tables and forms of general use, and formulas. (China Patent Agent, 2001, p. 2)



For the present study, I will use the concept of the public domain to refer to creative materials that are not or no longer protected by copyright laws. In application, I will also take into consideration the different items in the public domain as interpreted by both the Americans and the Chinese.

### Major Categories of Relevant Literature

In the following section, I will critically discuss each of the three major categories of relevant literature on the Chinese cultural perceptions of innovation, fair use, and the public domain in relation to the U.S.-China copyright disputes from a long-term point of view. By a long-term point of view, I am not seeking any immediate solutions to the complicated IPR issue or U.S.-China copyright disputes. Instead, I intend to look into the issue and disputes from different angles based on the following major types of literature and the three important aspects of copyright, i.e. innovation, fair use, and the public domain. The literature review is meant for establishing the basis and locating the gap for the present study.

#### *Legal and Administrative Perspectives*

Since the publication of William Alford's book *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilization* in 1995, China has been labeled by the Western world as the most rampant copyright pirate and a total alien to IPR concepts. In the book, Alford wrote that strict political control gave little room for the growth of private rights in China and lack of mass production of its comparatively advanced technologies provided little impetus to establish an intellectual property law. The book, which has been extensively cited and has become very influential in the West, sends the message that the Chinese will learn the

Western notions of intellectual property law only at gunpoint (Shao, 2006, pp. 19-30).

Consequently, there has been abundant literature on copyright in relation to the U.S-China IPR disputes from the legal and administrative perspectives (Berrell & Wrathall, 2007; Croix & Konan, 2002; Guvenli & Sanyal, 2003; Mertha, 2001; Ross, 1996, Xue, 2005; Yu, 2001).

As one of the first countries in the world to invent paper and develop printing and, consequently, encounter problems of unauthorized reproduction of printed materials, there existed a type of primitive copyright system in ancient China. As Alford (1995) noted, “considering the full scope of their legal history, the Chinese were not indifferent to the unauthorized reproduction of texts and other items” (p. 12). In order to consolidate the legitimacy of his rule, the first emperor of the Qin Dynasty (221-207 B.C.) showed great concern with the distribution of written materials by burning all Confucian classic works except those from the school of philosophy known as legalism. Furthermore, the emperor had even 460 scholars buried alive so as to unify thoughts and political opinions and suppress those ideas that might undermine his rule (Watson, 1993). Unauthorized reproduction of the Confucian Classics was also barred during the Han Dynasty (206 B.C. – 220 A.D.) because these classics and their accompanying commentary “served as one of the most important ideological bases legitimizing the rule of the Han Emperor” (Baum, 2001, p. 50) .

However, it was during the Tang Dynasty (618-907 A.D) that one found “substantial, sustained efforts to regulate publication and republication” (Alford, 1995, p. 13). As the peak period of feudal China, the Tang Dynasty evinced great concerns about the control over works that are related to imperial authority. For instance, the Tang Code prohibited the unauthorized reproduction of calendars and almanacs as questions of time and astronomy were central to the

emperor's role as the link between human and heavenly events. During the Song Dynasty (960-1279 A.D.), Bi Sheng invented the movable type printing in 868 A.D., which stimulated a marked increase in the production of printed materials. The rulers warned the private printers not to illegally reproduce books and government documents, and the printers were ordered to submit works they would publish to the local officials for prepublication review and registration. Violators were punished and their printing equipment was destroyed.

One by-product of the prepublication review process was that individuals who were approved by the officials to print materials also made efforts to publicize the approval so as to combat unauthorized reproduction. For instance, there was such a public notice in a work of history, which stated: "This book has been printed by the family of Secretary Cheng of Meishan, who have registered it with the government. No one is permitted to reprint it" (Wu, 2004, p. 241). According to Tang (2004), this form of copyright notice for the purpose of copyright protection lasted from the 10<sup>th</sup> century of the Song Dynasty to the early twentieth century of the Qing Dynasty (1644-1912 A.D.) (p. 278).

Unauthorized republication of governmental documents, civil service examinations, and other materials was forbidden in the following dynasties of Yuan (1279-1368 A.D.) and Ming (1368-1644 A.D.). According to Baum (2001), the imperial laws regarding the publication and dissemination of works underwent few changes from the Song Dynasty to the end of the Ming Dynasty. There existed no centrally promulgated legal protection for proprietary symbols except those "placed on goods made exclusively for imperial use" (p. 51). During the Qing Dynasty (1644-1911 A.D.), there was a famous decree from Emperor Qianlong (1736-1796 A.D.) in 1774, which required that "all literature be reviewed so that any books containing heterodox [or unconventional] ideas could be destroyed" (Alford, 1995, p. 14). There also appeared an

informal system of guild registration and protection, where the manufacturers could register their trade marks with other guilds or the local magistrates. Commenting on the nature of the copyright system in ancient China, Alford (1995) remarked that the legal codes of the Chinese governments in various dynasties were not meant to protect intellectual property per se, but rather to censor individual authors and control private printers for the purposes of “preserving imperial power and fostering social harmony” (p. 24).

In the late 19<sup>th</sup> century when the Qing Dynasty was obliged to strengthen its stability by gleaning knowledge from the West and establishing military industries during the Westernization Movement in the latter half of the 19th century, serious attention began to be paid to IPR protection. Tang (2004) noted that the word “copyright” first appeared in China in 1903 when the Qing government signed the Renewed Sino-American Treaty of Trade and Navigation with the U.S. government though the treaty was signed under U.S. “military and economic” pressure (p. 278). According to Yang (2003), the Qing government passed the Law on Copyright of Qing Dynasty in 1910, but it was never implemented because the Qing Dynasty was overthrown in the next year by the Kuomintang (KMT) or Nationalist Party, which established the Republic of China (ROC) and ruled over China between 1911 and 1949.

The KMT government issued the Law on Author’s Rights in 1928 based on the Law on Copyright of Qing Dynasty and enacted a Trade Mark Law in 1930 and a Patent Law in 1944. In 1946, the United States and the KMT government signed the Treaty of Friendship, Commerce and Navigation which provided for “a system of mutual obligation with respect to intellectual property laws” (Baum, 2001, p. 52). However, the wars among the warlords (1916-1937), the War of Resistance against Japan (1937-1945), and the Civil War (1945-1949) between the KMT and the Communist Party of China (CPC) severely constrained the development of IPR during

this period.

After driving the KMT to Taiwan, the CPC came into power in Mainland China and established the People's Republic of China (PRC) in 1949. Eliminating all the previous laws and regulations including the first Law on Copyright of Qing Dynasty and the Law on Author's Rights, the Trade Mark as well as the Patent Law of the KMT, the government of PRC introduced a reward system for inventions by means of official documents like the Provisional Regulations on the Protection of Invention Rights and Patent Rights of 1950 and the Provisional Implementation Regulations of Rewards on Industrial Inventions, Innovation and Rationalization Proposals of 1954. In 1950, the government enacted the Provisional Statute on Trademark Registration. As for copyright, the government issued three contracts drafted by the People's Publishing House in 1950: the Standard Contract for the Submission of a Manuscript, the Contract of Work Publication, and the Payment Methods for Authors' Remuneration (Yang, 2003; Tang, 2004). The development of the IPR in China as described above can be summarized in the following table:

Table 2-1: A Brief Chronology of IPR Development in China Before 1979

<b>Dynasties</b>	<b>Time</b>	<b>Events</b>
Qin	221-207 B.C	Burning all classics except those on legalism and burying 460 scholars alive
Han	206 B.C-220 A.D.	Prohibiting unauthorized reproduction of Confucian classics
Tang	618-907 A.D.	Prohibiting unauthorized reproduction of calendars and almanacs
Song	960-1279 A.D.	Inventing movable type printed in 868 A.D.; Implementing book reproduction review and registration
Yuan	1279-1368 A.D.	Forbidding unauthorized republication of governmental documents and civil service examinations;
Ming	1368-1644 A.D.	

		Protecting proprietary symbols on goods made exclusively for imperial use
Qing	1644-1911 A.D.	<p>Reviewing and destroying any books containing heterodox ideas;</p> <p>Instituting an informal system of guild registration and protection;</p> <p>Signing the Renewed Sino-American Treaty of Trade and Navigation in 1903;</p> <p>Passing the Law on Copyright of Qing Dynasty in 1910</p>
ROC	1911-1949 A.D.	<p>Issuing the Law on Author's Rights in 1928;</p> <p>Enacting a Trade Mark Law in 1930 and a Patent Law in 1944;</p> <p>Signing the Treaty of Friendship, Commerce and Navigation with the United States in 1946</p>
PRC (I)	1949-1979 A.D.	<p>Issuing the Provisional Regulations on the Protection of Invention Rights and Patent Rights in 1950;</p> <p>Enacting the Provisional Statute on Trademark Registration in 1950;</p> <p>Passing the Standard Contract for the Submission of a Manuscript and the Contract of Work Publication, and the Payment Methods for Authors' Remuneration in 1950;</p> <p>Enacting the Provisional Implementation Regulations of Rewards on Industrial Inventions, Innovation and Rationalization Proposals in 1954;</p>

Source: Based on the above literature review

According to Xue (2005), the formation of a systematic IPR regime in China started from 1979 when China began launching its policy of reform and opening up to the outside world. The symbol for this beginning is the U.S.-China Agreement on Trade Relations signed in July 1979,

in which both sides stipulated that each would offer the other reciprocal protection of patents and copyrights. As a result of China's continuous economic growth and rapid expansion of foreign direct investment, the USA and other Western economic powers have been increasingly pressing China "to update IPR protection levels, expand the IPR scope, and strengthen IPR enforcement" (p. 295).

Coupled with the domestic demands for the protection of creative works, the Chinese government "has established and implemented quite a few IP laws to encourage more active inventions of creative works and to ensure a better environment for both domestic and foreign investors" (Wang, 2004, p. 254). According to Croix and Konan (2002), China has made extensive progress in establishing its IPR regime since 1980. China has joined almost all the major international IPR conventions. To be specific, it joined the World Intellectual Property Organization (WIPO) in 1980, the Paris Convention for the Protection of Industrial Property in 1985, the Madrid Agreement Concerning the International Registration of Marks in 1989, the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention in 1992. In 1993, the Chinese government acceded to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. China signed the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedures in 1994. Upon its accession to the WTO, China also became a signatory of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 2001.

As for copyright, on September 7, 1990, the National People's Congress of China passed the first Copyright Law of the People's Republic of China and put it into force on June 1, 1991. The State Council of China, on May 24, 1991, approved the Regulations for the Implementation

of the Copyright Law. China promulgated the Computer Software Protection Regulations and the Regulations for the Implementation of International Copyright Treaty Provisions in 1991 and 1992 respectively. In 1994, China issued the Copyright Implementing Regulations. The copyright law was amended in 2001 with the new Implementation Regulations. The National Copyright Administration passed the Implementation of Administrative Penalties in Copyright Cases on July 24, 2001. Specific legislation for the protection of computer software took effect in 1991 and was amended twice in December 2001 and January 2002. In addition, China passed its Implementing Regulations of the Copyright Law of People's Republic of China on September 15, 2002, Measures for the Implementation of the Administrative Punishment of Copyright on July 24, 2003, and Guide to Copyright Administrative Complaints on September 1, 2006. The above development of the IPR in China since 1979 can be summarized in the following table:

Table 2-2: A Brief Chronology of IPR Development in China Since 1979

Name	Time	Events
	1979	Signing the U.S.-China Agreement on Trade Relations
	1980	Joining the WIPO; As a specialized agency of UN, WIPO is dedicated to developing a balanced and accessible international IP system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest.
	1982	Issuing the Trademark Law of the People's Republic of China; Detailed implementing regulations and revisions occurred in 1983 and 1988.
	1984	Issuing the Patent Law of the People's Republic of China; Detailed implementing regulations were issued in 1985, mandating registration of consumer products and licensing contracts.



PRC (II)	1985	Acceding to the Paris Convention for the Protection of Industrial Property; Signed in Paris, France in 1883, the Paris Convention made the IP systems of any contracting country accessible to the nationals of other members of the Convention.
	1989	Acceding to the Madrid Agreement for International Registration of Marks
	1991	Promulgating the Copyright Law of the People's Republic of China; Implementing regulations and revisions occurred in 2001, 2002, 2003, and 2006;  Promulgating the Computer Software Protection Regulations
	1992	Acceding to the Berne Convention for the Protection of Literary and Artistic Works; Signed in Berne, Switzerland in 1886, the Berne Convention is an international agreement governing copyright.  Acceding to the Universal Copyright Convention (UCC); Adopted at Geneva in 1952, the UCC serves as an alternative to the Berne Convention for those countries which disagreed with some aspects of the Berne Convention but still wished to join some form of multilateral copyright protection;  Promulgating the Regulations for the Implementation of International Copyright Treaty Provisions
	1993	Acceding to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms;  Passing the Unfair Competition Law; This law prohibits unfair competition by monopolies and protects unregistered trademarks, packaging, and trade dressing.
	1994	Signing the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedures;  issuing the Copyright Implementing Regulations; The regulations make copyright

		infringement a criminal offense. Violators can be sentenced to prison for up to seven years or executed in severe cases.
	2001	Acceding to WTO and signing the Agreement on TRIPS; The Agreement, which came into effect on 1 January 1995, is the most comprehensive multilateral agreement on IP.
	2002	Passing the Implementing Regulations of the Copyright Law of People's Republic of China
	2003	Issuing the Measures for the Implementation of the Administrative Punishment of Copyright
	2006	Issuing the Guide to Copyright Administrative Complaints

Source: Based on the above literature review

Besides adopting the legal measures in conformity with the international practices and in line with the domestic needs, China has also applied its administrative power at the state and local levels to protect copyrights. It has established the National Copyright Administration of P.R. China within the State Council and the Copyright Administration Office in all the provinces, autonomous regions, and municipalities. Nevertheless, as Yang (2003) indicated, administrative control is just one component of the current IPR system in China, the other two being the legislative guidance from the national and provincial legislatures and the judicial enforcement from the basic, intermediate, higher, and supreme courts. With regard to the administrative control, there are three separate organizations under the State Council: the State Intellectual Property Organization (formerly called the Chinese Patent Office), the Trademark Office, and the National Copyright Administration (NCA).

To clarify how the administrative control functions in China, Mertha (2001) distinguished two types of leadership relations within the Chinese administrative units: *leadership relations*

governed by binding orders from the immediate superior and *professional relations* based on non-binding connections. All of China's IPR enforcement bureaucracies are based upon the latter type of decentralized leadership relations. As a result, the orders from the NCA of China to its provincial-level functional counterpart, the Copyright Administration, may not be carried out if they conflict with the orders issued by the provincial government. All this has helped bring about the perpetuation of local protectionism.

The reason for the above is that the state-level NCA and the provincial-level Copyright Administration have a non-binding professional relation while the Copyright Administration and the provincial government is bound by a leadership relation. Furthermore, there are just about 200 people all over China who are engaged in full-time administrative management of copyright work with approximately two to six people in each province. Thus, the administrative fragmentation makes it "practically impossible for the leadership in Beijing to maintain sustained and systematic monitoring capability across China" (Mertha, 2001, pp. 118-119). In addition, if there are few incentives, the local governments will also find it hard to comply with Beijing.

Commenting on the Chinese efforts to establish a legal system to protect copyright, both positive and negative voices can be heard. Positively, Yang (2003) noted that during the past decades, China has made revolutionary transformations with respect to IPR from a country with no formal or standardized protection to one with a broad and systematic system. The motivation results from "China's desire to attract direct foreign investment and advanced technology from developed countries and to protect indigenous innovations" (p. 136). Lu (2008) also remarked that "the formation of a copyright system essentially agrees with the general goal of the Chinese government in developing a market economy" (p. 85). Wang (2004) added, in order to catch up with the developed countries by protecting the IPR of not only foreigners but the Chinese

themselves, the Chinese people began to “realize the position of intellectual property in economic growth.... China’s accession to the WTO is definitely an accelerator of the improvement of the existent laws of IPR” (p. 254).

However, other scholars are critical about the legal and administrative perspectives. Swanson (2005) said that, “there isn’t a shortage of laws, or of high-level promises” (p. 2). The increased Chinese IPR enforcement has actually “pushed counterfeiters ‘offshore’ to Macau...which had no copyright law and each day 500,000 VCDs (video compact discs) were smuggled into China” (Croix & Konan, 2002, p. 765). Mertha (2001) remarked that, “the literature focusing primarily on developments within China’s legal regime often misses the point: the power of enforcement and the propensity towards defection lie outside the legal realm” (p. 115). Lao (2006) also noted that, copyright piracy is more than a legal problem and cannot be solved by legal terms because “attitudes toward piracy will not be easily changed by regulation or legislation” (p. 405). Barrell and Wrathall (2007) confirmed that the Chinese culture exerts an important impact on forming social attitudes towards IPR and “Chinese managers are more influenced by their national culture than the rule of law” (p. 58).

#### *The Developmental and Innovative Perspectives*

As the biggest developed country and largest developing country respectively, the United States and China have drawn great attention among scholars in their studies on the relationship between IPR and innovation and the application of the IPR standards imposed by the Northern world in the Southern countries. Here, the South refers to the less developed countries while the North means the more advanced countries (Lai, 1998, pp. 133-134). Meanwhile, quite a number of scholars study the IPR disputes between China and the United States by examining the purposes of their copyright laws as well as the international IPR conventions. The purposes of all

the concerned copyright laws intend to keep a balance between safeguarding the exclusive rights of the copyright holders and the general public's access to the protected materials and the public domain for sustainable innovation. In the following part, I will review the existing literature of the developmental and innovative perspectives regarding the North-South IPR disputes in general and the U.S.-China copyright disputes in particular.

According to the International Chamber of Commerce (ICC) (2005), IPR protection contributes to the economic growth in both developed and developing countries by stimulating innovation. There has been a long-cherished correlation between innovation investment and economic growth. For instance, the ICC indicated that, "technological progress is now responsible for up to one half of the growth of the U.S. economy" (p. 10). The Office of the U.S. IPR Coordinator (2007) regarded innovation as the foundation of the U.S. economy in the 21<sup>st</sup> century and the protection of IPR as ensuring the source of innovation. To this end, the above office has created a five-point plan, two points of which are to "empower American innovators to better protect their rights at home and abroad," and "aggressively engage our trading partners to join our efforts" (p. 1).

On the Chinese side, Jiang Zemin, former president of the country, emphasized years ago, "innovation is the soul of a nation's advance and the eternal driving force for national prosperity" (Samuelson, 1998, p. 6). Recently, Hu Jintao, the current president of China reiterated the above point by saying that "strengthening the construction of our intellectual property rights system is an urgent need in order to strengthen our ability to innovate" (Reuters, 2006, p. 1). To strive for sustainable economic growth, China has been increasing its investment in scientific research and development (R&D) since the 1990s. For instance, China expended 12,534 million RMB or 0.68% of its GDP in 1990, 150 billion RMB or 1.32% of its GDP in

2003, and 300 billion RMB or 1.4% of its GDP in 2006 on R&D (Embassy of P.R. China in the United States of America, 2007, p. 1). Thus, we can see both the United States and China strive for development by increasing their investment in R&D and effective protection of their IPR and knowledge industries.

As for the scholarly findings on the relationship between IPR protection and development, there exist two major types of literature. The first type emphasizes the necessity to establish an effective IPR regime and advocates the significant role of strong IPR protection for the increasing rate of innovation. By using an equilibrium model of an international product cycle, Lai (1998) found that stronger IPR in the South increases the rate of innovation if the foreign direct investment is the channel of production transfer. If imitation is the channel of production transfer, stronger IPR lowers the rate of innovation. Similarly, by using cross-country panel data on R&D investment and other country-specific characteristics over the time period from 1981 to 1995, Kanwar and Evenson (2003) found stringent IPR protection provides incentives for spurring innovation when intellectual property protection influences R&D investment positively in the developing countries.

With regard to China, Huang, Amorim, Spinoglio, Gouveia, and Medina (2004) indicated that, since China has already expanded its investment in R&D annually to foster innovation, “developing and enforcing IPR protection is the unavoidable choice for China’s policy makers” (p. 383). Huang et al (2004) noted that, to launch a long-term strategy for raising the quantity and efficiency of innovative activities, China has established a dynamic innovation system in 1998, with the State Council acting as the Steering Committee of Science, Technology, and Education and the Ministries of Science and Technology, Finance, Education and the Chinese Academy of Science as well as the State Intellectual Property Office as executive stakeholders. It has carried

a series of reforms in the public science and technology institutions, financial policy, business innovation support structure, human source policy, and legislative actions. Due to its physical and institutional infrastructures as well as fiscal incentives, China already became the world's largest recipient of foreign direct investment (FDI) in 2002, receiving approximately 53 billion U.S. dollars. In addition, Shao (2006) mentioned that some policy-makers in China suggested "the establishment of an innovation law so as to encourage the publicity and distribution of information and knowledge" (p. 7).

The second type of literature on the relationship between IPR protection and development exposes the negative aspects of IPR protection for lagging economies in the South. Early in 1993, Helpman argued that strong enforcement of IPR increases consumer prices and reduces trade benefits crucial for developing economies. Analyzing the impact of tightening IPR in terms of trade, production composition, available products, and inter-temporal allocation of consumption, he showed that Southern countries do not benefit from tightening IPR (cited in Strykowski, 2006, p. 2). By the same token, Glass and Saggi (2002) indicated that it is true that stronger IPR protection may keep multinationals safer from imitation, but the "increased difficulty of imitation generates wasting of resources and imitation disincentive effects that reduce both foreign direct investment and innovation" (p. 387). In other words, developing countries may have to consume more resources to develop their desired high-tech because they are unable to acquire it via cheap imitation. Meanwhile, their needs for FDI may be reduced and thus causing fewer incentives for innovation in the developed countries.

Using innovation diffusion models of software adoption by legal buyers and pirates as an example, Prasad and Mahajan (2003) suggested that a "monopoly should start with minimum protection of its software but well before the product has diffused half way, impose maximum

protection and maintain it thereafter” (p. 337). Based on their empirical analysis of panel data from 64 countries, Chen and Puttitanun (2005) confirmed that while lower IPR protection facilitates imitation of foreign technologies, a developing country should gradually update its IPR protection mechanism to meet the international standards and encourage domestic innovation. In the shape of the English letter “U,” the implementation of IPR protection first decreases innovation, but it will gradually accelerate innovation as the economy grows and the national technological capacity expands. After comparing and contrasting the U.S. and Japanese IPR strategies in the Chinese market, Kumar and Ellingson (2007) concluded by saying that a country’s IPR strategy should be “flexible enough to consider many possible IPR protection and exploitation outcomes,” and the U.S. IPR strategies toward China “must have elements that respect the unique characteristics of the Chinese culture, social, and economic environment” (p. 152). The models or proposals of scholars from the developmental and innovative perspectives can be summarized in the table below. If the models or proposals support positive effects of stronger IPR protection upon the increasing rate of innovation, the word *positive* will be used as a comment. Otherwise, the word *negative* will be used and both words will be used if a model or proposal advocates different IPR protection at different stages of a country’s development.

Table 2-3: Developmental and Innovative Models

Scholars	Time	Models/Proposals	Comments
Helpman	1993	Southern countries unable to benefit from tightening IPR	Negative
Lai	1998	Equilibrium model of international product cycle	Positive
Glass & Saggi	2002	Reduction of FDI and innovation from stronger IPR protection	Negative
Kan & Evenson	2003	Cross-country panel data on R&D investment	Positive
Prasad &	2003	Minimum protection at the beginning and maximum protection	Negative/



Mahajan		halfway down the innovation diffusion	Positive
Huang, et al.	2004	Enforcement of IPR protection as a result of R&D investment	Positive
Chen & Puttitanun	2005	Innovation to be decreased at the beginning of IPR protection but will gradually increase as economy grows and technological capacity expands, thus forming a U-shaped model	Negative/ Positive
Shao	2006	Establishing an innovation law to promote innovation	Positive
Kumar & Ellingson	2007	Flexible IPR strategy by taking the cultural, social, and economic environment into consideration	Positive/ Negative

Source: Based on the above literature review

### *The Historical and Cultural Perspectives*

The third major category of relevant literature on the Chinese perceptions of copyright and the recurring U.S.-China copyright disputes comes from the historical and cultural perspectives. For a clear discussion, I will further divide this category of literature into three sub-categories with regard to copyright: 1) historical IPR practices in China; 2) major cultural differences between China and the USA; and 3) the U.S. pressure and the Chinese resistance.

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

England, more emphasis was laid on “the benefits of the society and the interests of the community in creative works in the Chinese history” (p. 10).

