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## Talking with Copyright Holders and Pirates: Grass Roots Voices Concerning Chinese Copyright Piracy of U.S. IP Products<sup>\*</sup>

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## Abstract

Through a thematic analysis of 45 in-depth interviews via the theoretical frameworks of the theory of reasoned action and culture change, this study explores the grass roots voices concerning Chinese copyright piracy of U.S. IP products in China. The study found that both the U.S. neglect of the Chinese historical heritage in terms of IPR protection and the traditional Chinese conceptions of private property account for the rampant copyright piracy in China. As the solutions to the issue, readjusted U.S. IPR policies and flexible IP product prices, sufficient media supervision and public education in China, and effective enforcement of IPR laws are suggested.

**Keywords:** copyright piracy, Chinese grass-roots voices; structural solutions

## 1. Introduction

Since the end of World War II, as Taylor (1997) noted, the United States has been practicing trade liberalisation by shifting alternatively between multilateralism and unilateralism to promote strong protection of its intellectual property rights (IPR). IPR refers to the legal rights relating to products of human creativity and innovation, which includes three major components of patents, copyrights, and trademarks. When it was necessary to pursue the multilateral path, the United States used its economic power and political clout to help establish such an international Agreement as the World Trade Organisation (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to oversee the relevant laws and rules and guarantee its benefits. Established in 1995 as a comprehensive multilateral agreement on intellectual property (IP), the TRIPS Agreement introduced 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.

China became a member of the WTO on Nov. 11, 2001, but the United States has been accusing the Chinese for the infringement of its IPR since the mid-1980s. For instance, there has been extremely high pressure on the Chinese government for its ineffective protection of 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 the negotiations in 1991, the United States Trade Representative (USTR), the Key U.S. government agency empowered with the authority to pursue U.S. bilateral trade policy including negotiations with China over trade-related issues, announced that it was drafting a sanctions list to charge 100% tariffs to 106 categories of goods imported from China. Realising that the U.S. side was serious, the Chinese government softened its position and eventually accepted most of the U.S. demands including updating its IPR regime. In the 1994 negotiations, the Chinese government was furious at the U.S. negotiators' criticisms of 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 repeatedly threatened to sanction China for media piracy, and the USTR went to China to deliver the message. 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 as follows:

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. (2005, p 16)

Facing the reported losses of its IPR due to copyright piracy like the above in China, the United States has been coercive in its strategies but ineffective as far as the expected results are concerned. However, as Bird pointed out, ‘coercion as a dominant long-term strategy 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’ year after year during the past three decades (2006, 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 commonly shared by members of the public’ in China (Piquero, 2005, p 41). Focusing on copyright, which protects the rights of creations in the fields of literature and the arts, such as books, paintings, music, films, and software, the present paper aims to explore the grass roots voices of Chinese copyright holders and pirates and determine what still needs to be done in the protracted war against the nation-wide copyright infringement in China. To this end, we will first conduct a critical review of the existing scholarship on the Chinese legal and administrative efforts concerning copyright protection. Then, we will adopt the thematic analysis method to analyse the ethnographic in-depth interviews via the theoretical frameworks of reasoned action and culture change to examine the cultural capital, behavioural intention and behavioural drivers, subjective norm and behavioural norm of the Chinese IP end-users. The significance of the present study lies in its void-filling efforts to make the grassroots voices of the Chinese copyright holders and consumers heard in future IPR negotiations between China and the United States and the potential inspiration of more direct and effective strategies to resolve the U.S.-China copyright disputes based on sufficient acknowledgment of the Chinese cultural perceptions of copyright and China’s continuous efforts to meet the IPR standards of the United States and TRIPS.

## 2. Literature Review

According to Wang and Zhu (2003), from the open sea to cyberspace, piracy has always been around. Generally speaking, there are two major 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. Referred to as softlifting, software piracy comprises unauthorised copying of software, the purchasing of unauthorised 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. For the purpose of this study, copyright infringement refers to the illegal or unauthorised reproduction, distribution, and use of copyrighted materials, covering the scope of both piracy and counterfeiting.

