Harmony or Discord?
TRIPS, China, and Overlapping Sovereignties

Government officials in Asia always complain to me that we keep changing the goalposts in our copyright legislation and law enforcement demands. But it is the pirates who are constantly setting and shifting the goalposts. We are mainly responding.

- Leong May-Seey, IFPI Regional Counsel, Asia; Regional Deputy Director, South East Asia (personal interview, 4 June 2004, Beijing)
“The spread of theft of America’s creative works flows like a swiftly running river in every nook and cranny of this planet. Today I’d like to focus on China and Russia, where…the piracy problems are spilling out beyond their borders to infect markets all around the world”.
- Jack Valenti (Capitol Hill Hearing Testimony, 9 June 2004, emphasis added)

“Now to non-Americans there’s something very familiar about this cycle. It is the cycle of prohibition: The policy dance where as regulation increases, deviation increases, inspiring more regulation, inducing more deviation, until the costs of the system of regulation far exceed any possible benefit”.
- Lawrence Lessig (2002:617)

Random as they may seem, these recent quotes are connected and they point to a highly contested and fast shifting terrain of piracy and global copyright governance that requires the rethinking of law and legality and the changing concept of state sovereignty. They attest to the dynamic and opposing relations between what Lessig describes as the two great trends that define our time: the technological and the legal. The former pushes towards the increasing range of the possible, while the latter pushes towards more law and more control.

These trends are highly dynamic, shaping and changing the courses of each other’s developments. A product of the intersecting and colliding forces of technology, capitalism, and the state, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS, see later discussion) is a good example of a tool that was created to recode (indeed, overcode) the deterritorialised flows of technology and to uphold the idea of a rule-based economy that the World Trade Organization (WTO) subscribes to.

This paper intends to reframe the highly complex, uneven, and paradoxical developments of global copyright governance and processes of the reterritorialisation of international treaties and agreements in national spaces. It also intends to raise important questions about the intersecting developments of technology, law, and state sovereignty. More specifically this paper reflects on the “in between spaces” in global copyright governance: between copyright legislation and law enforcement, between global copyright governance and national/local compliance, between global actors and national networks, and among different levels of juridical spaces and overlapping sovereignties. It focuses on the fluid gap in which translation takes place and clandestine actors and networks operate. It is also the bifurcated and relative regulatory realm in which the role of the state in a global economy is both questioned and underscored.

Using China as a case study, this article seeks to move the discussion of global copyright governance beyond the global-national dualism. By rethinking law and legality at the juncture in which exclusive territorialities are becoming unbundled, I also hope to examine some of these moments of transformation that call for a more complex way of approaching law and legality.
TRIPS - Harmony or Discord?

“As time goes on... the world will realize that at least for intellectual property the days of the nation-state are over and truly international courts will be created”.
- Robin Jacob (2000:516)

“Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice”.
- TRIPS Article 1(1)

“There are many holes to plug, and when one leak is stopped, others flow stronger while new ones spring. Unless progress is made to slow the overall drain, real progress will remain elusive”.
- Rama John Ruppenthal (2001:169)

Harmony?
The transnational nature of piracy has led to changes in global intellectual property (IP) rights legislation and enforcement. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is Annex 1C of the Marrakesh Agreement establishing the World Trade Organization, signed in Marrakesh, Morocco, on 15 April 1994. It means the expansion of global copyright governance into the arena of global trade. It also signals the “further intersection of legal, technological and knowledge structural streams”.