With the expansion of the commercial publishing industry following the invention of the printing technology in China in the 9<sup>th</sup> century, copyright protection came into being as an exclusive right granted to authors to protect their reputations against plagiarism and unauthorized reprinting. However, copying enjoys a long tradition in China and does not carry a stigma. Thus, “copying a masterpiece was historically considered an art form in its own right while Chinese students have been taught for centuries to copy their teachers as accurately as possible before attempting to create” (Yatsko, 2000, p. 213). Furthermore, free publishing and reprinting earlier books flourished throughout the major part of China’s publishing history. Even the government made public a decree in the tenth century, which stated, “if anyone wishes to transcribe the Classics, he must copy the printed editions offered by the government” (Cherniack, 1994, p. 20). Chia (2002) also noted that no one in China could have claimed exclusive rights over the printing or copying of earlier books including the classics, dictionaries, histories, school primers, medical texts, and poetry. Thus, the classics, which were the main sources of learning, could be printed and reprinted freely by anybody. In fact, books other than the classics were also largely available for reprinting and copying, thus expanding and enriching the public domain in China (Shao, 2006, 9-13).

Both foreign scholars like Swanson (2005) and Chinese scholars like Yuan (2001) noticed this phenomenon and pointed out that Chinese artists historically sought to mimic acknowledged masters in painting and calligraphy because the act of copying did not necessarily carry negative connotations. Wingrove (1995) also noted that the Chinese educational system has been mostly based on the principle of copying. For over 2,000 years in imperial China, the

highest academic attainment was demonstrated by faultless reproduction of the classical works of the past. At a very young age, Chinese children were taught to memorize and copy the classics.

Nevertheless, due to its domestic needs in the transformation from a labor-intensive society to a knowledge-oriented economy and its membership commitment to the WTO, China has been shaping its IPR practice in accordance with the strategy of *one base, two goals, and three principles*. The *one base* of China's IPR system is to respect and reasonably protect IPR. The *two goals* are: China's IPR regime will first benefit the transmission of knowledge and second facilitate human beings to share the welfare of knowledge accumulation. The *three principles* are: first, China's IPR system will be in line with the status quo; second, the public interests will take precedence over private rights; and third, national interests will take priority over private ones (Shao, 2006, p. 6). From the above, we see that since ancient times the Chinese have emphasized the functions of creative works for the benefits of the society and the interests of the community. The immature IPR system in the past and the strategy of *one base, two goals, and three principles* today both aim at transmitting information and sharing knowledge, in which individual interests of creators or authors usually give way to those of the group.

Recently, China's State Council has released its Outlines on the National Strategy of Intellectual Property Rights. The core content of the outlines includes consummating IPR principles; promoting IPR innovation and application; enhancing IPR protection; preventing the abuse of IPR by making relevant rules; and nurturing the IPR culture that respects knowledge, honors innovation and abiding by the relevant laws (China TechNews, 2008, p. 1). It can be seen from the outlines that China is striving to increase its self-owned IPR level, improve its IPR protection status, and enhance the public's awareness of IPR. The government also aims at

constructing China into a country with high IPR creation, application and management level in the near future.

*Cultural differences between China and the United States.* According to Garmon (2002), considerations of IPR have raised both philosophical and cultural issues because laws and social norms originated from broader cultural patterns and values. While globalization accelerates the process of imposing cultural conformities to the standards of the dominant actors, many people still appreciate differences and diversity among human societies. Nevertheless, as Mun (2003) argued, “a common flaw in many international agreements is the failure to reconcile the differences in Western and Eastern cultural values” (p. 12). Talking about culture, Hofstede (1977) defined it as “the collective programming of the mind which distinguishes the members of one group or category of people from another” (p. 260). Kluckhohn (1951) defined value as “a conception, explicit or implicit, distinctive of an individual or characteristic of a group, of the desirable which influences the selection from available modes, means, and ends of action” (p. 395). Thus, cultural values can be understood as those conceptions of the desirable that are characteristic of a particular group of people.

Scholars (Cohen, 1997; Lehman, 2006; Steidlmeier, 1993) claimed that differences in cultural values have probably been the largest obstacles for China to overcome in its ineffective IPR protection efforts. Steidlmeier (1993) posited that intellectual property protection is very much rooted in the Western cultural values of liberalism and individual rights. Such Western focus contrasts sharply with the Asian emphasis on social harmony and cooperation. Cohen (1997) agreed with Steidlmeier by saying that China’s cultural tradition itself (both communist and pre-communist) has been at odds with Western measures providing protection to IPR. Following the same line of argument, Lehman (2006) remarked that the crux of the U.S.-China

IPR dispute is “a basic incompatibility between modern Western views of intellectual property and traditional Chinese ethical and social thought” (p. 1).

After comparing the Western and Chinese cultural values on copyright, Tang (2004) concluded that as “a characteristic value of the Western world, copyright protection reflects how individual freedom and benefits are often emphasized over societal benefits,” while “traditional Chinese culture believes that individuals are obliged to share their creations and developments with their community” (p. 292). For example, the preamble to WTO-TRIPS clearly states that, “intellectual property rights are private rights” (cited in Burch, 1995, p. 224). Burch (1995) further noted that, as WTO/TRIPS extends IPR in the name of open-market efficiency, it also formalizes the global economy as a relatively open market demanding countries to conduct their international businesses according to specific principles underpinning private rights, individual rights, and property rights. The WTO/TRIPS globally diffuses such vocabulary of rights and property to indicate “a cultural template that is decidedly Western and essentially liberal in character” (p. 215).

Here, two concepts *property rights* and *liberalism* need to be clarified. Property rights refer to “the highest right a person can have to anything” (Black, 1990, p. 1216) or “the rights of unrestricted, exclusive ownership, and, by degree, lawful possession, use, and disposition” (Burch, 1995, p. 218). *Liberalism*, in a narrow sense, means “an outlook on social relations that attempts to balance individual freedom against community interests while minimizing the power of the state” (Rapaczynski, 1987, p. 120). In a broad sense, *liberalism* refers to “a way of life, a culture, a system of symbols and meanings by which individuals construe their world and seek meaningful lives” (Burch, 1995, p. 218). To a great extent, what WTO/TRIPS advocates above represents the American IPR cultural values concerning individual rights and property rights

because the concept of “individual property rights is a deeply held value in Western societies, especially the United States” (Garmon, 2002, p. 1157)

In contrast, the Chinese favor social and economic rights, which are considered “collectively based, non-universal, and less important than state interests” (Fung, 1996, p. 615). In other words, society in traditional China is regarded as an “organic whole in which collective rights prevail over individual rights,” and “the state is the ultimate arbiter of those individual rights” (Chou, 1997, p. 391). Such traditional Chinese perception of individual rights influences the Chinese attitude toward copyright law and the enforcement of the law.

Yang (2003) explained that the Chinese cultural impact on IPR is rooted in Confucianism. As an ethical code rather than a religion, Confucianism guided the Chinese people’s behavior from the sixth century B.C. to the middle of the 20<sup>th</sup> century. As Montgomery and Fitzgerald (2006) remarked, Confucian philosophy, which permeates the Chinese culture at all levels, emphasizes the transmission or passing down of creative works for others to build on. This ideology is explicitly expressed in the Confucian statement “I transmit rather than create—I believe in and love the Ancients” [*The Analects*]. Furthermore, the Confucian ideology encourages imitation of teachers as a way of learning, loyalty to masters, subordination of individual interests to the social good and discourages the self-motivated pursuit of money. Thus, the Chinese see copying as something divine while the same action is regarded as taking away someone else’s property rights in the United States and other Western countries (Low, 2002, p. 2).

The approach to IPR of the Chinese Communist Party since 1949 to 1979, which values the people’s access to knowledge instead of the author’s benefit from his or her creation, is a continuation of the Chinese tradition of sharing and copying. Under Mao’s rule from 1949 to the

end of the 1970s, the notion of IPR ran counter to a planned economy under the influence of Maoism. Just as Beam (1995) indicated, “the idea of private ownership is regarded as contrary to socialist community life” (p. 339). Maoism advocated public ownership and by 1957 all the privately owned land and enterprises were nationalized. Law in general was regarded as a tool for the oppression of the common people. Under such circumstances, “literature and art are for the masses of the people, and in the first place for the workers, peasants and soldiers” (Mao, 1967). Under Mao, individual rights including property rights were not clearly defined and enforced, and hence there was no room for the existence of the usual type of IPR. A popular Chinese saying during this time vividly expresses the Chinese attitude towards creative works of the intelligentsia:

Is it necessary for a steel worker to put his name on a steel ingot that he produces in the course of his duty? If not, why should a member of the intelligentsia enjoy the privilege of putting his name on what he produces? (Tang, 2004, pp. 292-293)

Thus, we can see how the Chinese attitude toward IPR is shaped by the social environment and cultural values throughout the history. Just as Hills (2002) indicated, “people’s attitudes are based on the relatively few, stable values they hold” (p. 1).

In the aspect of legal values, there exist sharp differences between the West and China as well. According to Lehman (2006), there are criminal and civil or common laws in the West, and the concepts of IPR arose in the 17<sup>th</sup> and 18<sup>th</sup> centuries together with the introduction of the civil law. In China, the role played by the civil law as in the West was replaced by Confucian ethics. Yang (2003) noted that, Confucianism emphasizes the Five Cardinal Relations between father and son, husband and wife, elder and younger brother, ruler and subject, and elder friend and

younger friend with the former ruling over and taking care of the latter while the latter obeying and respecting the former in each pair of the relation. Only when friends are at the same age, can equality be expected. In other words, Confucius advocated rule of propriety and morality rather than rule of law. Due to violent and abusive application of laws in some dynasties in the Chinese history, people generally viewed strict laws as the vehicle of imperial tyranny and oppression.

To elaborate, Butterton (2001) indicated that, Confucianism favors *li* over *fa*. Briefly, *fa* means rule of law. The concept of *li* refers to proper conduct, politeness, or etiquette in a narrow sense; it means the whole range of political, social, and familial relations that underpin a harmonious Confucian society in a broad sense. Thus, individual interests are subordinate to the interests of the group. Compromises and mediation are preferred over litigation when settling disputes. The assumption here is that government leans heavily on *fa* to reinforce its authority because it has no effective ability to rule of *li* (pp. 261-262). Thus, while judicial enforcement is the only way for a copyright owner to protect himself or herself in the United States, there are three different copyright enforcement systems in China: judicial, administrative, and private. Because of the negative or avoiding attitude towards law in the Chinese history, private enforcement is the most commonly used proceeding to settle copyright cases in China. One reason for this is that such practice is in conformity with the Confucian disfavor of litigation. Another reason is that it is traditionally considered a virtue to seek harmony with other people. Therefore, private remedies or administrative penalties are usually adopted for copyright infringement rather than statutory remedies and criminal penalties as often witnessed in the United States (Yuan, 2001, pp. 12-18).

The lack of the concept of private rights in the Chinese traditional culture exerts direct impact on copyright protection in China. Even today, many people in China still do not regard



the fruits of individual creativity as belonging exclusively to the creator. To them, all creative works belong to the society as a whole. Many people have vague ideas about copyright protection, and they may not be aware of respecting private rights. This attitude is believed to “have led to major piracy that will be likely to continue with the public’s ignorance of their rights” (Peng, 1999, p. 11). From another perspective, Yu (2005) argued that, the IPR system did not formally emerge in China until the early 1980s. In contrast, the United States has a well-established IPR system developed for over 200 years. Even within such a century-old system, “American file-sharers have great difficulty understanding why it is illegal to reproduce and distribute music online without the copyright holders’ authorization” (p. 11).

*U.S. pressure and Chinese resistance.* Before the 20<sup>th</sup> century, China had no formal copyright system (Neigel, 2000, p. 189). When China began implementing its policy of reform and opening up to the outside world in 1979, it had its first encounter with IPR issues upon negotiating with the United States and signing the Sino-US Trade Agreement. Since the 1980s, the United States has been negotiating with China to gain more access to the Chinese market and urge Beijing to better protect the U.S. IPR in China. Several times, the U.S. government has been threatening China with “a series of economic sanctions, trade wars, non-renewal of the Most Favored Nation Status, and opposition to [China’s] entry into the World Trade Organization (WTO)” (Yu, 2001, p. 133). Thus, the IPR dispute was brought to “the forefront of Sino-US trade relations for most of the 1990s.... Between 1991 and 1996, the United States and China came to the brink of trade warfare over IPR on no less than three occasions, upping the ante each time” (Mertha, 2001, p. 2).

However, as Lessig (2004) critiqued, the United States was born a pirate nation that did not give credit to foreign copyrights for about 100 years, and even the U.S. copyright law was

copied largely from Britain with some revisions (pp. 63-130). Early in 1995, Burch (1995) noted that, while the American and British governments were condemning Chinese pirating, the American and British firms were “engaged in extensive, often high-profile pirating such as reverse engineering and industrial espionage during their industrialization phases and well into the twentieth century” (p. 226). This is why Varian (2005) commented that, the United States was “a developing country in the nineteenth century, and it was hardly surprising that it found it attractive to free ride on the intellectual products of other, more advanced countries, such as Britain” (p. 124). It was not until the 19<sup>th</sup> century when the American bestseller novel *Uncle Tom’s Cabin* was massively reprinted overseas and technology began flowing out of the United States did the United States begin strengthening its international IPR laws and more and more Americans gradually changed their attitudes toward copyright protection. Thus, a shift in the balance of trade resulted in a shift in legal philosophy and change of attitudes toward the copyright policy (Anderson, 2007, pp. 178-179).

Internationally, a group of U.S.-led developed countries forced IPR provisions onto the GATT agenda in 1994, resulting in the TRIPS agreement in the Uruguay Round of trade negotiations (Liao, 2006, p. 185). Halbert (2005) noted that, “the inclusion of TRIPS in the WTO marked the culmination of the U.S. industry push to conceptualize intellectual property as a trade issue” (p. 2). The TRIPS Agreement requires that WTO members harmonize their intellectual property laws with the minimum standards in the elaborated agreement, including:

1. To propertize some classes of information (e.g. computer software, online services, and plant varieties) that had previously not been commodified;
2. To raise the price of information by increasing the duration of protection to twenty years;

3. To play a greater role in enforcing the property rights of multinational firms operating on global information infrastructure. (Sum, 2003, p. 378)

The minimum standards like the above were “already existing throughout the United States, Europe, Australia and Japan. Thus, harmonization meant just minor adjustments for these developed countries. For the developing countries like China, IPR laws were either absent or widely unenforced, so the compliance with the TRIPS Agreement meant “a substantial legal and enforcement infrastructure” (Halbert, 2005, p. 2).

Although there was strong disagreement in the developing world with the inclusion of TRIPS into the WTO framework, the developing countries did not have the negotiating power to withstand the U.S. position. Consequently, many developing countries see the global expansion of IPR through TRIPS as one important strategy to renewed U.S. hegemony, and this awareness “has triggered several forms of resistance and adaptation in East Asia” (Sum, 2003, p. 373).

According to Sum (2003), multiple tactics have been used in piracy, which in a way shows how the weak seek to resist the effects of the U.S.-centered TRIPS agreement. In many Asian countries, including China, Vietnam, and Thailand, software piracy is now a “way of life” (pp. 382-283). Sell (2003) also remarked that growing awareness of what are perceived as abuses of the intellectual property law have led to a network of organizations, which are working to resist global trade including IPR rules (p. 139). For example, half a million people were marching against privatization of seed stocks in Bangalore, India in 1993. In 1999, for another example, thousands of people were marching through the streets of Seattle to highlight the problems with the neo-liberal trade regime. The 1999 battle in Seattle became a watershed event for global resistance to the WTO. Since then, mass protests against corporate globalization have become such a common international trade scene that organizations like the WTO “have sought out non-

democratic governments in relatively remote locations for their meetings, such as the WTO meetings in Doha Qatar where it was much easier to control social protest” (Notes from Nowhere, 2003: 418-422).

Pressure and resistance have also been observed between the United States and China. To obtain the U.S. agreement on its WTO application, China “was forced to make numerous concessions” (Liao, 2006, p. 208). The first incident that revealed U.S.-China tension over IPR was about the drafting of China’s copyright law, which underwent more than twenty drafts over ten years within the context of U.S.-China IPR negotiations in the 1990s. Unlike its Patent Law (adopted in 1984 and amended in 1992), the Copyright Law of P.R. China came with few incentives. Thus, it was neither understood nor welcomed by most Chinese, especially governmental officials (p. 195). As a product of the 1992 U.S.-China Memorandum of Understanding, China’s Copyright Law ought to observe the International Copyright Treaties Implementing Rules, which “grant foreign works a higher level of copyright protection than Chinese works” (Xue, 2005, p. 303). Under the above rules, foreign copyright owners of any type of work enjoy the exclusive rental right and foreign producers of phonograms enjoy the exclusive right of public performance. However, Chinese copyright owners and phonogram producers cannot enjoy reciprocal protection under the Copyright Act of the United States. This abnormal phenomenon reveals the Chinese eagerness to join WTO so as to boost their economy even at the cost of accepting higher foreign demands.

According to Chander and Sunder (2004), prior to the existence of TRIPS, both the West and East effectively benefited from a public domain in the other’s inventions and expressions because the East did not formally protect its knowledge and the IPR laws were weak in the West at that time. Then, TRIPS upset the balance in the global public domain by mandating strict

protections for intellectual property throughout all member states. In addition, Croix and Konan (2002) commented that the “one-size-fits-all” IPR standards sometimes produce too much IPR protection and too early in some developing countries, which is likely to be a source of continued international conflict between the developed and developing countries. Lessig (2004) also confirmed that over-regulation in the U.S. IPR system stifles creativity and smothers innovation.

Naturally, it is observed that the Chinese end-users use “nationalism, with core values of patriotism and Confucianism” to “resist global copyright enforcement” (Lu & Weber, 2008, p. 89). There is also “a consensus among educated modern Chinese that intellectual property rights as currently defined by the West or as imposed on developing countries, are unjust” (Lehman, 2006, p. 7). Furthermore, Endeshaw (2005) contended that, compared with the European Union (EU) and Japan, the United States “maintains an increasingly belligerent tone in its approach towards its trading partners concerning their poor records in IP lawmaking and enforcement” (p. 392). Endeshaw cautioned that the more the United States criticizes other nations and their activities out of its own interests and expectations, the more those nations and their businesses will regard the IPR system as an instrument of the U.S. multinational corporations instead of an international regime that benefits all (p. 396). Therefore, Samuelson (1999) suggested that WTO restrain the TRIPS Council from pushing for harmonization of national IP laws, especially copyright laws. The chief reason herein is that national IP policies are usually intertwined with cultural values (p. 97). Just as Mun (2003) remarked, “the U.S. trade pressure on China has historically ignored the deep-seated cultural and historical resistance to protecting intellectual property rights” (p. 15).

### Conclusion

To facilitate the categorization of the relevant literature, I began Chapter II by clarifying

four key concepts. First, the Chinese cultural perception is used to refer to the Chinese understanding and interpretations of copyright, innovation, fair use, and the public domain and their attitudes towards the U.S.-China copyright disputes. Second, innovation is defined as the complicated process in which the expression of a new idea is fixed and brought to the market to provide incentives to the copyright owners for further creative works and to ensure future creativity among the public. Third, fair use means the use of copyrighted material in a reasonable manner without the consent of the copyright owner. Fair use is interpreted somewhat differently in the U.S. and Chinese copyright laws and covers different areas, both of which will be taken into consideration in the discussions of the following chapters. Finally, the public domain refers to creative materials that are not or no longer protected by IPR laws, and it consists of different numbers of items in the U.S. and Chinese copyright laws. The differences will also be considered in the following chapters.

As mentioned earlier, the critical review of the relevant literature serves two purposes. First, with this literature review, the academic basis for the present study has been established. To ensure successful copyright protection in particular and effective enforcement of IPR in general in China, the first and essential step is certainly to construct the appropriate infrastructure of the legal frameworks and the administrative and judicial enforcement institutions as is advocated by a substantial amount of literature of the legal and administrative perspectives. However, the one-size-fits-all IPR standards as imposed by the United States and TRIPS do not apply in all countries, thus meeting growing global oppositions. Major literature of the developmental and innovative perspectives reveals the connection between copyright piracy and per capita GDP of a nation and proposes a stage-orientated IPR system depending on the economic development of a country as well as the input of a U-shaped model for innovation. Nevertheless, the U.S.-TRIPS

IPR system provides little negotiating power for the developing countries, thus making it hard to put the theories into practice. Major literature of the historical and cultural perspectives emphasizes the integration of effective enforcement of IPR protection and the decrease or elimination of copyright infringement into sufficient appreciation of the Chinese cultural perceptions and social practices of IPR with regard to innovation, fair use, and the public domain. Hence, the present study will focus more on the third category of the literature.

Although they have their own focus, the three categories of literature reveal three common characteristics. First, they emphasize in different degrees the indispensable role of the Chinese cultural perceptions in shaping the Chinese attitudes and behaviors toward copyright protection and the U.S.-China copyright disputes. Second, all of them discuss the resistance of the developing world to the North-imposed IPR regime and impact of trade shift on the change of attitude towards IPR protection. Finally, they all recognize the significant and hegemonic role of the United States in pushing WTO to include TRIPS for establishing a universal IPR system in the world and applying U.S. Special 301 legal measure to regulate the IPR behaviors of other nations.

As can be seen from the relevant literature on copyright protection and copyright infringement, there has been no study based on qualitative in-depth interview data to explore the ordinary Chinese people's cultural perceptions of innovation, fair use, and the public domain. Thus, the present study will fill in this void to make the voices of the grass-root copyright holders and consumers heard so as to provide insightful reference to both the U.S. and Chinese IPR negotiators and policy-makers. Meanwhile, it is also hoped that the present study will enrich the body of knowledge on copyright disputes between the United States as the biggest developed country and China as the largest developing country.

## CHAPTER III THEORETICAL FRAMEWORKS AND RESEARCH METHODS

The literature review in Chapter II reveals three major features: 1) the change of attitudes toward copyright protection and the U.S.-China copyright disputes due to the impact of the dynamic Chinese cultural perceptions and China's domestic need for sustainable innovation; 2) the growing resistance of the Chinese to the U.S.-imposed IPR regime; and 3) the hegemony of the United States in the application of TRIPS and Special 301 to safeguard the U.S. IPR in foreign markets. Chapter II also indicates a call for efforts to fill the gap of exploring the cultural perceptions of the end-users in the study of the U.S.-China copyright disputes in particular and the North-South IPR disputes in general. In this study, I will focus on interpreting the Chinese cultural perceptions of copyright and the Chinese historical understanding and social practices of innovation, fair use, and the public domain based on the raw data of over 40 in-depth interviews of copyright holders and IP consumers in China. In Chapter III, I will first discuss the theoretical frameworks, then clarify the research methods for this study, and finally discuss the rationale for adopting the chosen research methods.

### Theoretical Frameworks

As a complex and dynamic international issue, IPR disputes between the North and the South and the copyright disputes between the United States and China defy any single theoretical framework. Furthermore, the emerging themes from the analysis of the interview transcriptions in the following chapter may call for a variety of additional theoretical interpretations. For now, I will just discuss three theoretical frameworks based on the three major features derived from the literature review in the previous chapter.



### *Theory of Reasoned Action*

As discussed earlier, the Americans changed their attitudes toward copyright protection from officially allowing copyright piracy of British literary works and German technology to staunchly safeguarding its IPR in foreign markets because of the shift of its trade emphasis. Similarly, the Chinese officials were first surprised and refused to cooperate with the U.S. negotiators who were trying to include IPR into the U.S.-China WTO negotiations. However, the Chinese administrators, at least those key figures in the central government, made compromises and gradually consented to the U.S. conditions when they saw potential benefits for their domestic innovative industries. As for the relevant officials or administrators at the local levels and, especially, the ordinary consumers of copyrighted products, it still takes time for them to change their attitudes from approving copyright infringement to supporting copyright protection.

Even today, many consumers in China contend that IPR should only apply to tangible goods and not intangibles like information. They suspect that multinationals charge the consumers in developing countries 20 percent higher for the same IP products sold in markets of the developed countries. A large number of Chinese consumers agree that flexible imitation contributes to the success of some East Asian economies (Sum, 2003, p. 384). Furthermore, as Schwabach (2007) pointed out, foreign insistence on stringent enforcement of IPR in China arouses intense resentment among the Chinese. Many of them regard the penalties imposed on copyright pirates as a sacrifice made by Beijing to appease the United States. This easily reminds the Chinese of the unhappy memories of the colonial era, in which Chinese civilians were sentenced to death because foreign powers insisted on execution as punishment for crimes committed against foreign missionaries. Nevertheless, when the Chinese themselves find it necessary to deal with piracy of their IP products, they will have the greatest incentive for the

enforcement of IPR in China (p. 19).