In fact, China has been labeled by the Western world as the most rampant copyright pirate and a total alien to IPR concepts since the publication of William Alford's book *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilization* in 1995. 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 are willing to learn the Western notions of intellectual property law only at gunpoint (Shao, 2006, pp 19-30).

Nevertheless, China has not been alien to IPR, and it developed a type of primitive copyright system for its IPR practice in tune with its cultural, commercial, and technological evolutions in ancient times. For example, during the Tang Dynasty (618-907 A.D) China began to have 'substantial, sustained efforts to regulate publication and republication' (Alford, 1995, p 13). At 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 unauthorised 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 publicise the approval so as to combat unauthorised 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, 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.) (2004, p 278).

After driving the Kuomintang (KMT) to Taiwan in 1949, the Communist Party of China (CPC)

came into power in Mainland China and established the People's Republic of China (PRC) on October 1 of the same year. Eliminating all the previous laws and regulations including the first Law on Copyright of the 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 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 United States and other Western economic powers have been increasingly pressing China 'to update IPR protection levels, expand the IPR scope, and strengthen IPR enforcement' (Xue, 2005, 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 Unauthorised 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.

With regard to 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 IPR development in China since 1979 can be summarized in the following table:

**Table 1: A Brief Chronology of IPR Development in China Since 1979**

Name	Time	Events
PRC (II)	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.
	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 decentralised 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.

In brief, we can take at least three aspects into consideration from the above literature concerning the copyright piracy phenomenon in China. First, unlike what some Western scholars said and the United States believed, China did have a kind of primitive copyright system in tune

with its cultural, commercial, and technological needs since ancient times. No matter how primitive the traditional Chinese copyright system was, it worked for the different historical periods. Therefore, any introduction of new, especially foreign IPR rules needs to take this historical heritage into consideration so as to avoid putting a square peg into a round hole. Second, the emphasis of the legal codes of the Chinese governments regarding IPR in various historical periods focused on preserving leadership power and fostering social harmony instead of protecting intellectual property per se. This is different from the strong property-focused approach in the IPR rhetoric created by the London booksellers in the early 18<sup>th</sup>-century England. Thus, copyright infringement of what was legally forbidden might be severely punished, but piracy of what was not restricted by the governments has been popularly rampant throughout Chinese history. Finally, it is true that China has gradually completed the establishment of its IPR laws and the IPR regime since the 1980s, but China has been reluctant to ‘fully enforce these laws for fear that they may stifle its own energy of creativity’ (Shao, 2006, p 1). Such one-eye-open and one-eye-closed law enforcement partially explains why there have been waves upon waves of copyright infringement cases in China.

### 3. Theoretical Frameworks

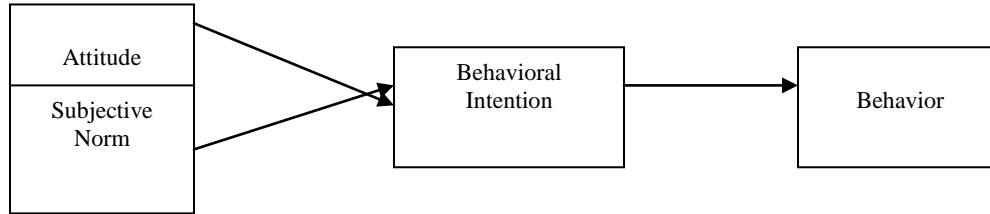
Before talking about the data collection and data analysis, it is necessary to introduce the two theoretical frameworks for this study: the theory of reasoned action (TRA) and culture change. According to Sheppard, Hartwick, and Warshaw (1988), the theory of reasoned action was developed by Martin Fishbein 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 behaviour,’ the theory not only predicts consumer intentions and behaviour very well but also provides a relatively simple basis for identifying where and how the consumers will attempt to change their behaviour (1980, 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), a behavioural 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 behavioural criterion in terms of action, target, context, time-frame, and specificity. In other words, a person’s voluntary behaviour 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 behavioural intention.