Initiated by American transnational corporations and policy makers, TRIPS’ deep integration program and supranational harmonisation requirements – harmonising the IP laws and policies of the developing countries with those of the developed countries – have challenged the concept of exclusive territoriality associated with the nation state. TRIPS’ National Treatment, for example, requires that “each Member shall accord to the nationals of other Members treatment no less favorable than that it accords to its own nationals with regard to the protection of intellectual property” (Article 3), while the Most-Favored-Nation Treatment dictates that “any advantage, favor, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members” (Article 4). The national treatment, most-favored nation treatment, and reciprocity constitute the keystone of TRIPS. The establishment of TRIPS thus signals a trend toward the upward harmonisation agenda in the international law of intellectual property. Furthermore, with its dual foci on both the substance of the intellectual property rights (i.e., the “substantive standards”, Articles 9 through 40 of the TRIPS Agreement) and the enforcement of these rights (i.e., the “performance standards”, Articles 41 through 61), TRIPS also has the enforcement power that the World Intellectual Property Organization (WIPO) does not have. Consequently, TRIPS is the first broadly subscribed multilateral international intellectual property agreement that is enforceable between governments, allowing governments to resolve disputes through WTO’s dispute settlement mechanism.

There is no doubt that the universalising IP right protection approach that TRIPS establishes is a much less flexible regime than earlier IP governance regimes (e.g., the
Paris Convention), reducing the scope of state autonomy in domestic law making.\textsuperscript{18} Even TRIPS’ predecessors, the Paris Convention (1883) and Berne Convention (1886), proceeded on a nation-state basis. TRIPS’ requirement that member states adopt criminal procedures and penalties when necessary also has serious implications for state sovereignty in its control of state resources (see TRIPS Article 61, personal interviews with Xu, 2004, and Lu, 2002).\textsuperscript{19} That said, however, with its built-in flexibility (see, for example, Articles 1(1) cited above and 41(5)) and the fact that it only sets minimum standards with which its members must comply, TRIPS depends on state capacities to enforce copyright provisions at the local and regional levels. Furthermore, in the linkage bargain environment of the WTO and TRIPS, all negotiations go through the state, thus underlining the indispensable role of the state in global copyright governance in general and in reterritorialising global agreements at the local level in particular.

\textit{Discord!}

Legal scholars such as Peter Yu\textsuperscript{20} and Assafa Endeshaw\textsuperscript{21} have long questioned the validity of equating law with development. Having more IP laws in a nation’s statute book does not mean that a nation is necessarily more advanced in intellectual property rights governance or environment, just as laws alone do not guarantee voluntary compliance. China, for example, has one of the most comprehensive and modern IP laws in the world. Without the necessary technological and economic development, legal culture, and other conditions, nevertheless, piracy level has in fact increased after China’s entry into WTO in 2001 while Sino-US relations over trade and copyright issues remain tense. The non-industrialised countries, in fact, have been critical of the apparent lack of congruence between the one-size-fits-all agenda of TRIPS and the vastly different national realities.\textsuperscript{22}

Indeed, one thing that makes WTO a more invasive regime than its predecessor, the General Agreement on Tariff and Trade (GATT), has to do with the fact that the latter requires only a shallow integration agenda of tariff reduction, while the former a deep integration process that involves policy decisions previously administered completely within the domestic arena. The deep integration approach, according to Thiers (2002), constitutes a four-step process: (1) a nation-state agrees to join an international regime and harmonise its own laws and policies with the said regime; (2) formal harmonisation through the amending and changing of laws and regulations; (3) the implementation of the newly harmonised standards; and (4) ongoing monitoring and enforcement to verify the compliance with the agreement.\textsuperscript{23} To join the WTO, most states would have had to accomplish steps (1) and (2) before gaining formal accession. It is the last two stages of implementation and monitoring that prove to be most challenging, and flexible, for states and right holders alike. They also provide an interesting and fluid space for the exploration of the changing landscape of copyright governance.