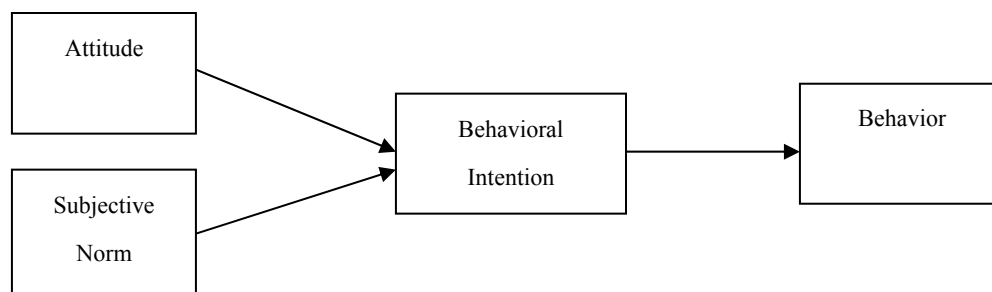
Here, we can use the theory of reasoned action (TRA) as a useful framework to examine the change of attitudes of the Chinese IP end-users toward copyright protection and the U.S.-China copyright disputes. According to Sheppard, Hartwick, and Warshaw (1988), the theory of reasoned action was developed by Martin Fishbein and Icek Ajzen in 1975 and 1980, which started out as the theory of attitude. Receiving “for the most part, justifiable attention within the field of consumer behavior,” the theory not only predicts consumer intentions and behavior very well but also provides a relatively simple basis for identifying where and how the consumers will attempt to change their behavior (p. 325). Hale, Householder, and Greene (2003) also remarked that, TRA has been tested in numerous studies across many areas such as using condoms, limiting sun exposure, and consuming genetically engineered foods.

According to Fishbein and Ajzen (1975; Ajzen & Fishbein, 1977, 1980; Fishbein, 1980), a behavioral intention measure will predict the performance of any voluntary act unless intent changes prior to performance or unless the intention measure does not correspond to the behavioral criterion in terms of action, target, context, time-frame, and specificity. In other words, a person’s voluntary behavior can be predicted by his or her attitude toward that behavior and how he or she thinks other people would view them if they performed the behavior. Hence, we can see that there are three components in TRA: attitude, subjective norm, and behavioral intention.

Miller (2005) defined attitudes as the sum of beliefs about a particular behavior measured by evaluations of these beliefs; subjective norms as beliefs or perceptions of what others will think about the behavior; and behavioral intention as the probability that the behavior will be performed, consisting of both the attitudes and the subjective norms. The relationships of the

three components and the subsequent behavior can be briefly summarized as follows: “Salient beliefs affect intentions and subsequent behavior either through attitudes and/or through subjective norms” (Madden, Ellen, & Ajzen, 1992, p. 3). The above relationships can be indicated in Figure 1.

Figure 5-1: Relationships among the Components of TRA



Source: Adapted from Madden, Ellen, and Ajzen (1992, p. 4)

The theory was developed to deal with behaviors and only those behaviors that are under a person’s volitional control. Since human behaviors are mostly under volitional control, TRA can be applied to predict most human behaviors accurately from an appropriate measure of the people’s intentions to perform those behaviors. This theory can shed light on our understanding of the rampant copyright piracy in China and the mentality of those Chinese that are involved in buying and consuming pirated copyright products.

### *Strategic and Tactical Resistance*

Due to the hegemonic feature of the GII-IPR-TRIPS complex advocated by the United States, waves of tensions or counter-hegemonic challenges occur both strategically and tactically in China and other developing countries. According to de Certeau (1984), a *strategy* refers to the calculation or manipulation of power relationships, which comprises three types of places: a place of power, an elaborate theoretical place, and an ensemble of physical places. In contrast, a

*tactic* means a calculated action or maneuver within the enemy's vision. To be specific, a strategy is a weapon of the strong while a tactic is an art of the weak. Strategically, the strong maintain their advantages by establishing a defensible institution of war of position against any outsiders. Tactically, the weak defend their interests or obtain temporary advantages by seizing any possible opportunities and thus engaging in a permanent war of maneuver. The concepts of *war of position* and *war of maneuver* come from Gramsci, who defined the former as a cultural war against capitalism by gaining a dominant voice in mass media and leadership in the revolutionary organization and the latter as the actual insurrection against capitalism with mass support (pp. 35-47). For the present study, I will use *strategy* and *war of position* to mean the Chinese resistance from the governments at various levels or corporate institutions and *tactics* and *war of maneuver* to refer to the resistance from the ordinary Chinese consumers in the U.S.-China copyright disputes. To Sum (2003), both strategies and tactics have been adopted in the Southern resistance against the Northern IPR regime.

For instance, individual computer programmers like Linus Torvalds developed the Linux operating system from 1989 to 1990 so as to move away from the structural domination of *Microsoft Windows installed* and *Intel Inside* architectural and operating standards. In 1991, Linux released his operating system on the Internet as free software and started the open-source movement. The governments of South Korea and P.R. China strongly supported the open-source movement. On the one hand, Linux enabled quite a number of followers to challenge the cultural hegemony of Microsoft exercised by the control of the Windows' code and possible backdoors into their national computer systems. On the other hand, the open-source movement provided the followers with possible opportunities to build their own post-PC industries, safe in terms of national security and outside the rules and sanctions of the GII-IPR-TRIPS complex (Sum, 2003,

pp. 379- 381).

Besides the strategic open-source movement, Sum (2003) also described the various forms of piracy in East Asia as resistance tactics, including:

- Demanding *fair* prices for software through anti-IPR campaigns;
- Passing on to friends or colleagues copies of licensed software;
- Swapping master disks with others;
- Exchanging information on access to new unlicensed software;
- Uploading and downloading unlicensed software from bulletin boards or the Internet;
- Frequent switching of third-party storage sites for illicit software;
- Copying a handful of licensed software products to all other computers in an organization;
- Transferring licensed software from office to home computers; and
- Obtaining unlicensed software from shopping malls, night markets, and mobile hawker stalls. (p. 384)

These tactics are adopted as a form of resistance and a way of life in China and some other Asian countries. Sum (2003) explained that those who are using the above tactics have their own counter-truths based on an alternative discourse against the hegemonic GII-IPR-TRIPS order (p. 384). Endeshaw (2005) noted that, the reality that non-industrial nations were forced to “forgo their domestic interests and accede to treaty obligations” with minimum benefits provides the root reason for the internationally ineffective IPR protection (p. 379). Piracy has become a rampant phenomenon across the world as consumers “seize time and space whenever and wherever possible to resist the increasing wealth and power of the information industry” (Sum,

2003, p. 384). In 2000, Starr explained that some counter-globalization forces are not actually against globalization per se, but they oppose the neo-liberal globalization as an economic paradigm that includes “structural adjustment, U.S. hegemony, the reduction of social services, and the privatization of the public sector (cited in Halbert, 2005, p. 8).

The application of the theoretical framework of de Certeau’s strategy and tactics with Gramsci’s notions of the war of position and war of maneuver is appropriate for this study for two reasons. First, in addition to the above example of the Linux operation system, the Chinese government has been criticized for opening one eye and closing another in fighting against copyright infringement during the decade-long U.S.-China copyright disputes. Second, the reported piracy rate of over 90% of U.S. intellectual products in China indicates that the Chinese consumers may be consciously or unconsciously taking actions against the U.S. pressure upon China’s IPR regime. Thus, the theory fits the situation.

### *Hegemony*

As Burch (1995) remarked, since 1945 many U.S. leaders have doggedly sought to expand free and unhindered international trade via GATT/WTO because the U.S. economy would “reap substantial rewards” (pp. 219-220). In 1980, Keohane found that GATT was an international regime with the United States at its center, and, as a hegemonic power, the United States had the capabilities to maintain it (cited in Liao, 2006, p. 180). Thus, it is not surprising that “WTO/TRIPS represents a ‘Washington consensus,’ echoed globally by political partisans and business advocates, on the virtues of open markets, privatization, and strengthened IPR” (Burch, 1995, p. 220).

According to Sum (2003), the United States has been making efforts to strengthen its hegemonic power in two aspects: the promotion of Global Information Infrastructure (GII) and

the global expansion of IPR through TRIPS. Functioning as the technical means and the judicial measures respectively, GII and IPR via TRIPS have “enabled the emergence of a hegemonic GII-IPR-TRIPS complex supported by transnational trade-related committees and state agencies” (pp. 373-377). Liao (2006) also remarked that: “Discussion about China’s response to the global IPR regime is incomplete without addressing hegemony, which has a crucial role in setting the rules of international regimes and the creation of a methodical rules-based international order in international affairs” (p. 180).

To be specific, Shao (2006) indicated that the United States “has been aggressive in pushing for a universal intellectual property regime” (p. 4). By viewing China as a total alien to IPR, the United States has been playing a missionary role to indoctrinate the Chinese with the present U.S. IPR perspectives, which represent the interests of the dominant U.S. industries (p. 1). Scholars (Halbert, 2005; Shao, 2006; Xue, 2005) shared the idea that it is for the purpose of expanding its economic interests and global power that the United States has been pressing China to substantively revise its patent, copyright, trademark laws and other IPR systems and repeatedly restructure its IPR enforcement mechanisms. Thus, it might be useful to examine the hegemonic role of the United States in the U.S.-China copyright disputes through the theoretical lens of the theory of hegemony.

Hegemony as a concept refers to “political leadership based on the consent of the led, a consent which is secured by the diffusion and popularization of the world view of the ruling class” (Bates, 1975, p. 352). In international relations, hegemony is used to “connote the predominant position of the most powerful state in the international system or the dominant state in a particular given region” (Faiz, 2007, p. 1). The modern usage of hegemony as a concept comes from the Italian Marxist and social theorist, Antonio Gramsci.

As Strinati (1995) noted, Gramsci used *hegemony* to mean the ability of a dominant class to exercise power by winning the consent of its subjugators. Consent is produced and reproduced by the hegemony of the ruling class in society. In the context of the developed West, consent is maintained not merely via coercion but more importantly through “the negotiated construction of a political and ideological consensus which incorporates both the dominant and dominated groups” (Strinati, 1995, p. 165). The consensus is achieved via the process by which the dominant classes propagate their values and ideology via social institutions such as mass media, religious organizations, schools and the family. The dominant values and ideology are so ingrained in people’s minds that they not only limit people’s vision but also enable it.

While drawing upon Gramsci’s notion of hegemony, Robert Cox (1981) was trying to put his thought of hegemony in the global context. To Cox, successive dominant powers in the international system have shaped a world order that suits their interests as a result of their coercive capabilities and broad consent even among those disadvantaged. Cox regarded the United States as a dominant power in the international system, which has successfully globalized its hegemonic ideas all over the world including China (pp. 131-137).

To explicate the changes in the world order, Cox (1981) proposed his thought of the *frame of action*, which comprises ideas, material capabilities, and institutionalization. *Ideas* are those shared notions or thought patterns of the nature of social relations and those of collective images of social order held by different groups of people. As the ideas are historically conditioned, they can predict behaviors when conflicts arise between states on such occasions as negotiation, confrontation, or war. *Material capabilities* refer to material conditions composed of technological and organizational capabilities and natural resources, which can be productive and destructive potentials. *Institutionalization* is a means of stabilizing and perpetuating a particular



order through human institutions. Such institutions reflect the power relations and the collective images that are consistent with these power relations (pp. 131-137).

Building upon the critical formulation of Robert Cox, Beeson and Higgott (2005) regarded hegemony as “the ability of some power or authority in a system to ‘lay down the law’ about external relations between states in the international system” (p. 1174). To them, the discussion of Cox about the interplay among ideas, material capabilities and institutionalization can be adopted to crystallize the dynamic process in which the U.S. interests and values are reflected in a rule-governed, normatively-informed post-war international order (p. 1174). The theory of hegemony will be useful for this study because it can help clarify the U.S. dominant roles in its application of TRIPS internationally and the USTR Special 301 bilaterally. However, as a disadvantaged country in terms of IPR protection, China consented to the U.S. demands with conditions and the Chinese historical and cultural factors must be carefully and critically examined in the application of the theory of hegemony.

In order to gain deeper understanding of the factors influencing behavior, it is necessary to look for the determinants of the attitudinal and normative components. As (Ajzen & Fishbein, 1980) explained, those determinants are beliefs individuals hold about themselves and their environment, or cultural perceptions individuals have about themselves and the world in which they live (pp. 453-460). Since social environment or the outside world shapes people’s attitudes and determine their behavior, I will also take into consideration Geert Hofstede’s cultural dimensions in my applications of the theoretical frameworks.

Based on his study of more than 100,000 employees in over 50 countries in 1980, Hofstede recognized four cultural dimensions of individualism-collectivism, masculinity-femininity, power distance, and uncertainty avoidance to classify the different ways cultural

members adopt to deal with basic problems in different situations. In 1991, Hofstede revised and expanded his cultural dimensions by adding the long-term orientation dimension so as to “represent the range of cultural characteristics that Asian cultural members possess” (Merkin, 2005, p. 258). For the present study, I intend to refer to Hofstede’s individualism-collectivism and long-term orientation dimensions as they can offer more theoretical guidance in the understanding of the Chinese perceptions and social practices of copyright protection and copyright infringement.

According to Merkin (2005), individualism characterizes a society in which everyone is expected to look after him/herself and his/her immediate family only. Collectivism characterizes a society in which people from birth onward are integrated into cohesive in-groups for lifetime protection with unquestionable loyalty. While the individualism dimension for China was scored at just 15 [the Asian average is 24], the U.S. score is 91. Long-term orientation refers to virtues oriented towards future rewards, which include the promotion of cooperation and harmony for the good of all men. China ranked much higher than most other countries in this dimension, with a score of 114 while most Western cultures including the United States scored in the 20s. This dimension indicates a society’s time perspective and an attitude of perseverance, i.e., that society’s willingness to overcome obstacles over time.

Although Hofstede’s cultural dimensions are widely used in the studies of social phenomena pertaining to different cultures, I will apply them cautiously in my study by putting the U.S. culture and the Chinese culture into a continuum individualistic and collectivistic and long and short term orientations instead of treating them with clearly cut dualism. In addition, other cultural elements like *li* (proper conduct or rule by ethics) and *fa* (rule by law), *mianzi* (face value), and social harmony, etc., which are unique to the Chinese culture and which are useful

for the understanding of the Chinese conceptions of IPR will also be taken into consideration depending on the emerging themes from the analysis of the interview transcriptions.

### Research Methods

As the present study aimed to explore the Chinese cultural perceptions of innovation, fair use, and the public domain and their social practices of copyright protection based on the above theoretical frameworks driven from an extensive literature review and via the analysis of over 40 in-depth interview transcripts, my undertaking is qualitative in nature within the discipline of social sciences. The following sections describe the philosophical foundation, ontology, and epistemology for choosing the qualitative approach and discuss the data collection and data analysis research methods as well as the rationale for adopting these research methods.

#### *Philosophical Foundation*

According to Smith (1983), there are two major approaches to social sciences: positivism represented by Comte, Mill, and Durkheim in the tradition established by Newton and Locke and idealism represented by Dilthey, Weber, and Rickert in the Kantian tradition. According to the idealist approach, the study of social and human subjects is the study of ourselves. Researchers and their human subjects are both the subject and object of their study. In seeking clarity about why people select and act on certain values, we are ultimately seeking clarity about the meaning of our own conduct. In other words, the selection of objects for study in the social sciences is based on the values of both the individual subjects and the researchers themselves.

#### *Ontology*

By definition, qualitative research is multi-method in focus, involving an interpretive and naturalistic approach to its subject matter. Qualitative researchers study things in their natural settings and attempt to interpret phenomena in terms of the meanings that the study subjects

bring to them. Based on a subjective ontology, qualitative research recognizes the human capacity to perceive and give meaning to the physical world through symbolic interaction. Ontology means the viewpoint on the nature of reality or what is. Embracing the ontology of internal reality, qualitative researchers contend that social reality only resides in human perceptions. Thus, they value the subjects' or participants' own interpretations of reality, which are considered to be deeply embedded in a rich contextual web that cannot be separated and generalized out to some mass population. Such internal, socially constructed ontology invariably impacts the epistemology of qualitative research.

### *Epistemology*

Epistemology refers to the relationship between the knower and the known or how we come to know what is. Since qualitative researchers embrace the ontology of internal reality, they believe that the knower and the known are inseparable. Maintaining that knowledge emerges from achieving a deep understanding of the data and the context it is embedded in, qualitative researchers value the participants' interpretations of reality and document the articulation and emergence of meaning as they unfold. To them, the essence of understanding is to put oneself in the place of the other with the attempt to achieve a sense of the meaning that others give to their own situations through the interpretative understanding of their language, art, gestures, and politics.

### *Data Collection*

As far as the research methods for data collection are concerned, the present project was based on both existing research results through a thorough and extensive literature review and a qualitative exploration of raw data from in-depth interviews. For data analysis, hermeneutics and thematic analysis were adopted to reveal the emerging themes in the Chinese cultural perceptions

of IPR in general and copyright in particular.

Smith (1983) noted that, the study of human beings can be perceived as the study of moral actors—people acting on the basis of their own values and interests. In-depth interviews are one of the most-commonly used qualitative methods for this purpose. There are at least two major advantages of in-depth interviews. First, an in-depth interview is flexible in that questions can be changed depending on the interviewee's answer or reaction. For some sensitive questions, the answer can be obtained by using questions framed in different ways, and for some interesting questions, further exploration can be made. Second, an in-depth interview emphasizes the interaction between the interviewer and the interviewee, and some misunderstanding about questions can be clarified immediately to increase the authenticity of the result.

Among the three types of in-depth interviews of the structured, non-structured, and semi-structured interviews, the semi-structured interview method is the most suitable and flexible for situations involving a small number of interviewees. Therefore, I used a pre-designed semi-structured in-depth interview guide with about a dozen questions in both English and Chinese, which had been approved by the Human Subject Review Board (HSRB) of Bowling Green State University (BGSU). To ensure validity, I had translated the twenty questions in Chinese back into English and had a native English speaker compare the two English versions. Differences had been detected and the Chinese version was revised.

Each interview lasted 30 to 50 minutes, which were conducted in an informal manner so that I could flexibly pursue other relevant issues as they arose. During the face-to-face interviews, the participants were considered the experts and the interviewer the student. During the interviews, I paid careful attention to the explanations participants provide for what they had experienced and believed. By actively probing them about the connections and relationships

they saw between copyright protection and copyright infringement in relation to the U.S.-China copyright disputes, I, as the interviewer, could not only encourage them to talk about the sensitive aspect of copyright piracy in China but also get them to share their personal experiences, feelings, and opinions concerning the Chinese attitudes and behaviors regarding IPR protection.

Specifically, I interviewed 10 copyright holders, who were authors, translators, researchers or publishers and over 30 ordinary IP consumers, who might have engaged in legal and/or illegal transactions in their daily life. Originally, I planned to go to three major cities of Beijing, Shanghai, and Xi'an to interview the participants coming from the three areas or other regions of China. I decided to make this purposeful selection of the three locations for my study because they represent Mainland China in different degrees. Beijing is the capital of the country accommodating all the national copyright institutions and the biggest number of intellectuals in the country. Shanghai is the biggest metropolitan city in China with relatively better copyright protection than other places. Xi'an, as an inland city, represents other big or medium-size cities in the hinterland.

Via snow-ball sampling, I recruited my participants. According to Babbie (2002), *snow-ball* refers to “the process of accumulation as each located subject suggests other subjects” (p. 179). Used primarily for exploratory purposes, snow-ball sampling is “appropriate when the members of a special population are difficult to locate” (p. 179). Since I was targeting representative copyright holders and different types of IP consumers, snow-ball sampling really fitted the purpose of this study. Through my former colleagues, students, and friends in the selected cities, I recruited my participants with letters of informed consent, which explain the purpose of the study and the voluntary and anonymous nature of the study. The participants

cooperated and kicked the snow-ball rolling and introduced other participants.

As my research topic is still somewhat sensitive in Mainland China at present, I have purposely crossed out the groups of IPR administrators and business people of copyrighted products from my list of interviewees. Initial interviews of some of the former group turned out to be virtually verbatim retelling of government policies or propaganda in their brochures or websites. And the latter, especially those engaged in illegal transactions of copyrighted products, gave almost the same answers to most of the questions that they were doing anything just for profits and for survival.

Before interviewing copyright holders and ordinary consumers, I obtained their verbal consent first. Then, I tried to minimize any risk throughout the interviews by not having them sign the consent form and by using information from the interviews confidentially without releasing their identity. In fact, confidentiality is protected throughout this study. For data collection interviews, I conducted the interviews in places where the participants agreed to go. With their permission, I made recordings and transcriptions of the interviews and told them clearly that neither would be seen by anyone else except me. All the recordings and transcripts were kept in a locked place to which only the researcher had access. When using the data from the interviews for this dissertation project and future conference presentation or publication, I promised to use pseudonyms of the participants to protect their identities. I also promised that, upon completion of the study, I would keep the recordings and transcriptions for some time for reference and finally destroy all of them myself.

### *Data Analysis*

As for data analysis, I first transcribed all the recorded interviews and then used hermeneutics and thematic analysis to generate emerging themes. According to Byrne (2001),

hermeneutics is usually used for the interpretation and understanding of texts derived from stories, interviews, participant observations, letters, speeches, or other relevant written documents and personal experiences. While interpreting the denotative and connotative meanings of the texts, hermeneutics also emphasizes the historical and socio-cultural influences on the interpretation. To this end, the texts are usually closely examined in connection to their relevant contexts for the generation of themes or patterns as research findings, which reflect the knowledge of the phenomenon under study. Here the context refers to the global IPR environment of the WTO/TRIPS and the U.S. Special Section 301, the U.S.-China IPR negotiations, and the Chinese traditional and modern social surroundings.

Braun and Clarke (2006) defined thematic analysis as “a method for identifying, analyzing, and reporting themes within qualitative data” (p. 79). Themes are defined as “units derived from patterns such as conversation topics, vocabulary, recurring activities, meanings, feelings, or folk sayings and proverbs” (Taylor & Bogdan, 1989, p.131). According to Leininger (1985), we can identify themes by “bringing together components or fragments of ideas or experiences, which often are meaningless when viewed alone” (p. 60). In other words, we can piece together the emerging themes from the interviewees’ stories to form a comprehensive picture of their collective experience because the “coherence of ideas rests with the analyst who has rigorously studied how different ideas or components fit together in a meaningful way when linked together” (p. 60).

According to Owen (1984), three criteria are required for the generation of a theme. The first criterion is occurrence, which means that at least two parts of a report have the same thread of meaning even though the meaning may be indicated by different wording. The second criterion is the repetition of key words, phrases, or sentences, which is an extension of the first



criterion in that it is an explicitly repeated use of the same wording. The third criterion is forcefulness, which refers to the underlining of words or phrases in a written report or vocal inflection, volume, or dramatic pauses in a recording. When generating the themes or patterns via hermeneutics and thematic analysis, another coder and I separately read the transcriptions of the recorded interviews thoroughly and repeatedly to determine the common themes in order to achieve validated evidence for data analysis. Just as Fetterman (1989) noted, “studying patterns of talk or behavior represents a form of reliability and looking for patterns is a form of analysis” (p. 92).

To determine the themes of talk and/or behavior, I examined each transcription and every field-note entry and highlighted the relevant information. To emerge as a theme, the relevant information ought to arise several times in the interviews. As the themes emerged, I identified and categorized the relevant portions of the transcriptions and parts of the field-notes into the classified folders. I was doing so by following the “cut up and put in folders approach” proposed by Lindlof (1995, p. 225). Then, I further examined the classified data and combined them into any necessary number of sub-themes so as to obtain a comprehensive view of the information. Finally, by referring back to the theoretical frameworks, I tried to build a valid argument for the themes.

### The Rationale for Adopting the Research Methods

The rationale for using secondary research results and in-depth interviews for data collection as well as hermeneutics and thematic analysis for data analysis lies in three aspects. First, as Smith (1983) stated, the purpose of investigation should be *verstehen*, or interpretative understanding, and the essence of understanding is to put oneself in the place of the other. Based on the initial literature review, I found it necessary to expand the existing literature by exploring

and interpreting the deeply rooted Chinese cultural perceptions that were historically resistant to IPR protection and looking into the historical, social, and economic factors for the Chinese copyright infringement phenomenon. To me, what the interviewees said about their cultural perceptions of IPR in general and copyright in particular and how they interpreted the Chinese ways of treating copyright would, to a great extent, reveal the IPR realities in China, which would be useful to both the Chinese IPR administrators and the U.S. IPR negotiators in the future meetings over the U.S.-China copyright disputes. It is such ontological and epistemological foundations that determine the nature of my project as a qualitative project.