Miller (2005) defined attitudes as the sum of beliefs about a particular behaviour measured by evaluations of these beliefs; subjective norms as beliefs or perceptions of what others will think about the behaviour; and behavioural intention as the probability that the behaviour will be performed, consisting of both the attitudes and the subjective norms. The relationships of the three components and the subsequent behaviour can be briefly summarised as follows: ‘Salient beliefs affect intentions and subsequent behaviour either through attitudes and/or through subjective norms’ (Madden, Ellen, & Ajzen, 1992, p 3). The above relationships can be indicated in Figure 1.



Figure 1: Relationships among the Components of TRA



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

TRA was developed to deal with behaviours and only those behaviours that are under a person's volitional control. Since human behaviours are mostly under volitional control, the theory can be applied to predict most human behaviours accurately from an appropriate measure of the people's intentions to perform those behaviours. 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.

Whether the Chinese as a whole will update their perceptions of copyright protection and change their attitudes towards copyright piracy hinge greatly on the change of their political, social, economic and cultural surroundings, which have been historically different from those of the United States and other Western countries. Just as Yu noted, 'unless the Chinese government introduces reforms that are sensitive to these differences, the piracy problem will continue' (2001, p 1). Thus, the concept of culture change, which emphasises the influence of cultural capital on individual and community behavior, will be adopted as another theoretical framework for this study as well.

The concept was first introduced in the discussion paper entitled 'Achieving Culture Change: A Policy Framework' (Knott, Muers, and Aldridge, 2008, pp 6-7). Briefly, the framework consists of three components: cultural capital, behavioural drivers, and behaviour. Cultural capital such as attitudes, values, aspirations and the sense of self-efficacy, is developed by our interaction with the immediate environment around us like our parents, peers, and co-workers and the wider society such as economy, technology, and media. Cultural capital influences our behavioural intention, which further influences our actual behaviour along with other behaviour drivers such as financial incentives, legal regulations, and levels of information. Over time, such behaviour passes into the behavioural norm of our society. This culture change framework obviously helps exploring what still needs to be done, first institutionally and then individually, so as to ensure that appropriate copyright protection can become a behavioural norm in Chinese society.

#### 4. Research Methods

For this project, we used a pre-designed semi-structured in-depth interview guide with about a dozen questions in both English and Chinese. Via snow-ball sampling, we recruited our participants. Since May 22, 2007 to May 24, 2008, the first author has 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 data collection partially as planned and partially thanks to

conference opportunities. In total, we have interviewed 45 participants.

Of the 45 participants 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). 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%. 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.

As for the education level of the participants, 18 are high school or students with bachelor degrees (BA), 19 are graduate students or graduates master degrees (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.

After collecting the raw data, we have transcribed all the audio-taped interviews verbatim and achieved a single-lined, 90-page record of transcriptions. Then we used thematic analysis to generate emerging themes from the transcripts. Braun and Clarke defined thematic analysis as ‘a method for identifying, analyzing, and reporting themes within qualitative data’ (2006, 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 and Bogdan, 1989, p 131). According to Leininger, we can identify themes by ‘bringing together components or fragments of ideas or experiences, which often are meaningless when viewed alone’ (1985, 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’ (1985, 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 via thematic analysis, we two authors 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 noted, 'studying patterns of talk or behavior represents a form of reliability and looking for patterns is a form of analysis' (1989, p 92).

To determine the themes, we examined each transcript 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, we identified and categorized the relevant portions of the transcriptions and parts of the field-notes into classified folders. We were doing so by following the 'cut up and put in folders approach' proposed by Lindlof (1995, p 225). Then, we 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, we tried to build a valid argument for the themes.

## **5. Research Findings**

Guided by the theoretical frameworks of TRA and culture change, we have categorized the emerging themes against the components of cultural capital, behavioural intention and behavioural drivers, subjective norm and behavioural norms as extracted from the above two theories. In the following section, we will examine how much the theories can help explain the Chinese common practice of copyright piracy and how well the latter can support and develop the former.

### **5.1 Cultural capital**

Cultural capital here means how much the Chinese believe in copyright protection and how they look at their behavior of copyright piracy.

#### **Example 1:**

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. For example, the 'old comrades', (people who support the Communist Party and who may be in their 50s and up) 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. 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. Today, authors, young and old, care about making contributions to the community and earning money for themselves at the same time. (P-02)

As a chief editor of a provincial press, P-02 [P stands for participant, *ibid*] is the oldest among all the interviewees. His definitions of copyright and 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.

