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Strategies under pressure: USA-China copyright dispute

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Abstract

Purpose – The purpose of this paper is to explore the Chinese and American efforts in keeping the balance of innovation and copyright protection, with an emphasis on China's strategies under Western, especially American pressure. The research findings are expected to enhance mutual efforts from the two countries to protect copyright and boost innovation and facilitate genuine communication between both sides in their decade-long intellectual property right (IPR) disputes.

Design/methodology/approach – For data collection, this study adopted in-depth interviews of 45 participants who were either copyright holders as publishers and authors, or ordinary consumers in China. Under the theoretical guidance of strategies and tactics, thematic analysis was used to reveal the emerging themes in the transcripts concerning Chinese cultural perceptions of copyright in general and the relationship between innovation incentives and copyright protection in particular.

Findings – First, both countries used strategies for the calculation and manipulation of power in the enactment and implementation of their copyright laws. Second, in order to defend their own interests and obtain national advantages, both countries made full use of various tactics. It is promising for the large developing countries like China to implement and enforce their copyright law and other IPR regulations more effectively under global bargaining and collaborating.

Originality/value – Since little research has been done on the hidden agenda in the USA-China copyright disputes, this paper attempts to fill this void by exploring the genuine intentions of both the USA and China in the enactment and implementation of their respective copyright laws and the strategies taken for their communication with the relevant parties at different stages of their own IPR development.

Keywords United States of America, China, National cultures, Intellectual property, Copyright law, Copyright protection, Strategies, Tactics

Paper type Research paper

1. Introduction

Tailor (1997) noted, with its economic power and political clout, the USA helped establishing such international organizations as the General Agreement on Tariffs and Trade (GATT) and the Agreement of Trade-related Aspects of Intellectual Property Rights (TRIPS) to oversee the relevant IPR laws and rules and guarantee the benefits of those countries that possess IPR. The GATT was created in 1947 with a multilateral agreement, the functions of which were taken over by the World Trade Organization (WTO) during the final Uruguay round of negotiations from 1986 to 1994 over such areas of services, capital, and intellectual property. The TRIPS Agreement was established in 1995 as a comprehensive multilateral agreement on IPR by introducing a series of global minimum standards for protecting and enforcing nearly all kinds of IPR. As one of the specific agreements annexed to the WTO Agreement, all incoming members of theWTOmust commit themselves to observing the standards of the TRIPS.

According to the International Trade Administration of the US Department of Commerce (2011), the US IPR administration agencies include, but not limited to, the National Intellectual Property Rights

Coordination Center (IPR Center), Copyright Office, Patent and Trademark Office, Federal Bureau of Investigation, Department of Justice, Customs and Border Protection, Office of IPR, and US Trade Representative (USTR). Meanwhile, the USA is a member of and exerts great influence upon such international IPR organizations as the TRIPS and World Intellectual Property Organization.

Specifically, IPR refers to the legal rights concerning intellectual activity in the industrial, scientific, and artistic fields. As one of the main components of IPR (the others being patents, trademarks, industrial designs, circuitry designs, and undisclosed information), copyright refers to the rights given to creators for their literary and artistic works. According to Bettig (1996), copyright traditionally covers the protection of literature, music, arts, maps, and technical drawings as well as motion pictures. Today, computer programs and domain names are also under the protection of copyright. In addition, moral rights and neighboring rights are closely related to copyright. While moral rights mean rights used to claim authorship and to object to certain modifications and other derogatory actions in relation to the piece of work, neighboring rights refer to rights that protect the interests of performers, production firms, publishers, and broadcasters.