Second, since my project primarily aimed to obtain insights rather than generalization to overall population, the semi-structured in-depth interview method was deemed most appropriate for my raw data collection. As one of the most-commonly used qualitative research methods, in-depth interviews are very effective in giving a human face to my research problems, which can be a rewarding experience for both the participants and the interviewer. Next, in-depth interviews are useful for learning about the perspectives of individuals and for getting the participants to share their personal experiences, feelings, and opinions. Via face-to-face interviews, the participants in this study were willing to talk about and share their understanding of and experiences in the sensitive topic of copyright piracy and copyright protection in China with relation to the U.S.-China copyright disputes.

Finally, hermeneutics and thematic analysis were adopted for data analysis in this study to generate emerging themes. The assumptions of hermeneutics, according to Byrne (2001), are that “human beings experience the world through language, and language provides both understanding and knowledge” (p. 1). Emphasizing the comprehension of the meaning of any particular part of a text such as a word or sentence within its context, hermeneutics is useful in

that it allows the investigator to seek and understand the nature of human behaviors and the meanings that participants assign to those behaviors. With regard to thematic analysis, Aronson (1994) contended that it is one of the most commonly used methods for qualitative data analysis. By focusing on identifiable themes and patterns of living or behavior, and by interweaving literature with findings, I will make the “story line that the interviewer constructs into one that stands with merit” (p. 3).

### Conclusion

Based on the research questions in Chapter I and literature review in Chapter II, Chapter III introduces the theory of reasoned action, strategic and tactical resistance, and hegemony as well as Hofstede’s individualism-collectivism cultural dimension as the theoretical frameworks for this study. Chapter III also discusses that, as research methods, in-depth interviews will be used for data collection and hermeneutics and theme analysis will be used for data analysis. To argue for the research design, Chapter III clarifies the philosophical foundation, ontology, epistemology, and rationale for conducting this qualitative research project.

## CHAPTER IV DATA ANALYSIS AND RESEARCH FINDINGS

The main goal of this project was to explore the Chinese cultural perceptions of copyright and the Chinese historical understanding and social practice of innovation, fair use, and the public domain so as to provide a grass-roots approach to studying the U.S.-China copyright disputes since the beginning the 20<sup>th</sup> century. To this end, I have critically reviewed the existent literature concerning North-South IPR disputes in general and the U.S.-China copyright disputes in particular and discovered three theoretical frameworks of the theory of reasoned action, strategic and tactical resistance, and hegemony. Based on the theoretical frameworks, I have designed a semi-structured in-depth interview guide, which I kept revising during my interviews of over 40 interviewees in China, Canada, and the United States.

On the one hand, the semi-structured interview questions allow me to collect the various perceptions and complicated attitudes of the Chinese interviewees and probe them to share their stories and opinions, which are “situated, improvisational, and collaborative enactment of cultural scripts” (Taylor & Trujillo, 2001, p. 177) without imposing prior categorizations that might limit the scope of my inquiry. On the other hand, the main goal of this project and the search for the answers to the research questions keep the present project focused. In Chapter IV, I will describe the in-depth interview participants, analyze the transcripts of the in-depth interviews, and elaborate on the research findings.

### Participants

As mentioned in the previous chapter, I planned to go to three major cities of Beijing, Shanghai, and Xi'an to collect my data through in-depth interviews during the valid periods of my HSRB approval from BGSU. My approved HSRB period was from May 2, 2007 to April 26, 2008, and then it was extended from April 27, 2008 to April 26, 2009 upon re-application. Since

May 22, 2007 to May 24, 2008, I have been to Beijing, Shanghai, Xi'an, Chengdu, Nanjing, and Weinan in China as well as Chicago in the United States and Montreal in Canada for my data collection partially as planned and partially thanks to conference opportunities. In total, I have interviewed 45 participants. The demographic information of the participants can be seen from the following table:

Table 4-1: Demographic Information of the Participants

Code	Time	Places		Sex		Age	Education			Professions
		Interview <sup>1</sup>	Origin <sup>2</sup>	M	F		HS <sup>3</sup> - BA	MA	Ph.D.	
P-01	22/05/07	Xi'an	Beijing	√		35	√			Teacher
P-02	24/05/07	Xi'an	Shaanxi	√		62	√			Chief-Editor
P-03	25/05/07	Xi'an	Shannxi		√	41	√			Editor
P-04	24/05/08	Weinan	Shaanxi	√		46	√			Lawyer
P-05	24/05/08	Weinan	Shaanxi		√	52	√			Farmer
P-06	26/05/07	Xi'an	Shanxi	√		60		√		Chief-Editor
P-07	28/05/07	Beijing	Shandong	√		38		√		Teacher
P-08	28/05/07	Beijing	Beijing	√		47			√	Author
P-09	30/05/07	Xi'an	Jilin		√	33		√		Author
P-10	02/06/07	Chengdu	Shanghai		√	43			√	Teacher
P-11	02/06/07	Chengdu	Sichuan		√	26	√			Researcher
P-12	02/06/07	Chengdu	Hong Kong		√	25		√		MA Student
P-13	07/06/07	Xi'an	Shaanxi		√	34		√		Translator

P-14	12/07/07	Xi'an	Tianjin	√		41		√		Editor/ Lawyer
P-15	14/07/07	Xi'an	Guangdong	√		55			√	Teacher
P-16	15/06/07	Xi'an	Gansu		√	26		√		MA Student
P-17	15/06/07	Xi'an	Shanghai		√	28		√		Salesman
P-18	15/06/07	Xi'an	Chongqing	√		25		√		Salesman
P-19	16/06/07	Xi'an	Shaanxi	√		48		√		Editor
P-20	19/06/07	Xi'an	Ningxia		√	20	√			BA Student
P-21	19/06/07	Xi'an	Shanxi		√	19	√			BA Student
P-22	20/06/07	Xi'an	Henan		√	20	√			BA Student
P-23	20/06/07	Xi'an	Heilong- jiang		√	20	√			BA Student
P-24	21/06/07	Shanghai	Shanghai		√	40		√		Business- woman
P-25	21/06/07	Shanghai	Jiangsu	√		36	√			Secretary
P-26	22/06/07	Shanghai	Shanghai	√		45		√		Teacher
P-27	24/06/07	Xi'an	Hebei		√	19	√			BA Student
P-28	24/06/07	Xi'an	Guangdong		√	20	√			BA Student
P-29	24/06/07	Xi'an	Guangdong	√		19	√			BA Student
P-30	26/06/07	Xi'an	Shaanxi	√		42			√	Teacher
P-31	26/06/07	Xi'an	Shaanxi		√	40	√			Worker
P-32	27/06/07	Xi'an	Yunnan		√	43		√		Engineer

P-33	28/06/07	Xi'an	Hunan		√	21	√			BA Student
P-34	28/06/07	Xi'an	Guangxi	√		20	√			BA Student
P-35	28/06/07	Xi'an	Tianjin	√		19	√			BA Student
P-36	01/07/07	Nanjing	Jiangsu	√		58		√		Director of FAO <sup>5</sup>
P-37	01/07/07	Nanjing	Hunan	√		52		√		Equipment Manager
P-38	02/07/07	Nanjing	Jiangsu	√		29		√		MA Student
P-39	02/07/07	Nanjing	Sichuan		√	26		√		MA Student
P-40	02/07/07	Nanjing	Liaoning		√	24		√		MA Student
P-41	04/07/07	Xi'an	Shaanxi	√		41		√		Farmer/Vil- lage Mayor
P-42	11/17/07	Chicago	Inner Mongolia	√		45			√	Editor/ Lawyer
P-43	06/07/07	Chicago	Qinghai	√		52			√	Teacher
P-44	24/05/08	Montreal	Taiwan		√	46			√	Teacher
P-45	24/05/08	Montreal	Taiwan		√	53			√	Teacher/ Lawyer

1. Place of Interview refers to the place where an interview took place.
2. Origin of Interview refers to the original birthplace from which a participant comes.
3. HS stands for high school students and high school graduates.
4. Rep is the short form of representative.

5. FAO stands for Foreign Affairs Office, which is similar to the Center for International Programs at American universities.

As can be seen from the above table, of the 45 participants I have interviewed during a time period of exactly one year, except one from Hong Kong and two from Taiwan, the rest come from Mainland China. According to the Ministry of Foreign Affairs of P. R. China (2007), there are 34 provincial level administrative districts in China, including 23 provinces, five autonomous regions, four municipalities, and two special administrative regions (SAR). An autonomous region is an administrative region where the minority is the majority in the local government and congress. A municipality refers to a city which is under the direct administration of the central government. A special administrative region means that the region pursues the policy of *One Country, Two Systems* (p. 1). Of the total number of 34 provincial level administrative districts in China, the participants for this project came from 25 districts, amounting to 73.53%. To break down the statistics, the participants of this study came from 18 provinces of the total number of 23, accounting for 78.26%; two autonomous regions (Guangxi and Inner Mongolia) of the the total number of five, accounting for 40%; four municipalities of the total number of four, accounting for 100%; and one special administrative region (Hong Kong) of the total number of two, accounting for 50%.

Among the 45 participants, 22 are males and 23 are females, accounting for 48.89% and 51.11% respectively. The age of the participants ranges from 19 to 62. Among this, 18 are of the age group from 19 to 30, who are mostly students; 26 from 31 to 60, who are generally out of school and holding different job positions; and just one is within the age group from 61 and up, who are supposedly retired according to the Chinese labor law (Females can legally retire at the age of 55, but none of the female participants are over this age limit). Here, it should be noted that the inclusion of the two Taiwanese respondents might be controversial as some people



could argue that Taiwan is different from China. There are three main reasons for the inclusion. First, the two Taiwanese participants were selected through snow-ball sampling. They were recommended because of their academic background and personal experiences. Second, they had personal experiences in buying and consuming pirated copyright products from Mainland China. One of them had published a book concerning the impact of the Chinese culture on the introduction and implementation IPR laws in China. Third, what Taiwan had experienced in terms of IPR protection in the past might shed some light on the improvement of the IPR situation in Mainland China today. For instance, “cing li fa,” which was effectively used in Taiwan to awaken the local people of the significance of IPR protection could be introduced to Mainland China as well. After all, Taiwan is still declared part of China according to Mainland China, and the United States as well as most of the international community give no official objection to this declaration.

As for the education level of the participants, 18 are high school or BA students, 19 are MA students or graduates of MA, and eight are doctoral students or graduates of Ph.D, which amount to 40%, 42.22%, and 17.78% respectively of the total. With regard to the professions of the participants, the figures are 10 high school graduates and college students accounting for 22.22%; nine teachers, 20%; six editors, 13.33%; five graduate students, 11.11%; three business people, 6.66%; two farmers, two authors, and two directors, 4.44% each; and one lawyer, one researcher, one translator, one secretary, one worker, and one engineer, 2.22% each. Three people are part-time lawyers and four people are part-time directors. For clarity, I have put the summarized information of the participants in the following table:

Table 4-2: Summarized Demographic Information of the Participants

	Categories	Number	Percentage
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<b>Places</b>			<b>No. of Participants</b>	<b>Percentage</b>
	Provinces	23	18	78.26%
	Autonomous Regions	5	2	40%
	Municipalities	4	4	100%
	SAR	2	1	50%
	Total	34	25	73.53%
<b>Sex</b>	Male	22	48.89%	
	Female	23	51.11%	
<b>Age</b>	19-30	18	40%	
	31-60	26	57.78%	
	61-up	1	2.22%	
<b>Education Levels</b>	HS-BA	18	40%	
	MA	19	42.22%	
	Ph.D.	8	17.78%	
<b>Professions</b>	HS-BA Students	10	22.22%	
	Teachers	9	20%	
	Editors	6	13.33%	
	MA Students	5	11.11%	
	Business People	3	6.66%	
	Farmers	2	4.44%	
	Authors	2	4.44%	
	Directors	2	4.44%	

	Lawyer	1	2.22%
	Researcher	1	2.22%
	Translator	1	2.22%
	Secretary	1	2.22%
	Worker	1	2.22%
	Engineer	1	2.22%

### Research Findings

After collecting the raw data from the in-depth interviews, I have transcribed all the audio-taped interviews verbatim and achieved a single-lined, 90-page record of transcriptions. Having perused the entire record at least five times for over a month, another coder and I examined the denotative meanings of the transcriptions and the nuanced connotative or implied meanings in-between the lines. After separately grouping the data into different categories according to frequently observed themes, we kept exchanging our ideas and regrouping the data. Finally, the following five themes have emerged: 1) understanding of copyright, innovation, fair use, and the public domain; 2) interpretations of the copyright piracy phenomenon and the U.S.-China copyright disputes; 3) reasons for the common practice of copyright piracy; 4) ideas about how to awaken and enhance the national awareness of copyright protection; 5) suggestions for resolving the U.S.-China copyright disputes. In the following sections, I will describe each theme in detail with sufficient illustrations of the participants' in-depth interview transcriptions.

#### *Understanding of Copyright, Innovation, Fair Use, and the Public Domain*

Since it is the common goal of both the Chinese and U.S. copyright laws to protect the benefits of the copyright holders and guarantee the public access to knowledge for sustainable innovation, it is meaningful to explore the Chinese understanding of copyright, innovation, fair

use, and the public domain. Innovation is part of what the copyright laws aim for and fair use and the public domain are essential for keeping the balance between protecting the exclusive rights of the copyright holders and ensuring the public access to knowledge for further innovation.

With regard to the participants' understanding of copyright, fair use, and the public domain, I have heard two major types of voices. The first type of voice comes from lawyers, editors, and authors. Below are some of the answers from these participants (I purposely put the participants' answers to a series of related questions together for the convenience of analysis and the presentation of the flow of the participants' ideas):

Example 1:

In China, copyright is the right of authors. Simply put, once you publish a paper or a book, you enjoy the rights of publication, naming the author or authors, revision, completeness, and transformation into other forms like audio-visual products, plays, or movies as well as copying. Usually, the author will authorize the publishing house to publish as many copies as the market demands.

Publishing houses only have the right of publishing or making copies of the authors' works....

As for copyright protection and copyright piracy, I look at the issue in this way. At the developing stage, each country and each government is taking almost the same or similar strategy to encourage its people to learn from others and then develop products of its own. The Chinese government is no exception. For example, each year the government is sponsoring about 100, 000 people to study abroad. The purpose of so doing and the process of learning from others is a process of copying and emulation. Every year, we have also designated a specific

date as the day of IPR protection, and the government is choosing other dates to crack down upon illegal manufacturers and sellers of IP products. The government will just punish those counterfeiters and pirates very heavily when they are reported and caught, especially by foreign copyright holders. However, these campaigns and measures are mainly for show....

With regard to innovation, fair use, and the public domain in relation to copyright protection, I think innovation means the creation of something new or different. The Chinese copyright law promotes innovation by protecting the benefits of the authors or copyright holders so that they have incentives to produce more innovative products. Fair use means that you can use the works of others for the purposes of teaching, research, or news report without getting their permissions. The public domain refers to the copyrighted products that are not protected by the copyright law and can be enjoyed by all free of charge. There is certainly a direct connection between the adequate understanding and observation of innovation, fair use, and the public domain with the proper protection of copyright. However, ordinary people hardly see this connection. For instance, when you write a book, you just concentrate on the writing and proper use of others' works so as to have your book published. Although you are doing something innovative, you may not be very clear that what you do have some direct connections with innovation or the public domain. (P-14; P-14 is the short form for Participant 14. Ibid)

P-14 is an editor and lawyer in a big university press. As part of his job, he is in charge of all the legal affairs in the press. He has received formal law training for a lawyer, and he is qualified to represent his university press in the law court. This is why the definitions he gave to copyright,

innovation, fair use, and the public domain are both standard and complete. Moreover, his ideas about copyright piracy as a universal phenomenon in all countries at their developing stages are quite representative. His opinions about the Chinese government's showy efforts to curb copyright piracy are also very sharp and to the point. Finally, his comments on the relationship between copyright protection and the concepts of innovation, fair use, and the public domain are interesting and meaningful.

Example 2:

Copyright is the right given to the authors for their created works. In the 50s, 60s, and a great part of the 70s, people did not have much knowledge of copyright.

Authors paid little attention to it because royalties at that time were very low.

However, when China began practicing the market economy since the late 1970s and royalties have been gradually raised, more and more authors began paying attention to copyright protection and caring about who has infringed upon their works....

As for the "old comrades," (people who support the Communist Party and who may be in their 50s and up) in the past, they cared more about the spreading of the knowledge through their books rather than the pursuit of money or royalties. They were glad to share what they have created. Even when others were copying their works for publication, they usually did not take any actions against that. Today, authors, young and old, care about making contributions to the community and earning money for themselves at the same time....

Innovation has something to do with originality. If a nation only knows how to copy and digest or emulate and manufacture, it does not have ever-lasting vitality

of innovation. At the same time, knowledge created should be shared and used to serve the society. When China issued its copyright law in 1990, for example, one could use 20% to 30% of the content from others' books in his or her book for classroom teaching. Then, in order to get integrated into the international norm, our copyright law was revised in 2001. Now, you can only use others' book content to support your ideas instead of turning the content of others' books or articles into part of or the substantial part of your thesis or book. With regard to the public domain, the Chinese people habitually assume that all human knowledge is within the public domain, and anybody can make use of it. Every day, speakers and writers frequently cite others without giving credit to the original authors. Only the elite, highly educated intellectuals may mention the names of the original authors, but they may or may not give the sources of the citations. (P-02)

As a chief editor of a provincial press, P-02 is the oldest among all the interviewees. He told me he could work until the age of 65 in his position as a chief-editor. His definitions of copyright and the three related concepts as well as his ideas about copyright protection and copyright piracy have an historical slant. To him, copyright piracy existed because authors felt honored to share and did not care about the small royalties before the 1970s. Only in recent years when China was geared towards the market economy, did authors begin to have some awareness of protecting their copyright. More importantly, the chief-editor's comments on innovation, fair use, and the public domain from an historical and developmental point of view offer a great deal of valuable reference.

Example 3:

As an author, I have published books and I am also writing in my blog online. To me, as soon as a writer has written something creative on paper or in the virtual cyberspace, it has copyright already. Certainly, to get proper protection of your copyright, you need to undergo the official application process.

As for the three concepts and their relationship to copyright protection, let's start with innovation. Right now in China, people tend to associate innovation with science, technology, and business. I think innovation in general goes further beyond that with many creative ideas in arts, music, and communication. As you know, China is now really focused on building an innovative country. To this end, the government is stressing three important aspects: first, the creative power of the people will be fully motivated; second, the innovative awareness of the whole nation will be greatly enhanced; and third, China will possess the substantial ownership of its IPR. Thus, China really takes it seriously to promote innovation. As for fair use, so long as you are not doing it for commercial benefits, you can quote others as a writer, copy part of works or complete papers for classroom use as teachers, and refer to other research results as researchers. Talking about the public domain, there are perhaps more things in the public domain in China than elsewhere. This has something to do with the Chinese culture which emphasizes individual contributions to the community and sharing among one another. If you observe carefully, people from the United States and other Western countries eat from their own plates, but the Chinese eat by sharing the food in all the plates around a round table. To me, when the three concepts are adequately understood and observed, copyright will be effectively protected. (P-09)



As an author, P-09 gave her definitions of copyright and the three related concepts from her own career experience not only about the traditional hard copy but also the works in cyberspace. To her, the Chinese government is serious about innovation in its drive for an innovative nation with the three emphases. She is also optimistic that the economic benefits from self-owned innovations will spur a tightened enforcement of the copyright law in China. Most interestingly, her observation of the differences in the ways of eating between the Chinese and other Western nations provides a vivid example and impressive clue to appreciate the Chinese perceptions of the public domain.

The second type of voice comes from teachers, students, workers, farmers as well as business people. Here are some examples:

Example 4:

As far as I know, copyright refers to the right of the authors and the publishers over their published papers or books. As for copyright protection and copyright piracy, I don't think a lot of people care to draw a clear distinction between them. Instead, they just go ahead and get what they want. The cheaper, the better so long the products are functional. It is true of computer software, and it is also the case with books and DVD movies. You know pirates also invest, use high-tech, and even hire editors to guarantee the quality of their pirated books and to burn five or half a dozen full-length movies onto a highly compact disk....

Certainly copyright also stimulates innovation in that the copyright holders receive benefits from their published works and they intend to create more. When their works go into the public domain, the general public can also make use of their works for further innovation. Fair use means that you need to give credit to

those you quote in your writing. The public domain refers to those IP products that are not protected by the copyright law any more. As for my colleagues, some of them may have a clear understanding of these terms, but many others may not. After all, the content of IPR including copyright is still not considered part of the university curriculum. (P-15).

P-15 is a university professor and department dean. He knows something about copyright, innovation, fair use, and the public domain, but he does not understand them completely. There are two important pieces of information from his answers. First, many people around him are not clear about what the above terms mean and they do not care about the distinction between copyright protection and copyright infringement. What they are interested in are the availability, quality, and low price of the IP products they need. Second, although the Chinese central government and the Ministry of Education are attaching great importance to embedding innovation in school education and severely punish any type of plagiarism, schools and universities do not consider IPR or copyright part of their curricula. The question here is: How can the teachers and students avoid plagiarism and create innovation without a clear understanding of the concepts under discussion?

Example 5:

Copyright means that someone has created something, and he or she should have the right to protect the invention. If some other people want to use the invention, they need to pay for the use. The Chinese government has been making efforts to fight against copyright piracy. For instance, in all the governmental offices now, computers must be equipped with legal versions of software programs. As for individual users, it is really hard for the government to control. It takes time to

effectively enforce all the copyright law and regulations and make the common people accept the concept of copyright....

As for innovation and the other two terms, I know that copyright protection is for the purpose of creating more innovation. I have no idea about fair use and the public domain. (P-34)

P-34 is a college student. As mentioned above, college students are not exposed to the knowledge of copyright, fair use, and the public domain. Therefore, it is good enough for this student to speak out so much about his understanding of the terms though he does not have a clear idea about fair use and the public domain. One meaningful thing is his observation of copyright protection of computer programs in governmental offices and the ongoing copyright piracy among Chinese individual consumers.

Example 6:

To me, copyright is just a word that often appears at the beginning of DVD movies, which gives the warning that the copyright belongs to so and so and no copying is allowed. Otherwise, there will be punishment or penalty or something else. However, it is ironic that the DVDs we use are mostly illegal copies. In another word, copyright is something that I don't have to pay attention to. As a businessman, I usually travel a lot in China, and I have certainly consumed many pirated electronic products like music CDs or movie DVDs. My colleagues and friends do the same. I have rented a room near my company. My landlord has a lot of DVDs, most of which are certainly pirated ones. I often borrow them and watch some movies. The quality is OK....

Innovation means the creation of something new based on the previous

knowledge of others. The condition is that we need to make use of the earlier work in a fair way. So long as you are not using others' ideas or materials for commercial purposes, you can make use of a portion of someone else's works by providing the appropriate citation. As for the public domain, I have no idea about it. (P-18)

As a businessman, P-18 is quite straightforward to express his perceptions of copyright and copyright piracy. According to him, copyright piracy is something he and his colleagues do not have to care about. Piracy has become such a common phenomenon in China that the people around P-18 take it for granted to consume pirated IP products. However, due to the ineffective law enforcement, copyright piracy is left unchecked.

#### Example 7:

As a farmer, I don't know anything about copyright and the other terms. Even after hearing what you have explained to me, I still don't think they mean anything to me or any other farmers. Since ancient time, farmers have been sweating day and night in all seasons so as not to starve. We have been using the same old farming methods for thousands of years. For the past 20 years, we have been informed of more new farming technologies via various media. To get in more harvests, we are learning new ways of growing crops and borrowing or lending new seeds among neighbors all the time. There has been a long tradition to share what we have because it brings benefits to every family. (P-41)

P-41 is a high-school graduate and village mayor. According to the National Bureau of Statistics of China (2007), the number of rural population in China as of 2006 is 577 million, accounting for 56.1% of the total population of 1.3 billion. What the village mayor said certainly cannot

represent the opinions of all those Chinese in the rural area, but there are at least three points in his words that are arguably characteristic of most farmers in China today. First, most Chinese farmers are still not aware of copyright, fair use, and the public domain though they have been engaged in innovative farming and making contributions to the public domain all the time. Second, modern media occasionally keep some of them informed of new farming technologies, and most farmers are still in the habit of sharing what they have or what they know of among one another. Finally, when they are talking about contributions or benefits, many Chinese farmers think of families instead of individual family members.

