

Could intellectual property laws spell the end of china's communist rule?

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Could intellectual property laws lead to the end of the People's Republic of China?

It might seem odd to suggest that patents and trade marks could help bring down the world's largest one-party dictatorship. But it may be possible.

Improving intellectual property laws is a very high priority in Peking. Oddly enough, I seem to have somehow found my way on to a mailing list in the People's Republic of China. From time to time I receive press releases about the great strides China is making in improving its intellectual property laws. At the annual conference of the Patent and Trade-mark Institute of Canada in 1995 in St. Andrews by the Sea, New Brunswick, to my surprise, I found myself sitting next to a representative of mainland China at dinner, who had come to the conference to mingle with us IP-types. Of course, he told me how wonderful China's new IP laws were.

China is going to all this trouble because it desperately needs to get into the World Trade Organization (WTO). This would give China the benefit of the lowered tariff rates around the world that resulted from the GATT negotiations. China must develop its export trade to bring in cash (310 million of its people are estimated to live below the international poverty line) or the present regime may collapse. But if China wants in to the WTO, it must improve its IP laws.

The Economist, in its recent survey article on China,¹ says China's much ballyhooed economic growth is exaggerated, and concludes that in fact China's growth has reached a limit because of lack of investment and lack of access to foreign markets. Peking must create growth and alleviate poverty, or there could be massive civil unrest. Access to foreign markets to bring in cash is absolutely necessary.

The trouble is the US demands real intellectual property laws in China before it will let China into WTO. China is notorious for producing massive quantities of bootleg goods

¹ "A Survey of China, Ready to Face World"? The Economist, March 8, 1997.

such as knock-off video games and software. The largest perpetrators are often state-run plants, run by party members. The US has applied increasingly strong pressure on China to create meaningful intellectual property laws. China now seems to be making serious efforts to do so. It has no choice.

The dilemma for China is this: you cannot just snap your fingers and create an intellectual property system in a state where there is no rule of law. Intellectual property laws, even if officially on the statute books, are meaningless unless judges can enforce them. Therefore China needs real courts with real powers, at least in the IP area. Most important, if it wants to satisfy the US, it needs credible judges who are well-trained and logical enough that they can deal with complex patent infringement cases, for example, and who have the power to impose their rulings without fear of retribution.

That means judge A has to be able to order some party-run factory turning out bootleg video games, operated by local Communist party boss B, to stop doing so and pay damages. If there is a dispute, a process must exist to resolve it, meaning an adversarial system where both sides are represented by competent lawyers, and there is some kind of predictable, law-driven outcome. The court has to be able to punish people who ignore its rulings, regardless of who they are in the party or military hierarchy.

Creating an intellectual property system in a place like China is therefore a big step because it necessarily involves creating limits on the arbitrary power of the state, and recognizing that individuals or firms have property rights that can be enforced.

At present, China, despite all the recent talk about Deng's liberalizing economic reforms, is still a totalitarian state where the rule of law is unknown. According to The Economist survey, "Power in China is exercised through the largest coercive apparatus in the world ... There is no legal framework that adequately protects property rights and resolves contractual disputes." Most people in China are assigned to a work unit or danwei. The danwei keep files on each individual's life history. "A black mark in these files - or the whim of a boss - can hold back someone's career indefinitely, without chance of appeal." A black mark can also have far graver consequences. The Economist regards as credible an estimate that there may be 15 to 20 million people in China's labour camps.

Once a system is created for dealing fairly with intellectual property disputes, many people in China may wonder why the same legal methodology should not be applied to other aspects of the Chinese system. If Microsoft or Atari is entitled to justice and the protection of the law, why not the ordinary citizen, not to mention all those dissidents in the Chinese gulag? And since the Chinese Communist party has no legitimate claim to absolute power, except that it won a war by brute force almost 50 years ago, that question could begin the unravelling of the one-party state.