

THE SKY IS HIGH AND THE EMPEROR IS FAR AWAY: THE ENFORCEMENT OF
INTELLECTUAL PROPERTY LAW IN CHINA

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ABSTRACT

China is often criticized by the western countries, in particular the United States, for its lack of enforcement of intellectual property rights (IPRs). Since intellectual property (IP) is not an indigenous concept in China, the doubt rises whether the transplant of western IP law into China can succeed, especially in the term of enforcement.

Some commentators have argued that the Chinese cultural tradition resists the idea of intellectual property. This paper, however, suggests that assumptions about the force of history cannot adequately explain the lacking of enforcement of IP protection in China. It addresses more the current inefficient legal institutions to afford IP protections and the need for an internal incentive structure in China.

At first, this paper considers the causes of the weak enforcement of IP protection in China from two perspectives as followed: (1) the weaknesses of the judicial and administrative systems for the enforcement of IP law, and (2) the marginalization of IP law by local protectionism. These problems shows that although the transplants of the IP laws into China from the western countries have improved the Chinese people's awareness about IPRs, they cannot resolve the problem of the lack of an internal will to enforce these laws.

Secondly, this paper compares the current enforcement of Chinese copyright and trademark law, explores what is the incentive structure for IP protection in China and

analyzes the impacts of the emerging domestic IP interest groups on the improvement of Chinese IP protection.

Finally, for the future enforcement of IP laws in China, this paper suggests that two factors should be given more attentions: (1) a more efficient institutional arrangement; (2) an incentive structure that make the people really willing to observe the laws and the government really willing to enforce the laws.

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LIST OF ABBREVIATIONS

AIC: Administration of Industry and Commerce

BSA: Business Software Alliance

CPO: China Patent Office

DSU: Understanding on Dispute Settlement

GATT: General Agreement on Tariffs and Trade

GDP: Gross Domestic Product

IPR(s): Intellectual Property Right(s)

IP: Intellectual Property

MOU: Memorandum of Understanding

NAFTA: North American Free Trade Agreement

NCA: National Copyright Administration

PRC: the People's Republic of China

SAIC: State Administration of Industry and Commerce

SOE: State Owned Enterprise

TRIPs: Trade Related Aspects of Intellectual Property Rights

USTR: The United States Trade Representative

VCD: Video Compact Disk

WIPO: World Intellectual Property Organization

WTO: World Trade Organization