To sum up, we may say that on the one hand, a small number of participants, who are lawyers, editors, and authors, offered very standard and complete understanding of the concepts under discussion. They defined the concepts with historical and professional insights, and they saw the clear connection between the adequate understanding of innovation, fair use, and the public domain and the appropriate protection of copyright. On the other hand, a large number of participants who are university teachers, college and high school students, as well as business people and farmers, revealed a very vague and incomplete understanding of the concepts under discussion. Many of them paid little attention to the concepts and they took copyright piracy for granted in their daily life.

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

As defined in Chapter I, copyright piracy refers to the illegal or unauthorized reproduction, distribution, and use of copyrighted materials including such literary and artistic works as books, papers, movies, music, songs, and paintings. It has also been discussed in Chapter II that people's interpretations of social events or phenomena are shaped by their past individual or group experiences. In the following section, I will give a detailed account of how

some of the participants are interpreting the copyright piracy phenomenon in China and the U.S.-China copyright disputes.

Example 1:

Schools and universities in China are not providing sufficient knowledge and training of copyright protection for their students. It is true that when students are writing their compositions, papers, or theses, teachers do tell them to avoid plagiarism and to give credit to the authors they quote. However, the students are more often than not confused about what plagiarism is. There is not a nation-wide network for the teachers to detect and respond to plagiarized assignments. It is oftentimes ironical to find that those well-written papers usually turn out to be the result of cut and paste while those with lots of mistakes and errors reveal some genuineness and originality....

In Hong Kong, there is a system of computer software to guarantee the genuineness of creativity. When we submit our papers, they will scan them, and enter our papers into a data base. If we have copied a large portion of others in our papers, the computer will immediately detect that. (P-12)

P-12 is a graduate student studying at a university in Hong Kong. She is familiar with the copyright protection situations in Mainland China, Hong Kong and the United States. From her experience as a student, she finds it necessary to implement the copyright law and academic discipline on a regular basis in the society and on campus. When students and citizens become used to the law and regulations, genuine creativity and innovation will be insured.

Example 2:

It is hard to say about the U.S. report about the copyright piracy level in China

because the standards are different in the two countries. What is copyright infringement to the Americans may be fair use to the Chinese like the 30% legal copying in textbook compiling and free downloading of movies, songs, and music. Thus, the 90% copyright infringement rate may be too high. Take books for example, there may be one out of ten books that is a pirated copy, not the other way round. What about the other aspects which are unique to the Chinese people? Everyone knows that China has a long history and rich culture. It has many unique sectors such as the manufacturing of rice paper for traditional Chinese painting and calligraphy and the high tech in its rocket industry. China is an agricultural country with 60% of its population (about 800 million) living in the rural area. These people possess myriad ways of creativity in growing crops, cooking food, and entertaining themselves. Most of such creation is unique only to the local people, which has evolved from generation to generation and shared among the local people. In our university press, each year we publish over 100 new books, and we have been doing so for about 20 years. During the 20 years, there are no more than 10 cases of copyright infringement involving lawsuits or official notification from or to us. To me, the awareness of copyright protection and copyright infringement is being strengthened among more and more Chinese, especially the intellectuals. (P-03)

P-03 is an editor in a university press. She is critical of the IIPA report that the copyright piracy rate is over 90% in all sectors in China, and she used figures in the publication of her own press as a convincing example. She pointed out that there is a difference in the standards of judging what copyright piracy is and what is not in the two countries. She also noted the fact that more

than 60% of the Chinese people live in the rural areas. The rural people possess lots of unique and creative ways in growing crops, cooking food, and entertaining themselves. To her, the standards of judgment are different in the United States and China; therefore, what is considered copyright infringement by the Americans may be treated as fair use by the Chinese. Anyway, she is hopeful that the copyright protection situation is changing for the better in China.

Example 3:

Talking about piracy in China, there should be a distinction. Those who are involved in the manufacturing, distribution, and selling of pirated IP products are certainly doing it consciously and intentionally. These people take the advantage of the consumers' mentality of purchasing cheap products and loopholes in the governments' administration to make lucrative profits. The government should crack down on the activities of these people heavily and constantly. Another group of people are the buyers and consumers. These people do equal harm to copyright protection because, without their existence and demands, copyright piracy would become distinct. These people often find self-comfort that they are buying and consuming pirated IP products because they cannot afford the legal versions and many other consumers are doing it too....

In any country, the law is made on the basis of the economic status. This does not mean that low economic development in a country will give green light to its nationals for a higher piracy rate. However, the establishment and enforcement of the law, including the copyright law are directly related to the economic situation of the country. For instance, Microsoft is selling its Windows system in China at the same price as it sells the product at the U.S. market. For an average Chinese



consumer, the price of one Window system equals half of his or her annual income.

Thus, just as the U.S. copyright standards are too high and meet various oppositions, the Microsoft products are so expensive for the ordinary Chinese consumers that they have to think of other ways. (P-42)

P-42 is an editor and lawyer of a big state-owned press. To start with, he was making a rational distinction between two types of copyright violators, with the manufacturers, distributors, and sellers grouped as the first type and the consumers as the second. To him, both types of people are doing harmful things to copyright protection, and both should be disciplined by law.

However, the law is not always enforced and the consumers find self-comfort by following the stream. His criticism of the U.S. copyright standards and his idea of appropriate law enforcement of IPR based on the economic status provide one more set of examples to the developmental perspective.

#### Example 4:

We have been bombarded with the news concerning the U.S.-China copyright disputes from various media. Last year I heard in Beijing that if any Chinese carrying pirated IP products like counterfeit jeans or cosmetics into France and Italy, he or she might be arrested and the pirated products will be confiscated. As a writer myself, I know the hard work behind the genuinely created or innovated piece of work. Therefore, I don't buy pirated IP products. However, unawares, I have consumed some IP products that are not legally manufactured or sold. You know high-tech has also been extensively used in the piracy industry. Not long ago, I read the news that the U.S. Trade Representative, Charlene Barshefsky, was

stopped in the U.S. customs because she had carried some counterfeit dolls after her WTO negotiation trip from Beijing. If Madam Barshefsky could have been trapped, let alone me or any other ordinary consumers....

The Chinese government is aware of this phenomenon. More importantly, it is aware that copying will not make itself competitive. There have been nationwide campaigns of awakening people's awareness of the significance of copyright protection and advocating innovation and creativity. That is a signal to demonstrate that the Chinese government is taking copyright infringement seriously. (P-08)

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

#### Example 5:

As a matter of fact, China is the biggest victim of the lack of copyright or IPR protection. For example, for thousands of years, there has been no legal protection of the inventions or innovations of individuals. Furthermore, there has been a tradition of sharing, copying, and abusing new techniques or inventions. When something is invented or innovated and when it can bring benefits, all the people nearby would copy and make it so much that the market is quickly overwhelmed by too many supplies. Consequently, some rare technological innovations are kept

in the hands of a few people, who just pass down their innovated skills or crafts from father to son and from son to grandson. When something unexpected happens to one son, the technique becomes extinct. This is why we read in history books about lots of wonder drugs in medicine, family crafts in manufacturing gold-ware or silver-ware, and metallurgical methods of forging weapons that have become extinct.

Even today, in the vast area of the rural area, over 60% of the Chinese population are still sharing, copying and ruining the agricultural techniques of one another. Each year, farmers seek new seeds and different ways of farming, but too much sharing and copying bring very little return to the inventors and innovators as well as those who are using the newly invented seeds and farming methods. Such vicious cycle has been going on for too long. The Chinese government and those Chinese with far vision have already realized this, and they have been attaching more and more importance to R&D for innovation in all walks of life. However, it still takes time for the national awareness to be awakened. (P-04)

As a lawyer from a medium-sized city near the rural area, P-04 talked about copyright piracy from quite a different point of view. Instead of listing the harm done to others due to copyright piracy in China, this lawyer exposed a series of historical and contemporary consequences as a result of copying among the Chinese themselves. Historically, lots of unique inventions have become extinct due to the lack of a working mechanism of protecting copyright or IPR. What is sad is that the *vicious cycle* of the uncontrolled copying among the farmers and the subsequent devaluation of their harvests still repeats itself year in and year out in the rural areas across China.

Thus, as the interview participants interpreted, some copyright piracy practices to the Americans may be fair use to the Chinese. The lack of copyright law enforcement facilitates copyright piracy, but the level of strictness in the law enforcement is determined by the present economic status. As consumers in China, copyright piracy is so common that it is hard not to follow the stream. The only hope hinges on the national shift from a manufacturing country to an innovative nation and the people's realization that they are victims of copyright infringement themselves for too long.

#### *Reasons for the Common Practice of Copyright Piracy*

As mentioned in Chapters I and II, copyright piracy is a complicated world phenomenon. The common practice of copyright piracy in China has become a hot issue for scholars from around the globe. In the literature review, I have discovered the legal and administrative, developmental and innovative, and historical and cultural perspectives. After analyzing the participants' major ideas concerning the reasons for the common practice of copyright piracy in China, I have found abundant pieces of evidence for each of the three perspectives. First, there are examples for the legal and administrative perspectives:

##### Example 1:

I teach law in the intercultural class. Any law is part of culture and culture specific. Culture and law go hand in hand. Sometimes, you have certain customs in your culture and you need laws to regulate people's behaviors, so you invent laws. Sometimes, you don't have certain customs but you need them, and you invent laws to change people's behaviors so as to have the expected custom. In terms of IPR, China is more of the latter case. When certain laws migrate to certain cultures, you not only migrate the laws and the regulations, but you are

migrating the whole set of culture, cultural rules and cultural conceptions as well. Any rules are culture specific and they require the cultural environment. In China, you have the IPR laws, but you don't have the cultural environment. The laws have become an empty system, and there is a mismatch between the two levels.... Laws are necessary but not enough. You need to address the basic point by changing people's perceptions and integrating copyright laws as part of the Chinese culture. (P-45)

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

Example 2:

Administratively, the enforcement of copyright law and regulations has been dispersed in three institutions of the Copyright Administrative Bureau, the Industrial and Commercial Administrative Bureau, and the Science and Technology Administrative Bureau at the provincial level. However, there are just four people in the Copyright Administrative Bureau in charge of the copyright issues of the whole province and, oftentimes, they have conflicts with the other bureaus due to some overlapping power and economic benefits. On the surface, there are four bureaus in charge of copyright protection and infringement, but none of them can really implement what they are responsible for. Consequently,

they will go out to do something only when they have received some reports from the copyright holders or consumers. (P-14)

As an editor and a lawyer, P-14 is an expert on the crux of the problem concerning the ineffective administrative enforcement of the copyright law. His comments on the functions of the three bureaus can be illustrated by a Chinese fable talking about one monk, two buckets; two monks, one bucket; and three monks, no bucket, which is similar to the English version of one boy, a boy; two boys, half a boy; and three boys, no boy. Too many people or too many institutions may not facilitate the job but rather hinder it. The lesson revealed in the fable exactly describes what is happening in the Chinese administrative enforcement of the copyright law.

Next, we may check the examples for the developmental and innovative perspectives:

Example 1:

To me a lot of people are consuming pirated IP products because they are really cheap and they really need those products in their daily life. Except for pornographic DVDs, most of the young people are buying pirated English movie DVDs to learn English and to have some fun. The same is true with books and magazines. With the advance of the Internet and the technological innovations in other types of media, free-downloading of papers, music, songs, and full-length movies has become easy and popular among both young and old in China. The law can hardly reach you unless you are involved in something that is undermining the rule of the government, which is under constant censorship. (P-09)

As an author, P-09 is familiar with the influence of technological advancement. People may use technology for different purposes like learning English or enjoying music or movies. The

problem is that, due to affordability, easy access, or little risk of being punished, most of the Chinese consumers are having a free ride at the expense of other's creative works.

Example 2:

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

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

Example 3:

The Chinese economy is mainly based on manufacturing of mostly labor-intensive products. There is limited innovation going on. Though China is

heading toward an innovative country with increasing investment in its R&D, the major part of the country is engaged in labor-intensive products for overseas markets. To do so, we just receive orders and designs from overseas with little innovation of our own. At this stage, people do not pay so much attention to copyright protection because they don't depend on innovation so much.

However, 10 to 20 years later when China is shifting from a manufacturing country toward an innovation-oriented nation, the production of new ideas, and research and development, then people will realize the importance of protecting IPR. When they become the creators and inventors, it is natural that they will protect their benefits from the innovations. In another word, lots of products are now made in China, but we do need more and more products invented in China.

(P-11)

As a researcher, P-11 made an analysis of the nature of the Chinese labor forces, which are still mainly engaged in the manufacturing of some repetitive, labor-intensive, and low-level products. Taking orders and receiving designs from overseas, the Chinese themselves are hardly doing anything innovative. However, the participant is hopeful that there will be more creators and innovators in China in the near future when the nature of the labor forces is oriented toward the direction of innovation. Finally, we can examine the examples for the historical and cultural perspectives

Example 1:

From ancient China, the Chinese people have been very innovative and creative, from the silk weaving to the world-famous Chinese cuisine, from the half underground and half above surface construction of houses 6,000 years ago in the



Banpo Village [a matriarchal clan communal village excavated in 1954 about 10 miles east of Xi'an City, Shaanxi Province, P.R. China] to the manned spaceship, not to speak of the four great ancient Chinese inventions of paper, movable type printing, gun powder, and the compass. However, innovation used to be regarded by the ruling class throughout the Chinese history as diabolic tricks and wicked craft and fame or honor went to the family or community, so individual or private ownership of inventions or innovation was not in practice. Thus, we may say that the Chinese have paid little attention to their own inventions in the history, and they tend to depend on one another by sharing and copying. (P-02)

P-02, the chief-editor of the provincial press in Xi'an, Shaanxi of China, elaborated on the innovative history of the Chinese nation on the one hand. On the other hand, he showed his disappointment at the traditional attitude of the ruling class toward innovations as *diabolic tricks and wicked craft*. Thus, lots of creative and innovative ideas must have been aborted due to such *royal* indifference and discouragement. Furthermore, the deprivation of individual fame and ownership nurtured dependence and facilitated the practice of sharing and copying.

#### Example 2:

Culturally, the Chinese have been greatly influenced by Confucianism, which advocates hierarchical human relationships and the conception of family and collective belonging. Strict hierarchical system emphasizes rule and obedience, which is unfavorable for the exploration of individual creativity by sticking to inherited traditions and requesting unconditional obedience. The concepts of family dependence and collective belonging also deprive individuals of possessing fame or honor and private ownership of inventions or innovations. In a

sense, the Chinese have the assumption that what belongs to us can be shared with you and what is yours may be offered to us as well. Consequently, the Chinese people take it for granted to take ideas and techniques or, in today's term, IPR from others. (P-04)

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

#### Example 3:

The Chinese inventors and innovators have the customary idea that their inventions and innovations should be shared with other people, the more the better. For example, some of the famous Chinese doctors like Zhang Zhongjing, Sun Simiao, and Li Shizhen were accustomed to spreading their prescriptions each time they had invented something new so as to eliminate diseases and sufferings from the patients. It would be meaningless if they had kept their prescriptions as secrets and seen tens upon thousands of people die.

Professor Yuan Longping, who has invented the high-yielding cross-breed rice, is another example in today's China. In the past, the best farmers in China could only produce 200 to 300 kilograms of rice in one mu (0.0667 hectares), but the Chinese farmers can now produce 700 to 800 kilograms of rice with Professor's Yuan's techniques. Instead of keeping his innovation a secret, Professor Yuan

promoted his techniques among the farmers free of charge, offering free training courses and even providing free accommodation for some far-away farmers so as to let them receive the farming techniques....

There are some cultural reasons behind the Chinese behaviors regarding copyright protection. It is the Confucian idea that “when one is poor and in difficulty, he should focus on his personal (moral) cultivation; however, when one prospers and is rich, he should help others around him.” For example, our past national leader, Deng Xiaoping launched the policy of reform and opening up to the outside world with his ideas of “Science is the first productivity,” “We need to build a type of socialism with Chinese characteristics,” and “No matter whether it is a white cat or black cat, it is a good cat so long it can catch a mouse.” When he did so, he was just thinking of bringing economic prosperity and social welfare to all the Chinese people. He did not apply for any copyrights or patents for his strategies of managing the state though his ideas have been published in books as the “Deng Xiaoping Theory.” This is like what Jesus Christ did when he was spreading the Christian gospel. He did not charge his listeners, nor did he apply for any copyrights. (P-06)

P-06 is an editor and a professor of Chinese history. His stories of a series of famous Chinese doctors in the past, the contemporary agricultural scientist, Professor Yuan Longping, and the former Chinese leader Deng Xiaoping reveal two common themes: selfless contribution and public sharing. These are influential household stories with real characters and genuine deeds. Most Chinese people show complete faith in these figures and their deeds. As a positive impact, the Chinese people will make more selfless contributions by following the above examples. As a

negative effect, the Chinese may continue taking from others without any sense of guilt.

Example 4:

It should be pointed out that the U.S. standards of copyright protection may be too stringent for most Chinese people. For example, there is an increasing demand of English textbooks today in China. When we publish the English textbooks, it is not practical for us to guarantee that the publication of every textbook meets the U.S. standards, and it will cost too much if we pay the original copyright holders on the basis of every English textbook we publish. Since we are publishing books about your language and culture, the Americans and other English-speaking nations should be generous enough not to charge us for using their materials. This is good for knowledge spreading, so the Americans should be friendly towards people like us in the developing countries.

In a sense, the English-speaking people, especially those in the United States, should feel happy about that because the Chinese, especially the young people, are learning their languages and cultures. In this way, they are being advertised and more Chinese begin to consume their products. Most importantly, many Chinese young people end up going abroad studying, working, and settling down there in foreign countries. If the United States intends to blame someone, it should blame itself in the first place. All the time, the Americans keep complaining that they have been losing billions of dollars each year due to copyright piracy in China and other developing countries. However, they keep silence about each year they have attracted millions of talented people to the United States from other parts of the world with their TOEFL and GRE examinations. (P-03)

To P-03, the U.S. copyright standards are too high for the Chinese. As an editor, she finds it impractical to check if there is copyright infringement in each of the English books published in her university press. Her extended comments on the demands and publication of the English materials in China and her sharp criticism of the English-speaking people, especially the Americans, may appear irrational and absurd. However, she is not alone in showing this kind of thinking in the face of copyright piracy.

In summary, data analysis has revealed three major types of reasons for the common practice of copyright piracy in China. First, the participants noted that the copyright legal system in China lacks a matching cultural environment, and the law enforcement power is too much dispersed into three institutions, which usually wait and choose to do something they feel profitable. Second, many consumers cannot afford legal versions of IP products, so they complain about the high prices and take self-comfort by following the stream to violate the copyright law. In addition, the majority of the labor forces in China are still engaged in low-level repetitive and labor-intensive manufacturing jobs, who are mostly taking orders and designs from overseas. Finally, the Chinese have been creative and innovative as a nation, but they face constant discouragement in this regard from the ruling classes who found it easier to control less innovative subjects. Furthermore, the strict hierarchical social system in China, which emphasizes inherited traditions, unchallengeable rule, and unconditional obedience, has nurtured a tradition of making contributions to the community, sharing with one another, and taking from others and the public without any sense of guilt. Most importantly, the Confucian tradition, which favors private or administrative mediation and disfavors court litigation, makes it hard for the government, which is strongly advocating social harmony nowadays, to genuinely enforce the copyright law. Although we have abundant pieces of evidence for each of the three

perspectives as discussed in the literature review, those that support the historical and cultural perspectives weigh much more heavily.

*Ideas about How to Awaken and Enhance the National Awareness of the Significance of Copyright Protection*

As described above, copyright piracy is really a common practice in China, and there are a variety of reasons for this social phenomenon. As one participant remarked at the end of the interview with him, “it is important to raise problems and find the reasons for them, but it is more important to seek solutions to the problems” (P-41). Therefore, in the following two sections, I will first describe the participants’ ideas about dealing with the issue of copyright piracy in China and then present their suggestions to resolve the U.S.-China copyright disputes. Here are some examples about the participants’ ideas:

Example 1:

In my opinion, to really solve the problem, the government has to go in full length and enforce the law. For instance, when the government wants to censor the Internet, they go all out and absolutely enforce the government’s policies so that the people know that the government has really put its teeth into it. The serious attitude of the government will help solve the problem to a great extent...

Certainly media publicity and education will also play their roles. In the United States, people have been trained since young age to give credit for anything borrowed. Although not all people do so because there is exception to everything, the logic of borrowing and giving credit works for most people. In China, as the majority of people still regard the Communist Party and the government officials as their “parental officials,” they may listen to what the government is advocating

in a serious manner. (P-01)

In Example 1, P-01 emphasized the importance of the governmental law enforcement, media publicity, and the role of education. He discussed a very important relationship between the Chinese government and the ordinary people. Historically, ordinary people regarded governmental magistrates as their *parental officials*, which means that they would listen to the officials as they listen to their parents. Today, this kind of relationship is not as strong as before, but it still exists. So long as the government is taking something seriously, the people will become alert and obey the rules.

Example 2:

We can deal with this issue with the two traditional ways: law enforcement and public education. Laws provide the basic guarantee, and education in variety of ways will familiarize the ordinary people with the laws. It is sad, however, that in China today the school education does not cover such education or the very essential education of how to become a qualified citizen. What is taught and emphasized is only preparation for examinations. Perhaps, emphasis should also be laid on the teaching of the proud history of the Chinese innovation and the appropriate ways of protecting the innovations of our own as well as others. Actually, before the Opium War in 1840, the Chinese were taking the lead in inventions and innovations. The four ancient inventions of paper, printing, gun powder, and the compass as well as the techniques of agriculture, textile, and metallurgy were spread far and wide. Similarly, many other nations have also selflessly shared their civilizations with the Chinese. This kind of extensive and free sharing of inventions has pushed forward the world civilizations dramatically

for many, many centuries. This does not mean that it is wrong today to protect IPR, but we need to keep a good balance of controlling certain IPR and saving others for the public domain, controlling certain IPR for some period of the time and then putting them into the public domain as well. After all, nothing can be created or innovated without the foundation of previous people. (P-03)

In Example 2, P-03 mentioned law enforcement and public education as the two traditional ways to awaken the people's awareness of the importance of copyright protection. Her critique of the education content and teaching methods in today's China is both sharp and to the point. Her suggestions, which emphasize the appropriate and balanced ways to promote innovation and protect copyright, represent the typical Confucian principle of the *golden mean*. According to the Confucian principle, the golden mean means that "the correct or right course of action is always some middle point between the two extremes of excess (too much) and deficiency (too little)" (Lugenbehl, 2000, p. 1).

Example 3:

I think both innovation and copyright protection should be taken equally seriously by the governments, educational institutions, and the ordinary people. To me, the Chinese government has really done some solid and effective jobs. For example, they have issued and revised all the necessary IPR laws and regulations. They have also established specialized IPR agencies in each province and autonomous region. They keep cracking down upon the illegal manufacturers, distributors, and sellers of counterfeit and pirated products.

However, we still need to educate people of the significance of copyright. We can start from schools and stop using pirated textbooks. We can teach the kids and



students to create their own ideas and respect the ideas of others from the very start. Then, we can continue training them to distinguish what is scholarly work and what is plagiarism on campus and in the society with a series of mechanisms of awards and penalties on a daily basis.

What we need to note at the same time is that copyright is a cultural specific concept and it is an imported foreign concept backed up by the Western cultures. Although Western cultural concepts including the concept of copyright protection have been introduced to China for several decades, they are still something very, very new or even odd to many Chinese people. Therefore, the Chinese government needs to be very patient with the ordinary consumers and gradually educate them about the importance and necessity of protecting copyright. They need also to continue with the nation-wide campaigns for innovation in all walks of life. When China has trained sufficient number of inventors and innovators and when China possesses quite a number of self-owned IPR, it is definitely sure that the Chinese copyright holders will actively and voluntarily employ the copyright law to protect their copyright. (P-14)

In Example 3, P-14 suggested that the governments, educational institutions, and the ordinary people all need to pay equal attention to both innovation and copyright protection. To the participant, the Chinese government has already done a lot of extraordinary jobs, and the educational institutions need to follow up to play their roles. In addition to the roles of the government and the educational institutions like the media and the schools, P-14 emphasized that innovators or copyright holders would take an active lead in fighting against copyright piracy so as to protect their own benefits.

As can be seen from the above, there are three major categories of ideas about how to awaken and enhance the national awareness of copyright protection in China. First, participants expect to see continued efforts of the Chinese government in establishing and completing a necessary and appropriate infrastructure of copyright protection and the protection of other components of IPR. More importantly, the government needs to reinforce the copyright law and regulations on a regular or daily basis. When the ordinary people find the government is really serious about copyright protection, they will gradually take it seriously as well. Second, participants hope for extensive public education from the media and other relevant institutions like the law enforcement bureaus and schools or universities. One crucial point here is that, by following the doctrine of the golden mean, the government needs to take an appropriate and balanced strategy to promote innovation and strengthen copyright protection. Finally, participants look forward to more emphasis on national innovation and the self-motivated driving force to protect copyright from domestic innovators as stake-holders.