Just as the performance (i.e., enforcement) standard part of TRIPS (Part III of the TRIPS Agreement) gives right holders much needed leeway in customising their anti-piracy demands and in defining what enforcement efforts in a given territory should entail, the same performance standards also present a fluid space for the state to define its implementation methods and domestic preferences within its own legal system (Articles
While state IP laws may appear to be harmonised and compliant with the TRIPS provisions on paper, in reality the implementation and enforcement of IP regulations can vary from country to country.24 The one-size-fits-all approach of law making simply does not work in law enforcement, which is deeply embedded in political, legal, cultural, technological, and economic structures. A particular country's size, history, legal and cultural environments, as well as economic and technological developments have important implications for the interpretation and reterritorialising of international IP treaties and agreements. It would be much easier, for example, for right holders to deal with a small territory like Singapore than with China with its immense market and complex politico-economic realities. As a result, it is necessary for right holders to have tailored strategies for each territory, which can be both time- and personnel-consuming (personal interview, Leong, 2004). Given the said ambiguity and diversity, upholding and monitoring performance standards (articles 41-61) in different territories becomes an intensely dynamic, challenging, and ongoing process for right holders and governments. This is not to mention the complex and sometimes-contradictory legislative needs and enforcement demands of different copyright industries (consider, for example, the clashing interests of computer industries and entertainment industries).25

With these changes in global copyright governance comes a fundamental shift in international diplomacy, one that emphasizes the increasingly important functions of domestic regulatory institutions and the operations of informal transgovernmental networks. To compensate for WTO's inability to adapt to today's complex political and economic realities and TRIPS' inefficiency in addressing enforcement issues, these transgovernmental networks provide domestic regulators with potential solutions in their efforts to interpret and implement international agreements. Because the independence of these institutions is maintained even when they work together toward the goal of the harmonisation of procedures or laws, it does not involve the ceding of sovereignty to a central policymaking authority (Cheek, 2001). Furthermore, the different types and levels of informal transgovernmental networks that Cheek presents – cross-fertilisation networks, coordination networks, mutual recognition networks, and harmonisation networks – also suggest fluidity in collaboration possibilities.26 Thus, while international disputes may have to work through the state, the actual reterritorialising processes are thrashed out by both formal domestic regulatory and law enforcement actors and institutions and among those informal transgovernmental networks.

To move further away from a state-centric analysis, Ordell and Sell's work reframing the WTO coalition on IP and public health issues also demonstrates the overwhelming complexity and uncertainty entailed in the two-level WTO negotiation that takes place among more than 100 states.27 The ultimate success of a weak-state coalition not having obvious power (while facing strong opposition from powerful transnational corporations), attests to the complex actors, networks, and their fluid alliances involved in global IP governance. These dynamic institutions become the critical link between micro- and macro-levels of IP governance. They both constitute and are constituted by structures. Indeed, as Sell (2004:6, emphasis added) has pointed out, it is the “dynamic process of mutual constitution” that is the main driving force behind global intellectual property rights regulation.
As the preceding analysis of TRIPS and the WTO coalition illustrates, global copyright governance involves the multiplying and overlapping of different networks and sovereignties. With the emergence of this polycentric legal order, a ‘global versus national’ (or ‘supranational versus territorial’) approach is insufficient, as the complex and contradictory processes of global copyright governance go beyond a simple micro-macro dichotomy. Instead of thinking of sovereignty as a single monolithic concept, we need to realize that we now live in a world of multiple, overlapping, and contested sovereignties.

The emergence of the afore-mentioned informal transgovernmental networks, or the “polycentric centers of power” within the state, also suggests forms of “complex sovereignty” that break down the internal structural coherence of the state. On the other hand, however, global copyright governance still requires the “nationalization of international law” that can be accomplished only through the “reconstitution of sovereignty”. Rather than thinking about the state power in the global economy only as a zero-sum game, then, it would be more productive to look at the state’s creative uses of sovereignty in the modern global political economy.

China provides one such example.

China: The Ambivalent/Fragmented Entrepreneurial Socialist State

“You see, we didn’t gain anything by adopting the Berne Convention. We didn’t gain anything in textile trading for example. Becoming a Berne signatory had nothing to do with our market needs. It didn’t help us in trade negotiations. But everything is linked when one joins WTO…I don’t think China’s accession to WTO has done any substantial damage to our national interest”.