Example 2:

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, parents may show their kids where to go to get more of what they want. (P-28)

P-28 emphasized 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.

Example 3:

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 U.S. statistics that the copyright piracy rate is over 90% in all copyright sectors in China, and she used figures in the publication of her own publishing house 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.

## 5.2 Behavioural intention and behavioural drivers

Behavioural intention in this context refers to the probability of the Chinese copyright piracy based on their culture capital and behaviour drivers such as financial incentives, legal regulations, and levels of information. As mentioned earlier, the rate of copyright piracy is almost 90% in all sectors in the past decades in China, according to the USTR Special 301 annual report (2005: 6; 2009: 14). Even the Chinese Institute of Publishing Science provided a survey statistics of 45.5% piracy rate for the year 2005 (XinhuaNet, 2006, p 1). Almost all the interview participants of this study also reported that they had bought or at least used pirated IP products. Thus, the probability of committing copyright piracy is really high in China as a result of the Chinese attitudes towards and perceptions of this phenomenon.

### Example 4:

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 and tourists from other countries, including the United States, fly to places like Hong Kong, Shanghai, and Beijing 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, which have also exerted great impact upon the behavior of people from neighboring countries. 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, including those from the developed countries, are doing the same, and the legal punishment seldom reaches them.

### Example 5:

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 6:

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.

### **5.3 Subjective norm and behavioural norm**

Subjective norm in this study refers to the Chinese perceptions of what others will think about their behaviour of copyright piracy while behavioural norm here refers to the expected patterns of behaviour in terms of copyright protection.

Example 7:

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. (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. Therefore, you do not have to feel ashamed of yourself or have any sense of guilt as piracy consumption has already become a common social phenomenon.

Example 8:

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 public 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 8, P-01 emphasized the importance of the governmental law enforcement, media publicity, and the role of public 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 9:

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 most of the necessary IPR laws and regulations. They have also established specialised IPR agencies in each province and autonomous regions. 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. 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 9, 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 emphasised that innovators or copyright holders would take an active lead in fighting against copyright piracy so as to protect their own benefits.

## 6. Discussion

As shown in the above literature review, China has to face its historical and social challenges to update the traditional Chinese cultural perceptions of property and drive home the international standards of the TRIPS regarding the distinction between copyright protection and copyright infringement. In this regard, the Chinese as a nation need to be reeducated about the necessity and significance of protecting copyright. Copyright infringement, rampant as it is in China, is no individual behaviour; instead, it is a social phenomenon just as the United States experienced in its own history. According to Anderson, 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' (2007, p 14). Only when it found necessary to protect its IPR at home and abroad, did the Americans themselves change their attitudes toward copyright protection from officially allowing copyright piracy of British literary works and German technology to staunchly safeguarding their IPR in foreign markets because of the shift of its trade emphasis.

In actuality, 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. Gradually, the Chinese administrators, at least those key figures in the central government, made compromises and finally consented to the U.S. conditions when they saw potential benefits for their domestic innovative industries. Even today, many educated consumers in China contend that IPR should only apply to tangible goods and not intangibles like information. 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 deeply-held beliefs and stubborn attitudes from approving copyright infringement to supporting copyright protection on a voluntary and conscious basis.

With regard to the functions and interrelationships of the two theoretical frameworks and the



interview data, we found that the theory of reasoned action and culture change are really helpful in categorizing and interpreting the meanings of the data transcripts. The above findings reveal that all the five categories of cultural capital, behavioural intention and behavioural drivers, subjective norm and behavioural norms as extracted from the two theories have found sufficient support from the participants' transcripts. Among the five categories, cultural capital and subjective norms determine behavioural intentions, which further determine the actual behaviour and the behaviour norm together with other behaviour drivers such as financial incentives, legal regulations, and levels of information.