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

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

##### Example 1:

According to what I know, the United States seems to criticize China for lots of things regarding China's ineffective enforcement of IPR laws and insufficient protection of its IP products. On the other hand, it seems that the United States is also trying to make China open its market bigger for the U.S. IP products. As for China, the government has been cooperating with the United States, but China has

too many priorities of attention on the government agenda, such as the three issues concerning agriculture, rural areas, and the farmers. Perhaps the United States is demanding too much without helping China genuinely.

I read some books about the U.S.-China relations. Since the 18<sup>th</sup> century, traders started making their journeys between the two lands. After that, American missionaries came to China to preach Christianity, and Chinese people went to the United States to build railways. Some missionaries helped China to establish schools and hospitals. During the 1930s, the Americans aided China in its resistance war against the Japanese invaders. Despite the historical incidents that the American Congress passed the Chinese Exclusion Act in 1882 to protect jobs for Americans when its economy was in decline and the two countries have been shut off for more than two decades after the Communists came into power in Mainland China in 1949, the Chinese have been grateful to the Americans for their genuine assistance in the history, and they are expecting more genuine help with regard to IPR protection. (P-13)

In Example 1, P-13 emphasized the historical importance of genuine help and cooperation between the peoples of China and the United States. With regard to the issue of copyright disputes, the participant suggested that the United States should consider the many urgent issues on the Chinese government agenda. Instead of high pressure, the United States may offer some sincere help, which will be appreciated and returned.

Example 2:

The IPR issue is closely related to a country's real situation, economic development, educational level, and cultural background. As it is not fair to

evaluate all the students with one exam paper, it is also irrational to assess the copyright protection level of all countries with one standard.

Copyright protection is an issue of the spiritual aspect. In China, most of the people have just solved their basic issues of living. (P-29)

The United States has been criticizing China for pirating its IP products, but there is a reality the Americans must face. Talking about copyright, even today only those who work in colleges and other relevant institutions in China have some knowledge of the concept. Most of the college students, ordinary citizens, and the farmers in the rural areas don't know much about it. Many of them, especially those in the rural areas, have not even heard of it. Without taking this reality into consideration, what the Americans require will certainly meet with oppositions of various forms. (P-41)

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

In Example 2, three participants offered their suggestions. P-29 clarified that most Chinese have

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

Example 3:

I am optimistic about settling the U.S.-China copyright disputes as well as the IPR disputes in the future. However, this takes time not only for China but also for the United States. As copyright is culturally sensitive, its survival and successful implementation depend on a match between the legal system and the cultural package. The Chinese history and culture have been resistant to the U.S.-imposed standard of copyright protection. In other words, it lacks the right cultural package. To further boost its economy, China has established its copyright law and IPR regime, but it needs time to educate its people to become aware of, understand, and support the copyright law. From my observation, China is making an increasingly greater effort toward this direction.

As for the United States, it has been emphasizing individualism and private property throughout its short history. Copyright protects the private ownership of individual intellectual property, so it fits in with the American culture very well. However, the United States is not perfect. It also needs time to readjust its strategies when introducing the IPR laws and the cultural values behind them to

foreign countries including China. It also needs time to get familiar with the local reality and take the local cultural contexts into consideration. To be successful in China, the United States must be holistic in its strategy. To this end, it should not just send the USTR to negotiate with the Chinese government. The USTR stands for the U. S. Trade Representative, and it really just represents the trade benefits of the country. Nevertheless, the copyright dispute is also a political issue involving power conflicts. China has a different political and social system. Perhaps, a more qualified organization should be the representative of the United States, which can represent the national benefits of the United States or, better, the interests of the international community. To me, the United States will move to this direction sooner or later. (P-45)

As a university professor of law, P-45 also expressed her optimism in resolving the U.S.-China copyright disputes in the future. However, both China and the United States need to do something. As for the Chinese, they need to nurture the cultural environment for the effective implementation of the copyright law. As for the Americans, they need to realize that the copyright dispute is not merely a trade issue, but it ought to be dealt with holistically by taking the cultural context into consideration.

In brief, the participants have offered three kinds of suggestions. First, they hope for a match between the copyright law and the necessary cultural environment in China. Otherwise, the copyright law is just an empty system. Here, the Americans need to be patient and offer some genuine help instead of mere pressure. After all, the Chinese government has too many other priorities on its agenda. Second, participants expect to see a readjustment in the U.S. strategies by taking the Chinese level of income and the level of copyright awareness into consideration

and by dealing with the U.S.-China copyright disputes holistically. Finally, participants wish real understanding and genuine cooperation between the two countries in their efforts to improve the IPR situations.

### Conclusion

In Chapter IV, I have described the demographic information of the 45 participants for the in-depth interviews. Among the 45 participants, 22 are males and 23 are females. Their age ranges from 19 to 62, their educational levels are from high school students to Ph.D. graduates, and they come from 14 different types of professions. The participants come from 25 provinces, autonomous regions, municipalities, and special administrative region, accounting for 73.53% of the total 34 administrative regions. Through a careful analysis of the interview transcriptions, the following five themes have emerged: 1) understanding of copyright, innovation, fair use, and the public domain; 2) interpretations of the copyright piracy phenomenon and the U.S.-China copyright disputes; 3) reasons for the common practice of copyright piracy; 4) ideas about how to awaken and enhance the national awareness of copyright protection; 5) suggestions for resolving the U.S.-China copyright disputes. For better understanding of the emerged themes, I have elaborated on each of them with sufficient and convincing proofs from the interview transcriptions. In the following chapter, I will further examine the emerged themes by referring back to the theoretical frameworks.

## CHAPTER V DISCUSSION

Based on the literature review in Chapter II, I have presented in Chapter III the theory of reasoned action, strategic and tactical resistance, and theory of hegemony as well as Hofstede's individualism-collectivism cultural dimension as the guiding theoretical frameworks for this study. In this chapter, I will discuss the theoretical frameworks and the research findings to examine how well they can help interpret and support each other and how much the present study can advance the theories.

### Theoretical Frameworks and the Research Findings

#### *Theory of Reasoned Action*

According to the theory of reasoned action (TRA), which was developed by Martin Fishbein and Icek Ajzen in 1970s, a person's voluntary behavior can be predicted by his or her attitude toward that behavior and how he or she thinks other people would view them if they performed the behavior. There are three components in TRA: attitude, subjective norm, and behavioral intention. Attitudes refer to the sum of beliefs about a particular behavior measured by evaluations of these beliefs, subjective norms are beliefs or perceptions of what others will think about the behavior, and behavioral intention means the probability that the behavior will be performed, consisting of both the attitudes and the subjective norms. Among the three components, attitude and subjective norms determine behavioral intentions, which further determine the likelihood of behaviors. In the following section, I will examine how much the theory of reasoned action can help explain the Chinese common practice of copyright piracy as a result of their cultural perceptions and attitude as summarized in the research findings, and how well the latter can support and develop the former.

*Attitude.* Attitude here means how the Chinese evaluate their behavior of copyright



piracy. For example:

The Chinese are innovative, but they pay little attention to protecting their innovation. There are two things here: collective awareness and public sharing. Traditionally, the Chinese have a strong sense of collective belonging and group dependence. This is why we used to have the so-called *big pot meals* in the 1950s and the *iron rice bowl* even today in some state-owned enterprises. As for public sharing, the Chinese people feel that it is quite all right to share and use others' things without getting permission. This is why most Chinese, even the educated people, don't think that piracy is wrong because copying is a way of learning to them. Instead of telling their children that it is wrong to buy a pirated DVD, they may show their kids where to go to get more of what they want. (P-28)

P-28 reemphasized the Chinese cultural norms of group belonging and dependence and public sharing and taking, with illustrations of the *big pot meals* in the past and the *iron rice bowl* today. To her, many Chinese, including the highly educated people, do not think that piracy is wrong. This is why there is even parental guidance to piracy consumption.

*Subjective norms.* Subjective norms in this study refer to the Chinese perceptions of what others will think about their behavior of copyright piracy. For instance:

Copyright piracy is a world phenomenon. At the beginning stage of its development, every country copies and emulates others. For example, the United States had copied from Britain and Germany for quite some time in its history before it became conscious to make self-owned innovations and create an identity of its own. In the American literature, copyright and emulation of the British literature did not stop until the publications of Washington Irving who was

regarded as the father of American literature for his novels of *Sleeping Hollow* and *Rip Van Winkle*, which were based on the American colonial culture. Japan underwent a similar process in its economic development.

The Chinese government is quite aware of this process, and this may explain why it is not taking the issue of copyright infringement so seriously sometimes. The ordinary consumers frequently complain about the high price of legal versions of copyrighted products. They buy or consume the pirated products and comfort themselves by saying that everyone else is doing the same, including the foreign tourists. (P-08)

In the above example, P-08 remarked that at the early stage of its development, almost every country, including the United States, copies from others. Aware of this process, both the Chinese government and the ordinary consumers take self-comfort in their piracy by arguing that other countries and other people have done or are doing the same. Therefore, piracy is a *world phenomenon* to P-08.

*Behavioral intention.* Behavioral intention here means the probability of the Chinese copyright piracy based on their attitudes and the subjective norms. As described in Chapter I, copyright piracy is almost 90% in the past decade in China, according to the IIPA annual reports, the Chinese Institute of Publishing Science provided a survey figure of 45.5% piracy rate for the year 2005, and almost all the interview participants of this study reported that they had bought or at least used pirated IP products. For example:

In China pirated IP products are everywhere. Few people can resist the temptation. I know that in Xiangyang Market in Shanghai, the Silk Street in Beijing, and many other places in China, you can really find lots of pirated IP

products on sale in the daylight. For example, the pirated movie DVDs are so cheap and popular that few people want to buy the legal versions and almost nobody is going to the cinemas today. The quality of the pirated products is also improving with the help of technology. A lot of Chinese people are buying these products because they want to follow the fashion, and such products can satisfy their vanity. Many people from Taiwan fly to Shenzhen simply to buy the pirated products of famous brands. (P-10)

From the remarks of P-10, we know that most Chinese people buy and consume pirated IP products. First, the low price, functional quality, and excessive availability have already been very tempting. Then, most of them do not think that it is wrong to consume illegal versions of copyrighted products. Most importantly, many other people are doing the same, and the legal punishment seldom reaches them.

The theory of reasoned action has, therefore, found sufficient support from the participants' transcriptions in the first theme of the Chinese understanding of copyright, innovation, fair use, and the public domain, and the second theme of the Chinese interpretations of the copyright piracy phenomenon and the U.S.-China copyright disputes. As mentioned earlier, among the three components TRA, attitude and subjective norms determine behavioral intentions, which further determine the likelihood of behavior. The theory is supported by the fact that most of, if not all, Chinese tend to consume pirated copyright products. The reason is that many of them, including the highly educated ones, take copyright piracy for granted, and seek self-comfort for their behavior. They argue that people in other countries are doing the same, so these people will not criticize them too much.

According to Sheppard, Hartwick, and Warshaw (1988) as mentioned in the literature

review, previous literature has mainly applied TRA to the study of the consumers' behaviors such as taking a diet pill, applying for a consumer loan, or shopping for a new car. TRA has also been used in the study of the consumers' behavioral intentions when they are faced with a choice among stores, products, brands, models, sizes, and colors. However, few studies have applied TRA to the study of the consumers' illegal behavior and behavioral intentions of buying and consuming pirated copyright products. In this sense, we can say that, on the one hand, TRA has helped explain the rampant copyright piracy phenomenon in China. On the other hand, the present study has expanded the scope of TRA application.

Having discussed the application of TRA, I will discuss the theoretical framework of strategic and tactical resistance and the relevant illustrations in the research findings in the following section.

### *Strategic and Tactical Resistance*

As discussed in Chapter III, the concepts of strategy and tactics come from de Certeau and the war of position and war of maneuver from Gramsci (de Certeau, 1984, pp. 35-47). In this study, I used *strategy* and *war of position* to mean the Chinese resistance from the governments or corporate institutions and *tactics* and *war of maneuver* to refer to the resistance from the ordinary Chinese consumers in the U.S.-China copyright disputes. Strategically, the Chinese government, as discussed earlier, strongly supported the open-source movement launched by Linux in 1991 with the intention to challenge the cultural hegemony of Microsoft and build its own post-PC industries, which might be safe in terms of national security. There are also interview illustrations mainly from the third theme of the reasons for the common practice of copyright piracy in China:

Example 1:

At this developing stage of its economy, I don't think the Chinese government has been taking its copyright laws seriously enough. In a sense, it is opening one eye and closing the other to some of the copyright infringement that is going on. Copying is a cheap way of development. Copyright piracy has also created a chain of industries, lessening the employment burden and bringing lucrative revenue to the local governments. This is why the central government is not dealing with copyright piracy as seriously as it is implementing the policy of *one couple, one child*. This is also why the local governments do not want to kill the golden goose for the time being. (P-08)

As most of the scholars of the developmental and innovative perspectives (Chen & Puttitanun, 2005; Grossman, 2004; Lai, 1998; Liao, 2006; Montgomery & Fitzgerald, 2006) remarked, at the developing stage of their economies, developing countries are unwilling to tighten the enforcement of their IPR rules. China is no exception. P-08 vividly commented on the Chinese governments' strategies as *shutting one eye and closing the other*, and unwillingness to *kill the golden goose* in the practice of their local protectionism.

#### Example 2:

To join WTO and develop its economy, China has made compromises in front of the developed countries. Some of the IPR policies may be something new to the Chinese and some standards somewhat too high. To me, the strategies China has been taking to deal with the U.S.-China copyright disputes are selectively cooperative and tactically resistant. By selectively cooperative, I mean that the Chinese government has been selecting those areas of priority for development and sincerely cooperate with the United States in such areas as establishing the

IPR regime and issuing the IPR laws. By tactically resistant, I mean that the Chinese government has been showy in occasionally cracking down upon copyright infringement facilities and punishing the relevant criminals. In a sense, it is closing one eye and opening the other to the big picture of the IPR situation in China. (P-44)

As a university teacher from Taiwan, P-44 had a sharp eye and gave an insightful depiction of the major strategies of the Chinese government in terms of IPR protection. To the participant, the Chinese government has been *selectively cooperative and tactically resistant* when it is dealing with the U.S.-China copyright disputes. For instance, China has established its IPR regime mainly to gain a ticket to accede WTO. Once joining WTO, China has been closing one eye and opening the other in the implementation of its IPR laws and regulations. Although the participant is somewhat absolute in her opinions, her observation is mostly accurate and her comments are basically to the point.

Tactically, the Chinese consumers have adopted each and every one of the following resistance tactics as described by Sum (2003): 1) Demanding *fair* prices for software through anti-IPR campaigns; 2) Passing on to friends or colleagues copies of licensed software; 3) Swapping master disks with others; 4) Exchanging information on access to new unlicensed software; 5) Uploading and downloading unlicensed software from bulletin boards or the Internet; 6) Frequent switching of third-party storage sites for illicit software; 7) Copying a handful of licensed software products to all other computers in an organization; 8) Transferring licensed software from office to home computers; and 9) Obtaining unlicensed software from shopping malls, night markets, and mobile hawker stalls (p. 384). Here are a couple of examples:

Example 1:

When I was a student, most of my textbooks were photocopied from cover to cover without any authorized permission. Besides, the audio-visual materials were also copied freely from class to class and from student to student. Now I buy fewer pirated books or tapes because they are available on CDs or DVDs. So sometimes I may buy some pirated CDs with English songs or famous speeches and DVDs of Hollywood movies. Certainly, as most Chinese, I have installed most of my computer programs with pirated versions. They are not only cheap but also functional. Sometimes, I also share what I have with my friends. (P-07)

P-07 is a university teacher now. He started consuming pirated copyright products of books and audio-visual materials as a student. Today, he is still buying pirated CDs, DVDs, and computer software programs. To him, the pirated copyright products are cheap, functional, and useful as a way of socializing and living.

#### Example 2:

The Chinese are involved in copyright piracy mostly in an unconscious and unintentional way. Even if they do know, it doesn't matter much because there is no absolute law that stops them from doing so. They feel pretty safe. The sellers of pirated copyright products are playing a kind of hide-and-seek game with the government and the representatives of the foreign copyright holders. Usually these business people sell legal and illegal products at the same time. When the supervisors come, they hide the pirated products. When they are caught, they may be forced to shut down their shops today, but tomorrow they are open again like nothing has happened. Those street peddlers may pass on the message that the government officials are coming, and they just hide themselves from the

supervisors. As soon as the supervisors are away, they come out again to continue selling their pirated IP products.

The government may have policies or laws, but the enforcement of the laws is not effective. It seems that it is very inconsistent because one day you may see bulldozers crashing the pirated copyright products, and they put it on the news when there is foreign pressure. However, the next day, the same business is resumed. I think the approach to the enforcement could be changed and then the enforcement may be improved. (P-01)

P-01 is a university teacher from Beijing, the capital of China. He hit the point when he described the hide-and-seek games between the businesses and peddlers involved in pirated IP products and the government officials and representatives of copyright holders. There are three messages here. First, some copyright violators are engaged in the piracy business intentionally while many others, especially consumers, are doing so in an unconscious way. Second, both copyright law violators and enforcement personnel in China are not taking copyright law enforcement seriously when they are playing the hide-and-seek games. Finally, only when it is necessary, will the government make news of bulldozers crashing pirated IP products.

To relate the reality with the theory, it is clear that the theoretical framework of strategic and tactical resistance has also found sufficient supporting demonstrations from the research findings. At the strategic level, the Chinese central government has established the copyright law, but it is not enforcing it on a regular basis and has cooperated with the United States only in those areas of priority for development. At the tactical level, the governments at various levels are not consistent in their management of the copyright piracy situation by *closing one eye and opening another*. They are using *bulldozers crashing the pirated copyright products* to make



news for show. They are also playing a hide-and-seek game between the sellers and consumers of pirated copyright products.

To sum up, scholars (Sum, 2003; Endeshaw, 2005, Halbert, 2005) have applied the theoretical framework of strategic and tactical resistance in their studies of various forms of opposition in the developing countries including China to the GII-IPR-TRIPS complex. The present study has reaffirmed the applicability of the theoretical framework of strategic and tactical resistance in the exploration and interpretation of the strategies and tactics of the Chinese government and ordinary consumers in the context of the U.S.-China copyright disputes. In the following section, I will examine the theory of hegemony with relevant illustrations in the research findings.

### *Hegemony*

Based on Gramsci's notion of hegemony, Robert Cox (1981) put his thought of hegemony in the global context and stated that successive dominant powers in the international system have shaped a world order that suits their interests as a result of their coercive capabilities and broad consent even among those disadvantaged. Cox's thought or frame of action comprises ideas, material capabilities, and institutionalization. Among the five emerged themes, the second and fifth themes provide sufficient supporting evidence to Cox's frame of action and reveal some noteworthy differences from Cox's thought at the same time.

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

Example 1:

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

Example 2:

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

From the above two examples, we can see in the eyes of the participants that it is the shared idea or notion of the United States to obtain bigger access into the Chinese market and get better protection of its IP products in China. P-02 pointed out that the United States is *aggressive*, and P-42 remarked that the United States is assessing the Chinese reality with an American standard.

China and the United States are two countries “with many differences in the understanding and protection of copyright” (P-42), so “it is absurd for the Americans to demand that the Chinese should observe the U.S. law” (P-02). With plenty of trade partners to choose for its attractive market, China has been making compromises with reservations. In other words, China has been playing the role of a consented, disadvantaged country under the U.S. pressure in order to join WTO and boost its economy.

*Material capabilities.* Material capabilities here refer to the technological and organizational capabilities and natural resources with which the United States is investing in the implementation of its IPR policy. In this regard, only the United States has had the resources to review in detail the adequacy and effectiveness of its IPR protection in over 70 countries in 2000, approximately 80 in 2001, 72 in 2002, 74 in 2003, 85 in 2004, 90 in 2005, 87 in 2006, and 79 in 2007, according to the USTR Special 301 Reports from 2000 to 2007. As for its review of China, the United States kept putting China on the Priority Watch List and categorizing China under Section 306 from 2000 to 2007. Although real economic sanctions and trade wars have not broken out between China and the United States during the IPR disputes in the past decades, there have been about half a dozen rounds of negotiations between the two countries since the 1980s, involving large quantities of financial expenses and manpower each time. However, the IPR situations in China as reported by IIPA and the USTR have remained almost the same with an average piracy rate of 90% (see Table 2-1). Some participants have also noted the U.S. hegemonic practice due to its position and wealth. For instance:

There already exists a big trade deficit between the United States and China, and the U.S. side has been responding to this very critically. However, to my understanding, the main reasons for the trade deficit are: first, China has been

exporting more but cheap products to the United States, but the States is doing just the opposite; second, due to ideological and political reasons, the United States doesn't want to sell some of the high-tech products China needs. (P-06)

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

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

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

As an editor and lawyer, P-42 is familiar with the U.S. role in the establishment of rules for international organizations like TRIPS. To him, the rules and regulations imposed by the United States and other developed nations into these international organizations are hegemonic in nature. Then, we may also recall how the USTR collects data for its annual special 301 reports. Through an institutionalized network composed of the American embassies and consulates, the Central Intelligence Agency, and IPR associations, the USTR obtains its information concerning the protection of the U.S. IPR and market access for U.S. nationals depending on IP products in

foreign countries. The IPR associations, including the IIPA, Software Publishers Association, International Trademark Association, and International Anti-Counterfeiting Coalition, accumulate their information by seeking reports from the relevant U.S. industries in countries like China. In order to attract expected U.S. governmental attention, these industries oftentimes exaggerate figures in their reports. As Yu (2002) noted, the reported losses in IP in China “are estimated under the assumption that the Chinese would be able to afford and would be willing to purchase the pirated goods at the retail price set by Western manufacturers” (p. 11). Recently, the United States Government Accountability Office (GAO) (2008) analyzed the USTR China compliance reports and stated that, the reports “lack any summary analysis about the number, scope, and disposition of reported issues that would facilitate understanding of developments in China’s trade compliance...” (p. 1). Commenting on the USTR reports, Shao (2006) also remarked that, “the loud voice of the U.S. interests...is to a great extent ‘imperialistic’ and ‘unfair’” (p. 5).

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

IPR associations in the administration of its IPR policies.

However, one critical difference between the theory and the research findings lies in the fact that China, as a disadvantaged country in the U.S.-dominated IPR world order, has given its consent with reservations by strategically cooperating with the United States in some areas and tactically opposing the United States in other areas during the U.S.-China IPR disputes. Thus, in a theoretical sense, the present study has advanced the theory of hegemony by redefining the key term *consent* as consent with reservations or strategic consent and tactical resistance. In a practical sense, if the United States expects full consent from China, it needs to readjust its IPR policies in China and genuinely facilitate China to establish not only its IPR regime but also the matched and coherent cultural environment.

Having discussed the research findings by referring back to the three major theoretical frameworks, I will now turn to Hofstede's individualism-collectivism cultural dimension for further theoretical confirmation of the research findings. Briefly, individualism characterizes a society in which everyone is expected to look after him/herself and his/her immediate family only while collectivism characterizes a society in which people from birth onward are integrated into cohesive in-groups beyond the family for lifetime protection with unquestionable loyalty. To find out how much Hofstede's individualism-collectivism cultural dimension can enlighten us of the research findings, we may examine the following examples:

Example 1:

There are also ideological differences between the two countries. While the Americans emphasize individualism and private ownership of property, the Chinese people have been collectively bound since they are born, first the family, then the community, still then the schools and institutions, until finally the whole

nation or the country. Throughout one's life, he or she is a member of the group, and his or her responsibility is to bring honor to the family and make contributions to the collective. In the Chinese history, even one's life was at the discrete of his or her parents, officials, or the emperor in the past. Individuals, no matter how much they desire personal fame or private belongings, usually try to obtain those in the name of their families or institutions. Thus, copyright protection is a new concept and different norm for most of the Chinese people. (P-02)

In Example 1, P-02 pointed out the very differences between the Americans and the Chinese, with the former enjoying individualism and private ownership while the latter born into collectivism and collective ownership. Collectivism may provide individuals with a sense of belonging and reliable dependence, but what collectivism advocates, such as sharing, family honor, collective contribution, and public ownership, are all at odds with copyright, which is mostly a type of private ownership.