- Xu Chao, Deputy Director General, National Copyright Administration of China (personal interview, 26 May 2004, Beijing)

“This law is enacted, in accordance with the Constitution, for the purpose of protecting the copyright of authors in their literary, artistic and scientific works and the rights and interests related to copyright, encouraging the creation and dissemination of works conducive to the building of a socialist society that is advanced ethically and materially, and promoting the progress and flourishing of socialist culture and sciences”.

- Copyright Law of the People’s Republic of China, Article 1

Three years have passed since China’s WTO accession on 11 December 2001. While it is too early to gauge the impact China’s WTO accession has on its economy, formal and otherwise, the 15-year saga of its quest (since July 1986) to join the WTO had already witnessed major changes in China’s IP law development. In addition to becoming a WIPO signatory in 1980, joining the Paris Convention in 1985, the Madrid Convention in 1989, the Berne Convention in 1992, and the Patent Cooperation Treaty in 1994, China also passed the following laws: the Trademark Law in 1982, the Patent Law in 1984, the Copyright Law in 1990, the Software Protection Act in 1991, the Anti-Unfair Competition
Law of 1993, and the Rules on the Prohibition of Infringement of Trade Secrets in 1995. Additionally, the amendments to the 1990 copyright law were adopted in October 2001, two months before the formal WTO accession, which brought China into compliance with TRIPS. China also added the Regulations on Computers Software Protection on 1 January 2002 and the Regulations for the Implementation of the Copyright Law of the People's Republic of China that was promulgated on 2 August 2002 and effective as of 15 September 2002. These changes have indeed been substantial and impressive, especially given the short period of time since China's insertion into the market economy in the late 1970s. The Chinese Copyright Law, for example, grants rights that are not available in its American counterpart. As discussed in the last section, it is not the making of law that is an issue, it is the implementation of these new laws and regulations that remains problematic to American right holders, who view copyright enforcement and the continuing market access restrictions in China as two major “WTO compliance issues”.

Indeed, China's relation with the United States in trade and IP issues has been contentious. Having been designated a Special 301 “Priority Foreign Country” in 1991, 1994, and 1996 by the United States Trade Representative (USTR) and put under Section 306 Monitoring from 1997 through 2004, China has been subject to potential trade sanctions for its failure to contain copyright piracy and to provide market access to the US copyright industries (see table 1). With the continuing pressure from the United States and with the updating of its IP legislation, however, China's piracy rates are still above 90% (Table 2). Yu, for example, describes the existing American foreign IP policy as "misguided", "self-deluding", "ineffective" and "futile", because the United States has not only lost its credibility through the constant use of unproductive coercive tactics, it has also helped China learn, from the emerged threat/counter threat pattern, how to resist these demands. Each time China was named a Priority Foreign Country (in 1991, 1994, and 1996), the United States would threaten China with trade sanctions, only to find China counter the US threat with its own list of retaliatory measures. These trade wars were always avoided (after lengthy dramas of more threats, accusations, and negotiations) with the last-minute signing of the Memorandum of Understanding on the Protection of

<table>
<thead>
<tr>
<th>Year</th>
<th>Status</th>
<th>Year</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1989</td>
<td>PWL</td>
<td>1997</td>
<td>306</td>
</tr>
<tr>
<td>1990</td>
<td>PWL</td>
<td>1998</td>
<td>306</td>
</tr>
<tr>
<td>1991</td>
<td>PFC</td>
<td>1999</td>
<td>306</td>
</tr>
<tr>
<td>1992</td>
<td>WL</td>
<td>2000</td>
<td>306</td>
</tr>
<tr>
<td>1993</td>
<td>WL</td>
<td>2001</td>
<td>306</td>
</tr>
<tr>
<td>1994</td>
<td>PFC*</td>
<td>2002</td>
<td>306</td>
</tr>
<tr>
<td>1995</td>
<td>WL</td>
<td>2003</td>
<td>306</td>
</tr>
<tr>
<td>1996</td>
<td>PFC*</td>
<td>2004</td>
<td>306</td>
</tr>
</tbody>
</table>