It is also worth mentioning that previous literature has mainly applied TRA to the study of the consumers' behaviours such as taking a diet pill, applying for a consumer loan, or shopping for a new car and the studies of the consumers' behavioural 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 behaviour and behavioural intentions of buying and consuming pirated copyright products. In this sense, the present study has expanded the scope of TRA application. As the nature of the behaviour under study has developed from the individuals to the Chinese people as big social group, we have integrated the theory of culture change, which involves changing the basic values and behavioural norms to improve organizational or institutional performance, into the theoretical frameworks of this study. Together, TRA and culture change have helped interpret the themes of the interview transcripts

In the present study, cultural capital refers to the deeply-held Chinese beliefs regarding private property and copyright protection and their conventionally-fixed attitudes towards copyright infringement. Thematic analysis of the interview transcripts clearly reveal that most of the participants have shown little respect for the expressed ideas of others and oftentimes made no distinction between copyright protection and copyright infringement. China passed its copyright law on September 7, 1990 and revised it on October 27, 2001 to update its content in line with the standards of TRIPS (Copyright Law, 2001). Besides, China passed its property law, which protects both public and private property, only on March 16, 2007 (Wang, 2007). Before that emperors treated the whole country as his own during the thousand-year long feudal China and all property still belonged to the state or the collective when the Communist Party came into power in 1949. Worst of all, copyright is a completely new and strange concept to about 60% of the Chinese people who are living in the rural area. No wonder the enforcement of the copyright law in China proves so hard though the Chinese government has been trying to commit itself to the standards of the TRIPS.

As a result of their cultural capital, the majority of the participants manifest a very high probability of committing copyright piracy. From the data analysis, they consume pirated IP products due to the following subjective norm and behavioural drivers. On the one hand, none of the participants think it wrong to consume illegal versions of copyrighted products as they take comfort that many other people, including those from the developed countries, are doing the same and legal penalty seldom falls on their heads. On the other hand, all participants confess that they consume pirated IP products out of such tempting behavioural drivers as very low price, excessive availability, and functional quality of the products. In terms of the level of information or education, few recognise that their piracy behaviours actually affect the innovation of the nation as a whole from the long term point of view and the internationally competitive future of

their children.

Finally, whether China will witness the expected patterns of behaviour of copyright protection according to the international standards and how we can make it materialise hinge on a series of factors as revealed in the data analysis. First, it is really important that some participants have already become fully aware that the long-term development and prosperity of a country result from the creativity and innovation of this nation instead of the so-called short-cuts of pirating others' IPR. Second, China's R&D spending of \$136 billion is only next to that (\$330 billion) of the United States among all the other countries in the world, which will obviously engender innovations and motivate the country to protect copyright more effectively (Belew, 2006). However, as emphasised by one of the interview participants, the above will depend on the effective law enforcement, timely media supervision, and extensive public education.

## **7. Conclusion**

The purpose of the present paper was to explore the grass roots voices of Chinese copyright holders and pirates and determine what still needs to be done in the protracted war against the nation-wide copyright infringement in China so as to inspire ideas for strategies that deal with not only the symptoms but also the origins of both the rampant Chinese copyright piracy and the recurring U.S.-China copyright disputes. This study found that although the United States itself did not respect copyright for over 100 years from 1790 to 1891, it has been attempting to popularize a one-size-fits-all IPR standard in China, without taking the Chinese historical heritage in terms of the prototype IPR system into consideration. Although almost all the necessary domestic and international IPR laws and legal regulations of copyright protection have been established in China, they have not been completely accepted by the majority of the Chinese. Second, it can also be concluded that the extremely high copyright piracy rate and the reluctant enforcement of the IPR laws and regulations in China have resulted from the lack of emphasis on private property throughout Chinese history and the different Chinese cultural values of and attitudes towards the balance between the protection of the copyright holders' benefits and the promotion of the free flow of information. Accustomed to collective ownership and public sharing, most Chinese still take it for granted to copy others' intellectual products and make use of other's expressions of ideas without offering credit or obtaining permission. Finally, even today most Chinese tend to consume pirated copyright products because of the availability, low price, and lack of shame and penalty. Thus, three doses of readjusted U.S. IPR policies and flexible IP product prices in the Chinese market, sufficient media and public education to raise the Chinese national awareness of IPR protection, and effective enforcement of IPR laws on a daily basis may cure not only the symptoms but also the origins of both the copyright piracy in China and, possibly, shed light on resolving the U.S.-China copyright disputes.

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