#### Example 2:

In the West, individualism is emphasized and private property is legally protected. In China, collectivism is dominant in the Chinese culture and there is almost nothing that really belongs to the individuals for thousands of years. Just recently, China has issued its first law of private property. Before this law, private property was a very vague concept. To me, very rampant copyright piracy in China results from the negative elements of collectivism such as extreme irresponsibility and selfishness. In feudal China, collectivism was represented mainly in the form of families or clans, which were powerful enough to suppress any type of individual

desires. Under the system of socialist planned economy, private property was deprived and individual desires were oriented to the pursuit of family honor and collective reputation. Since the end of the 1970s, China is gradually turning into a market economy. Although the central government is making great efforts to emphasize both spiritual civilization and material civilization at the same time, material desires, desires for more money and more comfort in life at all costs have become the overwhelming driving force of the nation. Thus, copyright piracy is like teeming mushrooms after a spring rain while copyright protection can hardly find a spot to sow its seed. (P-13)

P-13 is extremely critical of collectivism in the Chinese society throughout the history. To her, the Chinese did have individualistic desires, but they were suppressed or overwhelmed in the extreme expansion of collectivism in the long, long past. However, the implementation of the market economy in China since the late 1970s set free the uncontrollable desires of so many individuals that piracy or theft of others' copyrighted works broke out like a plague.

#### Example 3:

Here I want to mention the role of media and the Chinese awareness of face value. You know the Chinese people, especially the scholars, pay the utmost attention to their reputation. When you know that someone is going to use the media such as newspapers, TV, and the Internet to expose your copyright infringement behavior, you may do anything to prevent this from happening. For instance, a professor in our university compiled a textbook together with several other authors and published the book in our press. The book sells very well because it is a required textbook for a basic course in many universities. However,



one of the compilers copied part of another book by an author from Nanjing. The original author wrote a letter to the president and Party secretary of our university with severe terms and threat of suing us in a law court. I was put in charge of this case, and I wanted the plaintiff to show us his evidence. However, before I could do anything, the university president, Party secretary, and the professor in our university all made great efforts to prevent a lawsuit. They negotiated with the original author from Nanjing and repaid for his so-called loss of 80,000 RMB. The head of our press and the professor went to Nanjing and apologized to the original author, who finally said that “since you come from such a long way to apologize to me, I’ll just charge you 50,000 RMB.” (P-03)

In Example 3, P-03 has shared with us a very interesting and typical copyright infringement case. There are several messages we can take from this case. First, the accusers usually reserve it as the last option to sue the accused in a law court because they find that private or administrative processes are, oftentimes, more efficient and because they themselves may be found guilty in the court. In the case of textbook compiling, 30% copying was considered legal according to the Chinese copyright law before 2001. The so-called original author from Nanjing must have copied something from others as well. Second, as copying is relatively common in China, few people would sue you or charge you that much if you show them enough respect. For instance, because the accused went to apologize in person, the accuser asked them to pay 50,000 RMB instead of the former 80,000 RMB. Finally, both individuals and institutions pay great attention to their reputation and social harmony. Thus, they make use of the media to gain fame and try to avoid the media for fear of losing face.

From the above, it is obvious that Hofstede’s individualism-collectivism cultural

dimension does provide a theoretical lens, through which we can understand better the general features of the two cultures under discussion. First of all, the theory reveals that such Chinese collectivist concepts as sharing and public ownership are at odds with copyright, which is basically a type of private ownership introduced from the West. Second, because they emphasize face value, social harmony, and *li* (rule by ethics) instead of *fa* (rule by law), the Chinese tend to turn to private or administrative procedures rather than legal processes to resolve copyright infringement cases. This is another unfavorable cultural factor for the effective implementation of the copyright law.

What is new here is that there can be a shift from extreme collectivism to extreme individualism under certain circumstances. The present study discovers that individualistic desires, which have been suppressed in the extreme expansion of collectivism in the Chinese history, are set free today under the system of market economy. Free market economy, which had been developing in the West for hundreds of years, was formally introduced into P.R. China since the late 1970s. Although it is in conflict with feudalism in the Chinese history and socialism in present day China, market economy has awakened or liberated individual desires in China. Due to the lack of regular law enforcement, individualism has developed into some kind of personal pursuit of individual or material desires even at the risk of violating the law. This provides another chief reason for why copyright piracy is so rampant in Mainland China.

### Conclusion

In this chapter, I have examined the theoretical frameworks with the relevant interview illustrations in the research findings. First, the theory of reasoned action shows that the majority of Chinese in present-day China have the tendency to consume pirated copyright products. They take copyright piracy for granted, and they seek self-comfort for their behavior by arguing that

others were or are copyright pirates as well and will understand and forgive them.

Second, both strategic and tactical resistance has been observed in China. Strategically, the Chinese government does not enforce the established copyright law regularly because of a hidden agenda, and it is willing to cooperate with the United States only in those areas of priority for development. Tactically, the governments at various levels try to keep the status quo by closing one eye and opening the other in their IPR administration. The majority of the Chinese buy or consume pirated copyright products via any means available.

Third, the theory of hegemony reveals that the United States just cares about its own IPR interests in China with little intention of genuine assistance. This may partially explain the ineffectiveness of the U.S. IPR policies in China. No matter how much manpower and resources the United States expends and how intricate its relevant human institution is, the piracy rate in China keeps swinging from 80.75% to 90.10%, and the U.S. trade losses due to piracy in China range from \$978.7 million to \$2,975.2 million from 1995 to 2007 as reported by the IIPA (see Table 1-2).

Finally, Hofstede's individualism-collectivism cultural dimension helps explain the rampant copyright piracy in China. Briefly, the three main factors for the piracy phenomenon are: (1) some Chinese collectivistic concepts such as sharing and public ownership, (2) the Chinese disfavor of adopting legal measures to deal with copyright infringement cases, and (3) the extreme pursuit of individual or material desires at the risk of violating the law. Among the above theoretical frameworks, the present study has broadened the scope of application of the theory of reasoned action, reaffirmed the applicability of strategic and tactical resistance, redefined the key term of *consent* in the theory of hegemony, and discovered a possible shift from extreme collectivism to extreme individualism under certain circumstances.

## CHAPTER VI CONCLUSION

The purpose of this study was to explore the Chinese cultural perceptions of copyright and the Chinese historical understanding and social practice of innovation, fair use, and the public domain so as to provide a grass-roots approach to studying the recurring U.S-China copyright disputes. To this end, I have raised two research questions:

RQ1: What are the Chinese cultural perceptions of copyright, innovation, fair use, and the public domain in relation to copyright protection and copyright infringement?

RQ2: What common themes and implications can we draw from the Chinese cultural perceptions of copyright protection and copyright infringement in relation to the recurring U.S.-China copyright disputes?

In Chapter VI, I will provide answers to the research questions by summarizing the research findings and highlighting their implications. Then, I will address the limitations of the present project and, finally, make suggestions for future research.

### Summary of the Research Findings

Guided by the theoretical frameworks of the theory of reasoned action, strategic and tactical resistance, and hegemony as well as Hofstede's individualism-collectivism cultural dimension, I designed a semi-structured, in-depth interview outline with a dozen questions and interviewed 45 copyright holders and ordinary consumers in China for data collection. Of the participants, 22 are males and 23 are females with an age range from 19 to 62 and educational level from high school students to Ph.D. graduates. They are engaged in 14 different types of professions, and they come from 25 provinces, autonomous regions, municipalities, and special administrative region, accounting for 73.53% of the total 34 administrative regions in China. After a month-long careful analysis of the single-lined, 90-page record of interview

transcriptions with another coder, the following five themes have emerged: (I) understanding of copyright, innovation, fair use, and the public domain; (II) interpretations of the copyright piracy phenomenon and the U.S.-China copyright disputes; (III) reasons for the common practice of copyright piracy; (IV) ideas about how to awaken and enhance the national awareness of copyright protection; (V) suggestions for resolving the U.S.-China copyright disputes.

As for the first theme, this study finds that just a small number of the participants, who are lawyers, editors, and authors, offered complete and insightful understanding of the concepts under discussion while most of the participants who are university teachers, college and high school students, as well as business people and farmers, demonstrated very vague understanding of the concerned concepts. The significance of this research finding is three-fold as follows.

First, effective enforcement of the copyright law in China must have its basic condition. The reality of the basic condition is that only a small number of elites are familiar with copyright protection and willing to resist copyright piracy. Most of the Chinese people, especially the 577 million farmers, who account for 56.1% of the total population of 1.3 billion, know very little of what copyright is and are mostly unaware of the distinction between copyrighted and pirated IP products. Second, the Chinese government needs to launch extensive campaigns to acquaint most of its nationals with the essentials of the copyright law. More importantly, it should treat the results of the campaigns as the pre-condition for its recent cross-country drive to build China into an innovative nation. Third, the reality provides the very necessity for the USTR to readjust its IPR policies in China.

With regard to the second theme, data analysis reveals that copyright piracy is so common in China that it is hard not to follow the stream. The hope for resolving the U.S.-China copyright disputes hinges on China's shift from a manufacturing country to an innovative nation.

As for the temptation to purchase or consume pirated IP products, anyone who had the experience of traveling along commercial streets in China like Xiangyang Street in Shanghai or Silk Street in Beijing would make a similar confession. They might have been either attracted by the quality and low price of the pirated products or simply taken the pirated products for the legal copyrighted ones.

As for the hope for resolving the U.S.-China copyright disputes, there are three aspects for elaboration. First, throughout the interviews for data collection, there was one clear and consistent voice that innovation is the soul of a nation and copying will ruin a country in the long run. The Chinese government has already realized this and taken some solid steps to gear the country to the direction of innovation. Second, to build China into an innovative country, there has been a nation-wide drive to make sure that the creative power of the people will be fully motivated, the innovative awareness of the whole nation will be greatly enhanced, and China will possess the substantial ownership of its IPR.

Finally, there have been investment and signs of progress in the national drive for innovation. Among all the nations in the world today, China's R&D spending of \$136 billion and possession of 926,000 researchers are only next to the U.S. corresponding figures of \$330 and 1.53 million (Belew, 2006). The leading position of China in the rocket technology has already successfully sent manned-spaceships into outer space. The splendid display of originality, creativity, and innovation in the Beijing Olympic Games Opening Ceremony in August 2008 further indicated that China's shift from a manufacturing country to an innovative nation is possible and probably already on its way. More innovations as a result of the national strategy and the country's shift will ultimately lead China protecting IPR more effectively.

The third theme indicates three major reasons for the common practice of copyright

piracy in China. First, the copyright legal system in China lacks a matching cultural environment, and the law enforcement power is too much dispersed into three institutions, which usually wait and choose to do something they feel profitable. Second, most Chinese are engaged in labor-intensive manufacturing jobs with a low income, so affordability really calls for adjusted prices of legal copyright products at the Chinese market. Finally, at odds with the concept of copyright are the Chinese traditional behaviors of making contributions to the community, sharing with one another, and taking from others and the public without any sense of guilt and the Confucian pursuit of social harmony by disfavoring criminal litigation of copyright infringement.

The three types of reasons for the rampant copyright piracy in China represent the three categories of perspectives as discussed in the literature review; however, illustrations from the interview transcriptions that support the historical and cultural perspectives weigh much more heavily. Therefore, emphasis should be laid on the exploration of historical and cultural factors for the copyright piracy in China, and prioritized measures ought to be taken to address these historical and cultural reasons in the U.S.-China copyright disputes. For instance, in establishing a matching and coherent cultural environment for its copyright legal system, the Chinese side can address the historical and cultural issues by reinforcing the copyright laws and regulations on a regular basis with the help of school education and media publicity. The U.S. side can also be more helpful and less aggressive in implementing its IPR policies in China by reflecting upon its own copyright infringement history from 1790 to 1891 and by really understanding the country it is dealing with. In this way, both sides may sit down around the negotiation table and communicate with each other on equal footing instead of carrying on the never-ending disputes due to systematic misunderstanding.

The fourth theme provides three types of ideas to awaken and enhance the national awareness of copyright protection in China. First, the Chinese government should be very serious about copyright piracy, and then the ordinary people will also take copyright protection seriously. It is true that the Central Government of China is now taking an increasingly solemn attitude towards copyright protection. However, not all the governments at the local levels are following up, and the copyright law enforcement really needs to be carried out on a regular and daily basis so as to keep any type of Xiangyang Street or Silk Street out of the market for good.

Second, the Chinese people should be educated about copyright and IPR via media, schools, and law enforcement. Right now, there are just some occasional campaigns to arouse the public awareness of copyright protection. What is really needed is the institutionalized mechanism which sees that copyright protection is a necessary part of school and public education, and copyright infringement is an escapable target of media exposure and law enforcement.

Finally, emphasis on national innovation can bring about the self-motivated driving force to protect copyright from domestic innovators as stake-holders. At the moment, China is implementing its national drive for innovation, and each year the number of individual and corporate applications for copyrighted innovations is on the rise. However, in terms of its total population, the number of domestic innovators who can invest in their innovations and become stake-holders is still extremely very small. Thus, these domestic innovators need special protection and encouragement from the above two suggested measures so as to awaken and enhance the Chinese national awareness of copyright protection.

For the last theme, participants proposed three kinds of suggestions to resolve the U.S.-China copyright disputes: (1) maximum patience and genuine help with the Chinese creation of



the cultural environment for the enforcement of the copyright law; (2) flexible prices of copyright products at the Chinese market; and (3) following the golden mean to promote innovation and protect copyright. The U.S.-China copyright disputes have been existent for almost three decades with few achievements in terms of the staggering copyright piracy rate in China and continuous U.S. trade losses due to the piracy. This fact alone indicates that, instead of continuing to transplant its one-size-fits-all IPR policies in an aggressive way for short-term benefits, the USTR needs to tackle the crux of the problem by patiently helping the Chinese with their establishment of the essential cultural environment for the smooth and effective operation of its IPR system.

As mentioned earlier, analysis of the Chinese participants' interviews reveals that the computers of most of, if not all, the governmental offices in China have now been installed with legal version software programs. This is a typical example of providing the Chinese officials with the necessary time to become aware of, understand, and support copyright protection. With more patient and genuine assistance as well as price flexibility from the U.S. side, more institutions and individuals in China will become familiar with the necessity to protect copyright and gradually abandon the ideas and behaviors of copyright piracy. The last theme of the research finding also indicates that, to obtain long-term benefits and to achieve a win-win victory in the U.S.-China copyright disputes, both the United States and China need to learn from each other in their common efforts to maintain the balance of protecting the copyright holders' benefits and ensuring the general public's interests.

#### Implications of the Research Findings

The research findings of the present study demonstrate both theoretical and practical implications. Theoretically, the present study has broadened the scope of application of the

theory of reasoned action, reaffirmed the applicability of strategic and tactical resistance, redefined the key term of *consent* in the theory of hegemony, and discovered a possible shift from extreme collectivism to extreme individualism under certain circumstances. First, the theory of reasoned action has been mostly applied to the study of the consumers' legal behaviors or behavioral intentions. The present study has expanded the application scope of TRA to the study of the consumers' illegal behavior and behavioral intentions of buying and consuming pirated copyright products.

Second, earlier scholars have applied the theoretical framework of strategic and tactical resistance in their studies of Southern oppositions to the Northern GII-IPR-TRIPS complex. This study has reaffirmed the applicability of this theoretical framework in the exploration and interpretation of the strategies and tactics of the Chinese government and ordinary consumers over the issue of the recurring U.S.-China copyright disputes.

Third, the essence of the theory of hegemony is that the dominant power maintains its rule in the international system via broad consent even among those disadvantaged. As a disadvantaged country in the U.S.-dominated IPR world order, China has given its consent with reservations by strategically cooperating with the United States in some areas and tactically opposing the United States in other areas during the U.S.-China IPR disputes. Thus, the present study has advanced the theory of hegemony by redefining the key term *consent* as consent with reservations or strategic consent and tactical resistance.

Finally, this study discovers that there can be a shift from extreme collectivism to extreme individualism under certain circumstances. Individualistic desires, which have been suppressed in the extreme expansion of collectivism in the Chinese history, are set free today under the system of market economy. Once set free, individualism has developed into an

uncontrollable pursuit of material comfort at the risk of violating the law. This discovery adds another stroke of critique to the individualism-collectivism dichotomy and provides another reason for why copyright piracy is so rampant in China.

Practically, the implications of the research findings of the present study are five-fold. First, the analysis of the participants' interview transcriptions has revealed that both the Chinese government and the USTR ought to readjust their strategies in resolving the U.S.-China copyright disputes. As for China, the strategic cooperation and tactical resistance may obtain some temporary benefits for the country and the consumers. However, both the Chinese government and the general public ought to realize that it is creativity and innovation, instead of copying or emulation, that bring long-term benefits to a nation.

As the trade representative of the United States, the USTR has been almost fruitless in the past decades when trying to resolve the U.S.-China copyright disputes in terms of the staggering piracy level in China and the U.S. trade losses due to the piracy. Yu (2001) used words like "a pattern of ineffectiveness and futility" (p. 134) to describe the work result of the USTR. The United States Government Accountability Office (2008) also stated that, the "USTR's narrative reports make it difficult to understand the relative level of progress China made in each trade area in a given year," and "to ascertain specific changes or trends" (p. 2). The USTR, therefore, needs to reconsider its hegemonic, coercive measures in the past. It also needs to reconsider its recent plans to expand its investigations of the IPR situations in China from the national to the provincial and to even lower levels. Instead of collecting and reporting shocking figures concerning the piracy rate in China and U.S. trade losses and offering measures from the U.S. perspective every year, the USTR may greatly improve its job efficiency by obtaining more information to better understand the country and the nation it is dealing with and to genuinely

help China with what it really needs in copyright protection.

A critical point here is that China is willing and determined to become an innovative nation with strategic and long-term guidelines and continuous and increasing investment in its R&D and training of researchers. However, it still needs financial and technical support for the protection of IPR in some high-tech areas such as the cyberspace and the public education of IPR among all its nationals in a systematic and regular manner. Unless it does not want to assist China and see the country developing too fast due to certain ideological differences, the United States can really help itself and China by hitting the nail on the head in dealing with the IPR disputes between the two countries.

Second, this study has found that the U.S.-China copyright disputes are not a simple trade issue. Without considering the Chinese historical background, cultural environment, and economic development, the USTR may issue its annual special 301 reports with the similar piracy rate in China and U.S. trade losses due to the piracy in the coming five or ten years. Just as Yu (2003) noted, there are four misconceptions to regard copyright piracy as 1) merely as a cultural problem, 2) primarily as a development issue, 3) simply as a past phenomenon for technologically advanced countries, and 4) just as a necessary byproduct of the authoritarian rule (p. 130). This is why the USTR has proven itself disqualified for resolving the U.S.-China copyright disputes because it mainly represents the interests of those U.S. businesses in China. To satisfactorily settle the U.S.-China copyright disputes today and similar IPR disputes between the United States and other countries tomorrow, either the USTR must take a holistic approach or its job should be taken over by a more qualified agency that represents the national interests of the United States.

Third, the research findings have also indicated that effective copyright law enforcement

in China still needs a matched and coherent cultural environment. The copyright law has been issued and revised, but it needs to be understood and reinforced consistently. To this end, there should be administrative seriousness, permanent mechanism of rewarding the innovators and punishing the copyright law violators, and the consumers' awareness and observation of the relevant legal regulations.

It is true that there is breaking news now and then in which bulldozers are crashing pirated CDs or DVDs and even stores engaged in selling illegal IP products. Occasionally, campaigns of public education for raising people's awareness of the significance of copyright protection can be observed on the streets in big cities. These activities leave people the impression that the Chinese government is performing and showing to the outside world that it is doing something about copyright piracy. To take copyright protection seriously, the Chinese governments at various levels and the ordinary people of all walks of life ought to make up for the training of copyright law observation right now via media publicity, school education, and law enforcement on a daily basis.

Fourth, during the negotiations of the U.S.-China copyright disputes, the United States is a more influential participant and thus has more responsibilities to make the appropriate IPR policies. In the past decades, the USTR has been playing with this clout in a coercive manner and provoked growing distrust and retaliation. Consequently, the Chinese feel that the United States is just aggressively trying to gain greater access into its market and forcing the Chinese government to better protect the U.S. IPR in China. In addition, the Chinese find the USTR indifferent to the Chinese consumption reality and the Chinese government's need to deal with both the traditional forms of hardcopy pirating and modern types of soft-lifting in cyberspace. Furthermore, more and more Chinese are also beginning to doubt whether the U.S. IPR policy

“strikes the right balance between the protection of the copyright holders’ benefits and the promotion of the free flow of information and the preservation of the public domain in the interest of potential future creators” (Yu, 2002, p. 47).

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

Finally, the present study has also demonstrated that both China and the United States ought to sincerely learn from each other and genuinely cooperate in their efforts to resolve the U.S.-China copyright disputes. On the one hand, China has been innovative but very weak in the protection of both its own innovations and those of others. In the implementation of the copyright law, China needs to seek assistance and learn from the United States in at least two areas. First, China needs to learn from the United States to change most of its nationals’ perception of copyright protection. Second, the United States may assist China technically in safeguarding copyright in the cyberspace.

On the other hand, the United States has been prioritizing the protection of the copyright holders’ benefits by prolonging the term of protection from the author’s lifetime plus 14 years to the author’s lifetime plus 70 years and by passing laws like the Digital Rights Management and the Digital Millennium Copyright Act (1998). There has been sharp critique of this imbalance

among American scholars (Ginsburg, 1999; Lunney, 2001; Nimmer, 2000; Samuelson, 1999; Zimmerman, 2001). Other scholars (Halbert, 2005; Liao, 2006; Shao, 2006; Sum, 2003; Xue, 2005; Yu, 2003) also criticized the United States for its hegemonic intentions to expand its own economic interests and global power in the establishment of the international IPR regime.

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

#### Study Limitations

This study has a series of strengths as listed in the section of rationale in Chapter I. For instance, it is the first research effort taken to approach the U.S.-China copyright disputes by collecting data from in-depth interviews of the Chinese copyright holders and ordinary consumers of their cultural perceptions of copyright, innovation, fair use, and the public domain. In this way, I intend to make the grass-roots voices heard and enrich the body of knowledge on copyright disputes between China as the largest developing country and the United States as the biggest developed country. However, there are three major limitations to this study, which I need to caution the readers in their interpretations of the research findings and conclusions of this study.

First, although this study aims at providing a grass-roots approach to the study of the U.S.-China copyright disputes, I have just focused my research on the Chinese side. I have not

interviewed the U.S. copyright holders and ordinary consumers about their cultural perceptions of the topics under discussion and, especially, not heard their comments on the copyright piracy phenomenon in China. The main reason for this one-side investigation is that this study just deals with copyright piracy by exploring the Chinese grass-roots voices. Nevertheless, a comparative study may present a fuller picture of the recurring copyright disputes between China and the United States.

Second, in this intercultural case study of the U.S.-China copyright disputes for a research project in communication studies, I am a layman in terms of copyright law and the IPR legal system. I have described some legal terms and concepts simply based on book knowledge. Furthermore, my own voice as a researcher may sound somewhat weak as I have been trying to give voice to the Chinese grass-roots copyright holders and ordinary consumers. Thus, the scope of authorial interpretation and assessment and the communication issue at stake need to be strengthened and further explored.

Third, this study is mainly based on the in-depth interviews of the participants, and it has singled out the USTR as an obstacle for resolving the U.S.-China copyright disputes. However, more efforts should have been made to expand the scope of interviews for identifying more concretely the different ways, in which different participants are connected to the issues under study and the various reasons for their different connections. Furthermore, this study has just touched upon the cultural insensitivity and belligerent attitudes of the USTR while the profound and complex reasons that back up its hegemonic role have not been explored.

#### Suggestions for Future Research

Before I make suggestions for future research, I would like to share part of the issued call for a conference hosted by the Berkeley Center for New Media and the History of Art



Department at the University of California on November 7 and 8, 2008. The conference call goes:

In the United States copyright is now automatic, and registration with the Copyright Office is no longer required. Recent additions to copyright law such as the Digital Rights Management and the Digital Millennium Copyright Act (1998) have further extended copyright protection by criminalizing the creation and dissemination of devices, technologies, and services that assist in circumventing copy protection, even when such circumventions do not violate copyright and remain within the shrinking purview of ‘fair use.’ Growing legal debates over file sharing have ensured that copyright violation and fair use are firmly entrenched popular topics in the media. These developments speak to the urgency of readdressing the ever-expanding reach of copyright and the limits it subsequently places on our right to critique, comment upon, and parody our culture. This conference aims to offer such a reassessment, and will also reconsider the history of appropriation in the arts and begin a cross-disciplinary discussion about the myriad repercussions of its increasing pervasiveness as a practice for the future.