Source: compiled from USTR301 reports. See also Wang, 2003.
PFC: Priority Foreign Country
PFC*: Priority Foreign Country (Subject to 306 Monitoring)
306: 306 Monitoring
PWL: Priority Watch List
WL: Watch List
Some have suggested that cultural, historical, and legal contexts have supposedly predisposed the Chinese to resist the idea of copyright (e.g., Chynoweth, 2003; Yonehara 2002; Yu, 2001). Yonehara (2002:74), for example, lists several of these “Chinese predispositions and problems toward enforcement” of copyright law that include cultural, historical, and economic factors. Problems of essentialism and Eurocentrism (sometimes camouflaged in rhetoric of anti-Eurocentrism) in some of these accounts aside, it is important to address the larger frameworks in which issues of copyright and piracy arise: cultural and philosophical beliefs, China’s socialist system, the Chinese government’s skepticism toward Western institutions, nationalism, the strict media and information policies, and the different legal and court systems are some of them (see, for example, Chynoweth, 2003; Yu, 2000, 2001, 2002; Yonehara, 2002; and Alford, 1997). In light of the preceding analysis of the dynamic relations among market, law, and the state, it is the current form of the unique political economy system in China (i.e., capitalism with socialist characteristics) that I will focus on.

Xu Chao, Deputy Director General of National Copyright Administration of China, attributes the current market economy development to two post-Cultural Revolution (1966–1976) events that he sees as imperative in shaping China’s contemporary politics and economy (personal interview, 26 May 2004, Beijing). The first was Deng Xiaoping’s talk in the 1978 Third Plenary Session of the Eleventh Central Committee of the Chinese Communist Party (Third Plenum), during which he called for a public admission that the Cultural Revolution was a disaster and that China could not afford to spend more time on class struggles. Instead, the nation should focus on economy and Deng became the main architect for the economic reform that the nation embarked on in 1979. The second event took place in 1992 during Deng’s visit to Shenzhen. Because the 1989 Tiananmen student movement had created an atmosphere of fear and conservatism, Deng pointed out the

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Motion Pictures &amp; Music</td>
<td>178.0</td>
<td>95%</td>
<td>168.0</td>
<td>91%</td>
<td>160.0</td>
<td>88%</td>
<td>120.0</td>
<td>90%</td>
<td>120.0</td>
<td>90%</td>
</tr>
<tr>
<td>Business Software Applications</td>
<td>286.0</td>
<td>90%</td>
<td>48.0</td>
<td>90%</td>
<td>47.0</td>
<td>90%</td>
<td>70.0</td>
<td>93%</td>
<td>70.0</td>
<td>90%</td>
</tr>
<tr>
<td>Entertainment Software</td>
<td>NA</td>
<td>NA</td>
<td>1637.3</td>
<td>92%</td>
<td>1140.2</td>
<td>92%</td>
<td>NA</td>
<td>99%</td>
<td>1382.5</td>
<td>95%</td>
</tr>
<tr>
<td>Books</td>
<td>568.2</td>
<td>96%</td>
<td>NA</td>
<td>96%</td>
<td>455.0</td>
<td>92%</td>
<td>NA</td>
<td>99%</td>
<td>1382.5</td>
<td>95%</td>
</tr>
<tr>
<td>Books</td>
<td>40.0</td>
<td>NA</td>
<td>40.0</td>
<td>NA</td>
<td>130.0</td>
<td>NA</td>
<td>130.0</td>
<td>NA</td>
<td>128.0</td>
<td>NA</td>
</tr>
<tr>
<td>TOTAL</td>
<td>NA</td>
<td>NA</td>
<td>1893.3</td>
<td>96%</td>
<td>1932.5</td>
<td>95%</td>
<td>1085.1</td>
<td>95%</td>
<td>2137.7</td>
<td>95%</td>
</tr>
</tbody>
</table>