(V. S. Ekstrand, personal communication, July 15, 2008)

Different scholars will detect different messages or topics for future research from the above conference call. To me, the statement, “Growing legal debates over file sharing have ensured that copyright violation and fair use are firmly entrenched popular topics in the media” exactly echo the very message I intend to send in the present project. To focus the message within the context of the U.S.-China copyright or IPR disputes, I have the following three suggestions to make:

First, both China and the United States are big countries with 1.3 billion and 300 million

people respectively. To make the research findings concerning the U.S.-China copyright disputes more trustworthy and generalizable, perhaps a comparative study or project with mixed methods of both qualitative and quantitative approaches will be more appropriate. When either of the above proposals is undertaken, emphasis can be laid on identifying the different ways and motivations, in and for which the participants are involved in terms of copyright piracy. Meanwhile, future studies can also focus on the profound and complex reasons and forces that back up the hegemonic role and work results of the USTR.

Second, with the further implementation of the universal IPR standards from TRIPS and the U.S. requirements from the annual USTR Special 301 Reports, copyright disputes between the United States and China and IPR disputes between the North and the South will continue to be hot topics of research. While scholars have been exploring the related topics from their own perspectives of expertise, one can never emphasize enough the significance of the historical and cultural perspectives as well as the holistic approach. From what I have drawn from the present study, I suggest that more efforts be made in future studies on the systematic misunderstanding between the United States and China and between the North and South over a variety of issues including IPR by further exploring the relevant historical, cultural, or multiple factors.

Finally, when longer time for field study is possible, more efforts should be made to establish rapport with the Chinese copyright administrators and the manufacturers, distributors, as well as sellers of illegal copyright products so as to make their voices heard as well. After all, copyright piracy in China is the focus of research. However, from my personal experience, the researcher must have a network of relations or connections to get introduced to the right potential participants. Even so, the researcher needs to be patient enough to make contacts with the participants two or three times. When initial trust is established, the interview can begin, and the

interviewer still needs to probe in a variety of ways to obtain what he or she really wants from the in-depth interviews.

### Conclusion

In Chapter VI, I have provided answers to the two research questions by summarizing the research findings and highlighting the implications of the research findings. While the first two themes have supplied answers to the first research question, the last three themes have answered the second research question. Altogether, the five themes as the research findings of the present study contain both reasons for the copyright piracy phenomenon in China and possible solutions to the issue of the U.S.-China copyright disputes. To finish this chapter and whole research project, I have also listed three limitations to this project and made three suggestions for further study.

The nugget of the present study can be summarized in the following statements. The U.S.-China copyright or IPR disputes have been going on for almost three decades with few commendable achievements. A systematic misunderstanding has been created between the two sides because the USTR has been culturally insensitive and habitually belligerent and the Chinese side has been strategically cooperative and tactically resistant. As research findings, five themes have emerged from the in-depth interviews of the Chinese grass-roots copyright holders and ordinary consumers, which provide the basic reasons for the rampant copyright piracy phenomenon in China and the possible solutions to the U.S.-China copyright disputes. Four theoretical frameworks have proved useful in interpreting the meanings of the research findings and their scope and applicability have been either expanded or reconfirmed. Hope for improved IPR situation hinges on China's transfer from a manufacturing country to an innovative nation, with promising signs.

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# APPENDIX A INFORMED CONSENT LETTER AND

## HUMAN SUBJECT RESEARCH BOARD APPROVAL I

Appendix A  
INFORMED CONSENT LETTER

April 30, 2007

Dear \_\_\_\_\_

**BGSU**  
school of communication  
communication studies

I am a doctoral student in the Communication Studies Program at Bowling Green State University conducting research for my dissertation. The topic of my project is Chinese Cultural Perceptions of Innovation, Fair Use, and the Public Domain: An Alternative Approach to Studying U.S.-China Copyright Disputes. Without obligation you are invited to participate in an in-depth interview, which will take approximately 30 to 50 minutes. I will inform you if there are any risks associated with your participation and how I will minimize the risks.

The main purpose of this study is to identify the Chinese cultural perceptions of copyright in general and innovation, fair use, and the public domain in particular in order to shed light on the recurring U.S.-China copyright disputes.

There are several benefits of this study to you and the field of intellectual property rights at large. First, the study will benefit you through the sharing of information about copyright protection in China, the United States, and other countries and enhance, through you, the community and national awareness of the significance of protecting both foreign and Chinese intellectual property. Second, the research results will contribute to the study of intellectual property rights by revealing the cultural perceptions of the Chinese people both at the front and at the grassroots that guide their attitudes and behaviors towards the issue of copyright protection. Finally, the findings may provide references for settling IPR disputes between China and the United States and, hopefully, between the developed and developing countries.

By participating in the interview, you are indicating your consent and allow me to tape-record your opinions and comments for the purpose of this study. All information you provide for this project will be confidential and will not be seen by anyone else except me. All the recordings and transcripts will be kept in a locked place which only I have access to for the mere purpose of this study. Upon completion of the study, I will keep recordings and the transcripts for half a year for reference and finally destroy them myself. You are also informed that you will be quoted in my dissertation in pseudonym. You can choose not to answer specific questions that I will ask you. Your decision to participate in this project is totally voluntary. You are free to withdraw from this study at any time. Your decision to participate or not to participate in the interview will have no impact on your relationship to the ministries, institutions, or businesses to which you belong. Thank you very much for your help on this project.

If you have any questions about the interview or requirements of this project, please contact me at (419)-372-2369 (dexint@bgsu.edu) or my academic advisor, Dr. Oliver Boyd-Barrett, at (419)-372-6018 (oboydb@bgsu.edu). If you have any questions about the conduct of this study or your rights as a research participant, you may contact the Chair of Bowling Green State University's Human Subject Review Board at (419)-372-7716 (hsrb@bgsu.edu). If you are interested in receiving a summary of the research results, you can contact me by e-mail, and I will forward them to you.

Sincerely,

Dexin Tian

BGSU HSRB - APPROVED FOR USE  
ID # H07027567  
EFFECTIVE 9-2-07  
EXPIRES 4-26-08

302 West Hall • Bowling Green State University • Bowling Green, OH 43403 USA  
Phone: 419-372-8349 • Fax: 419-372-0202

## APPENDIX B INFORMED CONSENT LETTER AND HUMAN SUBJECT RESEARCH BOARD APPROVAL II

Appendix A  
INFORMED CONSENT LETTER

April 3, 2008

Dear \_\_\_\_\_



I am a doctoral student in the Communication Studies Program at Bowling Green State University conducting research for my dissertation. The topic of my project is Chinese Cultural Perceptions of Innovation, Fair Use, and the Public Domain: An Alternative Approach to Studying U.S.-China Copyright Disputes. Without obligation you are invited to participate in an in-depth interview, which will take approximately 30 to 50 minutes. I will inform you if there are any risks associated with your participation and how I will minimize the risks.

The main purpose of this study is to identify the Chinese cultural perceptions of copyright in general and innovation, fair use, and the public domain in particular in order to shed light on the recurring U.S.-China copyright disputes.

There are several benefits of this study to you and the field of intellectual property rights at large. First, the study will benefit you through the sharing of information about copyright protection in China, the United States, and other countries and enhance, through you, the community and national awareness of the significance of protecting both foreign and Chinese intellectual property. Second, the research results will contribute to the study of intellectual property rights by revealing the cultural perceptions of the Chinese people both at the front and at the grassroots that guide their attitudes and behaviors towards the issue of copyright protection. Finally, the findings may provide references for settling IPR disputes between China and the United States and, hopefully, between the developed and developing countries.

By participating in the interview, you are indicating your consent and allow me to tape-record your opinions and comments for the purpose of this study. All information you provide for this project will be confidential and will not be seen by anyone else except me. All the recordings and transcripts will be kept in a locked place which only I have access to for the mere purpose of this study. Upon completion of the study, I will keep recordings and the transcripts for half a year for reference and finally destroy them myself. You are also informed that you will be quoted in my dissertation in pseudonym. You can choose not to answer specific questions that I will ask you. Your decision to participate in this project is totally voluntary. You are free to withdraw from this study at any time. Your decision to participate or not to participate in the interview will have no impact on your relationship to the ministries, institutions, or businesses to which you belong. Thank you very much for your help on this project.

If you have any questions about the interview or requirements of this project, please contact me at (419)-372-2369 (dexint@bgsu.edu) or my academic advisor, Dr. Oliver Boyd-Barrett, at (419)-372-6018 (oboaydb@bgsu.edu). If you have any questions about the conduct of this study or your rights as a research participant, you may contact the Chair of Bowling Green State University's Human Subject Review Board at (419)-372-7716 (hsrb@bgsu.edu).

If you are interested in receiving a summary of the research results, you can contact me by e-mail, and I will forward them to you.

Sincerely,

*Dexin Tian*

Dexin Tian

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EFFECTIVE 4-27-08  
EXPIRES 4-26-09

APPENDIX C SEMI-STRUCTURED IN-DEPTH INTERVIEW GUIDE  
(ENGLISH VERSION)

Moderator: Dexin Tian

Date: April 11, 2007

Opening Comments:

Hello. I am a doctoral student in the Communication Studies Program at Bowling Green State University conducting research for my dissertation. The topic of my project is Chinese Cultural Perceptions of Innovation, Fair Use, and the Public Domain: An Alternative Approach to Studying U.S.-China Copyright Disputes. Without obligation you are invited to participate in this interview, which will take about 30 to 50 minutes. I will inform you if there are any risks associated with your participation and how I will minimize the risks. Your decision to participate or not to participate in the interview will have no impact on your relationship to the ministries, institutions, or businesses to which you belong. I will use all the information from our interview confidentially and without any identifying information. All recordings and transcripts will be kept in a safe place accessible only to the researcher and will be destroyed by the researcher himself in the end. As for the interview, I will specifically ask you about your knowledge concerning copyright, copyright infringement and protection in China, and the U.S.-China copyright disputes. I will focus on inquiring about your perceptions on innovation, fair use, and the public domain in relation to the U.S.-China copyright disputes (When necessary, definitions of copyright, innovation, fair use, and the public domain will be provided). Should any part of this study be submitted for conference presentation or publication, pseudonyms will be used to protect your identity. You have the right to ask me any questions concerning the study and you can withdraw your consent to the participation in the study at any time without penalty. If any

problems or concerns arise during the course of the study, you may contact my academic advisor, Dr. Oliver Boyd-Barrett at (419)-372-6018 (ooydb@bgsu.edu) or the Chair of Bowling Green State University's Human Subject Review Board at (419)-372-7716 (hsrb@bgsu.edu).

#### Opening Questions:

1. Could you tell me a little bit about your background such as education, profession, and marital status?
2. Are you aware of the U.S-China copyright disputes? Have you got any anecdotes concerning this debate or personal experiences with regard to copyright infringement and protection?

#### Introductory Questions:

3. As you know, intellectual property rights comprise patents, trademarks, and copyright. Patents protect technological inventions, trademarks protect such distinctive features as brands, symbols, and shapes, etc., that distinguish one type of product or service from the other, and copyright protects creations in the fields of literature and the arts, such as books, paintings, music, films, and software. Today, we'll focus on copyright. What is your idea of copyright in China and other parts of the world?
4. Closely related to the protection of copyright, there are three important concepts of innovation, fair use, and the public domain. Could you say a few words about your understanding of these concepts? (When necessary, explanations will be provided to probe answers from the participants.)
5. Could you describe the situation of some people around you with regard to their knowledge of these concepts?

#### Transitional Questions:

6. Do you see any connections between the knowledge of innovation, fair use, and the public

domain with the reality of copyright protection in China?

7. How do you comment on the report by the International Intellectual Property Alliance that “the IPR [intellectual property rights] infringement levels have been around 90% in all sectors in China?”

Key Questions:

8. Do you think there is any conscious or unconscious and intentional or unintentional resistance in China toward the U.S. and other foreign pressure with regard to copyright protection in China?
9. How do you comment on the strategies China has been taking to deal with the U.S.-China copyright disputes?
10. How do you understand innovation, innovation in the Chinese history and innovation in China today?
11. Have you observed any changes in the public domain in China due to the influence of the Internet?
12. How can the national awareness of the significance of copyright protection be awakened and enhanced in your opinion?
13. Do you see any promising prospects of settling the U.S.-China copyright disputes in the near future?

Ending Question:

14. Is there anything else you would like to comment on in relation to our discussion topics today?

Ending Comments:

Thank you so much for all your input! I sincerely wish you all the best in your work and life!



## APPENDIX D SEMI-STRUCTURED IN-DEPTH INTERVIEW GUIDE

## (CHINESE VERSION)

## 访谈提纲

## 一、开场白：

您好！我叫田德新，

现在美国俄亥俄鲍林格林州立大学攻读博士学位。我拟撰写博士论文，题目为“中国人对创新、合理使用、以及公共领域的传统看法：探索解决中美版权纠纷的基本途径”。为此，我想对您进行大约30至50分钟的访谈。您可以自愿参加。访谈对您若产生任何危险性，我会提前告知您，

并告诉您我将如何把危险降低到最低程度。您决定参与与否，不会影响您和您单位的关系。我将对所有访谈内容严格保密，不公开任何与您身份有关的信息。录音和文字稿将加锁保存，并最终由我亲自销毁。访谈内容涉及您对版权、侵权、版权保护，以及中美版权纠纷的了解。我将主要询问您对与版权相关的创新、合理使用、以及公共领域等的看法。如果我日后在学术会议或发表文章中引用您的谈话内容，我将一律使用假名，以保护您的身份。您可以决定回答某些问题或不回答某些问题。您可以在任何时间退出访谈。

如果您对该研究有任何问题，可以和我的导师或我就读大学的相关部门联系。他们的联系方式是：Oliver Boyd-Barrett博士，419-372-6018

或oboydb@bgsu.edu。大学主管研究的部门的联系方式是：419-372-7716或hsrb@bgsu.edu。

## 二、访谈问题：

1. 能否请您简述您的教育，职业和家庭背景？
2. 您是否了解有关中美版权纠纷事宜？有没有关于侵权和版权保护方面的故事或经历？

3. 如您所知，知识产权包含专利、商标和版权。专利保护技术发明，商标保护品牌，和与其他产品与服务有别的符号和图案。版权对诸如书刊、绘画、音乐、以及软件等文学艺术作品的创作进行保护。我们今天主要谈论版权。能否请您谈谈您对中国或世界其他地方版权方面的看法？
4. 有三个与版权保护相关的概念，即创新、合理使用、以及公共领域。您对这些概念的看法是什么？
5. 能否谈谈您周围人士对这些概念的了解与看法？
6. 您认为对创新、合理使用、以及公共领域的了解与中国的版权保护现状是否存在直接关系？
7. 国际知识产权协会报道中国知识产权侵权程度高达百分之九十。您对此有什么评论？
8. 就美国和其他国家对中国在知识产权保护方面施加的压力，您是否认为中国人在有意识或下意识、有意或无意地抵制？
9. 您对中国在中美版权纠纷中采取的策术怎么看？
10. 您怎么看中国人在历史上和当今的创造和发明？
11. 国际互联网的出现是否对中国的公共领域状况有所改变？
12. 您认为如何唤醒和提高中国人对版权保护的民族意识？
13. 您认为中美版权纠纷前景如何？

### 三、结束语：

14. 就我们今天的谈话，您还有什么补充？

非常感谢您的参与！祝您生活工作顺利！

## APPENDIX E SAMPLE TRANSCRIPTION OF AN IN-DEPTH INTERVIEW

P-14:

Q1: As a lawyer specializing in copyright trade and an editor of a big university press, could you give me a couple of representative cases involving copyright infringement in your work?

A: In the 1990s, our press had a copyright infringement case with the Higher Education Press. We published a dictionary of scientific English which sold very well. However, the Higher Education Press copied our dictionary and published many copies as well. When we sued it in the law court, we won the case. They paid us, so far as I remember, several hundred thousand RMB.

Three years ago, we also infringed upon the copyright of another press as well. One of our books used the major part of the cover of a book published by another press. When their chief-editor made a phone call to us about this issue, we did not pay any attention to it at first. Then they sued us in the law court and the court sent us a letter. At this point, our chief editor wrote a long letter of sincere apology, promising that we would trace back as many copies of that book from the market as possible and that we would not republish that book any more. Even if we do it, we will change the cover of the book completely. In this way, we have settled the case without going to the law court.

Actually, a lot of infringement cases occur in the publication of textbooks, which have been based heavily on the knowledge of previous people. Furthermore, the exercises following the texts are very much similar so much so that it is really hard to tell who is copying whom. Thus, many Chinese authors won't sue you when you copy or emulate their works so long you let them know it before hand.

Q2: What is the annual percentage of the infringement among all the books we publish in a year?

A: I think a little bit over 0. Every year we may encounter one or two cases, but we usually solve them by ourselves before going to the law court. Actually, this is the case with almost every publishing house because, you know, the Chinese like to settle things in an unofficial way.

Q3: What about cases with foreigners, such as copyright disputes between China and the United States?

A: I can give you an example of the New Oriental School. The School is specialized in training people to take TOEFL, GRE, and GMAT, etc. It used to steal and use the original tests of the Educational Testing Service (ETS). As a result of a lawsuit, the New Oriental School paid ETS several hundred million RMB. Now all the TOEFL tests the School and many other schools are using are legal versions.

Another example is that computers are sold now with legal versions of software, especially computers sold to governmental institutions. However, it is still hard to say about computers sold to individuals.

Q4: As part of the intellectual property rights, copyright is a component. The other two components are trademark and patent, but today we'll just focus on copyright. Could you tell me about your understanding of copyright?

A: In China, copyright is the right of authors. Simply put, once you publish a paper or a book, you enjoy rights of publication, naming the author or authors, revision, completeness, and transformation into other forms like audio-visual products, plays, or movies as well as copying. Usually, the author will authorize the publishing house to publish as many copies as the market demands.

Q5: Talking about copyright, what are the exact rights of the publishing houses and those of the authors?

A: The rights of the authors are mentioned above. Publishing houses only have the right of publishing or making copies of the authors' works.

Q6: So far we have discussed the content of copyright in China. What about the purposes of copyright?

A: The purposes of copyright are to spread knowledge, prosper the culture and our nation, and stimulate more creative works by the authors as well as some of the readers.

Q7: Related to copyright, there are three important concepts of innovation, fair use, and the public domain? How do you understand the three concepts and their relation to copyright protection?

A: The Copyright law in China promulgates that copyrighted literary or artistic works will go into the public domain 50 years after the death of the authors. This is one way that copyright protection can promote innovation. Another way to promote innovation is that the benefits of the authors or copyright holders are protected by the copyright law so that they have incentives to produce more innovative products.

Fair use means that you can use the works of others for the purposes of teaching, research, or news report without getting their permissions. The public domain, as mentioned earlier, refers to the intellectual property products that are not or no longer protected by the copyright law.

Q8: Do you see a direct connection between the adequate understanding and observation of innovation, fair use, and the public domain with the proper protection of copyright?

A: Certainly yes, but the ordinary people hardly see this connection. For instance, when you write a book, perhaps you just concentrate on the writing and proper use of others' works so as to have your book published. Although you are doing something innovative, you may not be very clear that what you do has some direct connections with innovation or the public domain.

Q9: How do you comment on the annual reports of IIPA and the USTR that copyright piracy rate is over 90% in all sectors in China?

A: I don't know how they have got this figure. They may be true before China made its IPR laws, including the copyright law in the 1980s or 1990s. However, now more and more educated people observe the copyright law and the copyright infringement rate is decreasing rapidly year by year.

Q10: What about copyright piracy among the ordinary consumers?

A: As for the ordinary consumers, they may not have sufficient awareness of protecting copyright. First, copyright did not exist in China for thousands of years. Second, some copyrighted products are really too expensive. Third, counterfeit and pirated IP products are easily available at very low costs without too many risks of penalty. Because of these reasons, copyright piracy is still very common among the ordinary consumers.

Q11: Do you see any conscious and intentional resistance among the ordinary consumers against the U.S. or foreign pressure in terms of copyright protection?

A: As consumers, they feel that they bear no responsibilities for their purchasing behaviors. In Hong Kong, this may be true, but in Mainland China, both the seller and the buyer of pirated IP products should shoulder legal responsibilities. On the other hand, the counterfeit products of some famous brands are so cheap that consumers purchase them without too much thinking or awareness of violating the law or anything. I myself have bought a Swiss dagger for just 60 RMB not long ago for my son. Although it is a counterfeited product, it is very cheap and the quality is OK. However, some people are still consuming pirated IP products even if they know it is wrong, but most consumers don't think they bear any responsibilities.

Q12: What do you think of the measures and strategies of the Chinese government in dealing

with the U.S.-China copyright disputes in terms of establishing and completing the laws and regulations, administrating and enforcing the laws and regulations, and educating the Chinese people to cooperate in their efforts?

A: To me, the Chinese government has really done some solid and effective jobs. For example, we have issued and revised all the necessary laws and regulations. We have established specialized IPR agencies in each province and autonomous regions. We are also cracking down upon the illegal manufacturers, distributors, and sellers of counterfeiters and pirates. However, copyright is a cultural specific concept and it is an imported foreign concept backed up by the Western cultures. Although Western cultural concepts including the concept of copyright protection have been introduced to China for several decades, they are still something very, very new or even odd to many Chinese people. Therefore, the Chinese government needs to be very patient with the ordinary consumers and gradually educate them about the importance and necessity of protecting copyright.

Administratively, the enforcement of copyright law and regulations has been dispersed among more than three institutions of the Copyright Administrative Bureau, the Industrial and Commercial Administrative Bureau, and the Science and Technology Administrative Bureau at the provincial level. However, there are just four people in the Copyright Administrative Bureau in charge of the copyright issues of the whole province and, oftentimes, they have conflicts with the other two bureaus due to some overlapping power and economic benefits. On the surface, there are three bureaus in charge of copyright protection and infringement, but none of them can be really implemented for what they are responsible. Consequently, they will go out to do something only when they have received some reports from the copyright holders or consumers.

Q13: Some scholars who are studying the IPR relationship between the developed and

developing countries say that governments of the developing countries usually close one eye and open the other to permit or encourage their nationals to copy and emulate the high tech of other advanced countries. Only when they have learned the technologies and produced their own products, will they really enforce the IPR laws and regulations in their countries. They also say that if the Chinese government were dealing with IPR as it has been dealing with the “One Couple, One Child” policy, there would be a different picture. What is your opinion?

A: I agree with them. At the developing stage, each country and each government is taking almost the same or similar strategy to encourage its people to learn from others and then develop products of its own. The Chinese government is no different. For example, each year the government is sponsoring about 300, 000 people to study abroad. The purpose of so doing and the process of learning from others is a process of copyright and emulation. Each year, we have designated specific dates as the day of IPR protection. The government will punish certain counterfeiters and pirates very heavily when they are reported and caught. However, these campaigns and measures are mainly for show.

Q14: How do you comment on the Chinese innovation in the history and the Chinese awareness of protecting their innovation?

A: The Chinese people have been very innovative throughout the history, but they have very little awareness of protecting their innovation. Even today, some of the Chinese famous brands have been registered by others at home and abroad. For example, the logo of the Phoenix TV Station in Hong Kong actually got its inspiration from a sculpture bird called the Bird of the Sun excavated in Sanxingdui near Chengdu, Sichuan Province. However, when asked if there was any copyright involved, the director of the Museum said, “No, we are proud that the Phoenix TV



Station is making us more famous.” For another example, even CCTV-1 has been registered by an individual. The government has to spend lots of money buying it back.

Q15: Do you see any cultural reasons for the lack of emphasizing copyright protection in the Chinese history?

A: In the West, individualism is emphasized and private property is legally protected. In China, collectivism is dominant in the Chinese culture and there is almost nothing that really belongs to the individual for thousands of years. Just recently, China has issued its first law of private property. Before this law, private property was a vague concept which was not sufficiently protected by law, but now property is equally protected by law as the collective and state property.

Q16: How will the present status of copyright protection in China impact upon its future development?

A: Copyright protection is a double-edged sword. On the one hand, proper copyright protection protects the benefits of the copyright holders and promotes innovation. On the other hand, a lot of people may lose their jobs if copyright is too stringent.

Q17: After all the national awareness of the copyright protection needs to be enhanced. How do you think we can do it?

A: First, the copyright law and regulations need to be publicized, and education will play a great role here. The fact is that a lot authors do not know their rights. Through education and other campaigns, the government needs to make people familiar with their rights and aware of what is considered copyright infringement.

Q18: How do you see the prospect of the U.S.-China copyright disputes?

A: It will take a long time.

Q19: Do you find anything I should have asked but did not or do you have any other suggestions regarding my project?

A: It is a worthwhile topic, and you have asked a lot of interesting questions already.

Many thanks for your valuable time and excellent answers! I sincerely wish you happiness and prosperity in your life and work!