Source: IIPA 2004 Special 301 Report–People’s Republic of China

urgent need for bolder steps and braver moves in economic reform. Without these two events, Xu maintains, there would have been no WTO accession for China. The fact that China's quest for the WTO accession was an “internally-driven” process also explains the public support of the decision. The WTO accession has “helped expedited China's transformation”. In fact, Xu adds, from its inception the National Copyright Administration (NCA) has been linked directly to the market.

With Deng's open door policy and economic reform came decentralisation. To facilitate China's economic reform, for example, Deng designated four Special Economic Zones (SEZs) in 1980, while giving provincial and local (including village) governments regulatory power over economic issues (see Wang, 2003; Yonehara, 2000). The original four SEZs have now grown to over 400, and even local villages retain economic governing power. This de-centering process produces a profound fissure of the state system and turns the juridical space of sovereignty into “mutually dependent relative spaces” (see, for example, Palan, 1998:10). Consequently, China's unique status as an entrepreneurial socialist state creates a situation in which both the central and provincial/local governments find themselves occupying an ambiguous space in which they operate as both regulators and entrepreneurs, with profound implications for the implementation of IP laws. Thiers (2002:414) argues that this combination of the two conflicting types of functions – the state as both regulatory authority and entrepreneurial competition – and the resulting “structural conflict of interest” have led to China's incomplete compliance with the WTO and TRIPS provisions and the blocking of effective monitoring and enforcement efforts. To many local officials who are under tremendous pressures to produce significant results in economic development, for example, copyright infringement may provide a stronger source of revenue than its licit counterpart can, thus creating resistance towards IP law implementation.43

Because of the imposed nature of TRIPS requirements in many countries (especially developing countries), buying pirated goods can also work as a protest and counter movement to the “perceived illegitimacy and plain old-fashioned colonialism” that the enforced TRIPS provisions have come to symbolise (Endeshaw, 2002:75). In China, for example, pirated software becomes “patriotic software” (Yu, 2003:364) and buying pirated goods becomes nationalistic since it strengthens local industry rather than supporting foreign corporations. Indeed, piracy has been linked to the growth of domestic economy (e.g., Ruppenthal, 2001).44

**Conclusion: Collision and Collusion**

"If it is true that the function of the modern State is the regulation of the decoded, deterritorialised flows, one of the principal aspects of this function consists in reterritorialising, so as to prevent the decoded flows from breaking loose at all the edges of the social axiomatic....Or the movement of deterritorialisation that goes from the center to the periphery is accompanied by a peripheral reterritorialisation, a kind of economic and political self-centering of the periphery, either in the modernistic forms of a State socialism or capitalism, or in the archaic form of local
despots. It may be all but impossible to distinguish deterritorialization from reterritorialization, since they are mutually enmeshed, or like opposite faces of one and the same process”.  
- Deleuze and Guattari (1983:258)45

“This ripening of capitalism horizontally (the assimilation of consumers on a global scale into capitalist circuits of capital) and vertically (the penetration of info-media and bio-technical areas by commodification) provides both capitalist firms and the State with an intensified necessity to construct and codify new juridical and political frameworks on an international scale”.
- Avenell and Thompson (1994:33-34)46

With its emphasis, and rhetoric, on deep integration, harmonisation, universalising and standardisation of global intellectual property laws, the TRIPS Agreement embodies global IP industries’ desire to recode and regulate the decoded and deterritorialised flows of technology and products. Just when observers such as the Hon. Mr. Justice Jacob rush to predict the end of the nation state in IP governance (2000:516), however, the complex and diverse national realities associated with the implementation of such provisions show a state’s creative use of sovereignties in interpreting and enforcing these agreements.

The examination of China and its unique status as an entrepreneurial socialist state offers a rich case study of a state that selectively participates in global copyright governance according to its perceived self-interests. It also demonstrates the crucial need for case studies in understanding the complex and diverse processes of globalisation and their “embeddedness in the national”.47

Finally, by focusing on the fluid spaces between copyright legislation and law enforcement, and on the complex actors and networks (licit and illicit, state and otherwise) that operate in them, this paper also questioned the concept of exclusivity associated with law and legality. It illustrates an emerging polycentric legal order with multiplying and overlapping sovereignties. Liang’s argument for the rethinking of law and legality as elastic, porous, and seeping, is well suited for the studying of global copyright governance in the rapidly changing technological, and state, environments.48

NOTES


7. See the full text at the WTO website http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm (accessed 4 July 2004).


9. There are two categories of intellectual property: industrial property, which includes inventions, patents, trademarks, trade secrets and industrial designs; and copyright. Copyright covers “original works of authorship fixed in any tangible medium of expression, which includes inter alia literary, musical, scientific, dramatic and artistic works and sound recordings” (17 U.S.C. §102, 1994).

10. A right holder’s losses in a foreign territory, for example, would only be meaningful if some right existed according to the laws of this foreign country. See Austin, Graeme W. “The Role of National Courts: Valuing ‘Domestic Self-Determination’ in International Intellectual Property Jurisprudence”. In Chicago-Kent Law Review 77:1155-1211 (2002). The developments of digital technologies and the (uneven) processes of globalisation have also rendered the previously nation-based copyright governance ineffective for transnational right holders.


17. See TRIPS; May, 2000; and interview with Leong, 2004.


22. Ibid.
25. Meanwhile, the fact that TRIPS enforcement solutions are state-based, targeting individual nations, points to another inherent contradiction of the TRIPS provisions. In East Asia, for example, much of the piracy flow in the area is regional (if not global), not domestic. TRIPS’ country-by-country enforcement efforts are ineffective and inadequate in curbing the increasingly mobile piracy production. Regional “patchwork” solutions are thought to be a more effective strategy than one that supports a “global blanket” approach such as the TRIPS provisions (see Ruppenthal, 2001:170).
32. The subject heading is inspired by Paul Thiers’ article on China’s deep integration into an international trade regime. See Thiers, Paul. “Challenges for WTO Implementation: Lessons from China’s Deep Integration into an International Trade Regime”. In Journal of Contemporary China 11(32): 413-431 (2002).
35. See National Copyright Administration of China, 2003.
37. See IIPA, 2004:3.
38. Initially, the Trade and Tariff Act of 1974 enabled the United States to take retaliatory action against any country that denied it rights granted by a trade agreement or unfairly restricted US commerce. The cooperation among the copyright industries and the resulting lobbying leverage IIPA possessed had led to the expansion and the change of language of the 1974 Trade Act. The Trade and Tariffs Act of 1984 extended the definition of unfair trade practices to include intellectual property rights violations. The 1984 Trade Act also empowered the USTR to undertake annual review of problem countries, which could result in a USTR investigation and subsequent trade sanctions. After its annual review, USTR would name TRIPS Copyright Cases, Potential Priority Foreign Countries, Priority Foreign Countries, Priority Watch List, Watch List, and Special Mention according to the severity of their offenses. See Wang, Shujen. Framing Piracy: Globalization and Film Distribution in Greater China (Rowman & Littlefield, 2003, Lanham) pp. 33, 39 (2003).
44. Effective intellectual property enforcement in an emerging market would inevitably make these goods unaffordable to average consumers. As Fan (1999) pointed out, the fact that the Chinese government itself is a major user of infringed software complicates things even further. By providing its workers necessary training, optical disc piracy also arguably expands a country’s technological base and facilitates technology transfer (Ruppenthal, 2001).