Although both the USA and China promulgate the balance between the protection of copyright and the promotion of innovation in their respective copyright laws, there has been overprotection of copyrighted IPR and double standards in the enforcement of copyright law and international IPR standards on the US side (Bates and Liu, 2010; Meng, 2007). As for the Chinese side, there has been strategic cooperation and tactful resistance (Mertha and Pahre, 2005). Since sufficient ink has been spilled on the USA-China IPR disputes from the administrative, legal, and cultural perspectives (Bates and Liu, 2010; Berrell and Wrathall, 2007; Lehman, 2006; Liao, 2006; Mertha and Pahre, 2005; Montgomery and Fitzgerald, 2006; Xue, 2005; Yu, 2005) but little research has been done on the hidden agenda in the USA-China copyright disputes, we aim to fill this void by exploring the Chinese and USA efforts in keeping the balance of innovation and copyright protection with an emphasis on the Chinese strategies under Western, especially US pressure. The significance of the present study lies in the fact that, first, the research findings will reveal the genuine intentions of both the USA and China in the enactment and implementation of their respective copyright laws and the strategies taken by both countries in their communication with the relevant parties at different stages of their own IPR development. Second, the research findings are expected to enhance mutual efforts from the two countries to protect copyright and boost innovation and facilitate genuine communication between the two sides so as to bring about a win-win result in their decade-long IPR disputes.

2. Literature review

For the purposes of this study, we will draw from and contribute to four major categories of literature: the relationship between innovation and copyright protection, studies on strategies and tactics, the US copyright act revisions, and the Chinese resistance to the US pressure over copyright disputes.

2.1 Relationship between innovation and copyright protection

As part of IPR, “copyright protects the rights of creators of literary and artistic works, and of those who purchase or otherwise obtain those rights” (Becker and Vlad, 2002, p. 3). On the one hand, copyright

protection safeguards the exclusive rights of the authors and, on the other hand, it keeps enriching the public domain to guarantee sustainable innovation. Copyright protection is meant to foster this kind of virtuous cycle of innovation. Just as the USA Congressional Budget Office (CBO, 2004) declared:

> [. . .] copyright law is thus characterized by the balance it seeks to achieve between private incentives to engage in creative activity and the social benefits deriving from the widespread use of creative works (p. 1).

Being the biggest developed country and largest developing country, respectively, the USA and China have drawn great attention among scholars in their studies on the relationship between copyright protection and innovation in these two countries. It is found that, although the USA has been criticized for the overprotection of copyright with the enactment of the Digital Millennium Copyright Act (DMCA) (Samuelson, 2001; Zimmerman, 2001; Yu, 2003), both countries strive for the balance between the protection of copyright and the promotion of innovation in their respective copyright laws. On the US side, the legal basis for the copyright is Article 1, Section 8 of the US Constitution, which empowers the Congress "to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries" (Leval, 1990, p. 1108). Similarly, the Copyright Law of the People's Republic of China, also aims at "encouraging the creation and dissemination of works [. . .], and of promoting the development and prosperity of the socialist culture and science" (China Patent Agent, 2001, p. 1). It is clear that the balance between protection of copyright and the promotion of innovation is promulgated legally in both countries.

According to the American economists Scherer and Ross (1990), innovation refers to the process of inventing or creating something new and better, or providing cheaper and better goods and services. For the present study, we define innovation as the complicated process in which the expression of a new idea is fixed and brought to the market to provide incentives for the copyright holders to produce further creative works and to ensure future creativity among the public. Scholars (Leger, 2007; Lipton, 2009; Mertha and Pahre, 2005) have various views regarding what the optimal scope of copyright protection should be so that maximum incentives for innovation can be guaranteed. The dilemma here is: the broader the scope of copyright protection is, the higher the incentives there are for innovation; however, a broader scope of protection also limits the access to the copyright works and affects both fair use and the public domain. While fair use refers to the use of copyrighted material in a reasonable manner without the consent of the copyright owner, public domain means "a sphere in which contents are free from IPR" (Samuelson, 2001, p. 82). To approach the dilemma, Vaidhyanathan (2001) proposed, copyright should be more about policy rather than property, which means that any country's copyright law ought to be contingent upon the specific historical, political, and socio-economic context instead of being shaped into a universal model by force.

Actually, it is argued that strong enforcement of IPR increases consumer prices and reduces trade benefits crucial for developing economies. Analyzing the impact of tightening IPR in terms of trade, production composition, available products, and inter-temporal allocation of consumption, Stryszowski (2006) showed that Southern countries do not benefit from tightening IPR. By the same token, Glass and Saggi (2002) indicated that it is true that stronger IPR protection may keep multinationals safer from imitation, but the "increased difficulty of imitation generates wasting of resources and imitation disincentive effects that reduce both foreign direct investment and innovation" (p. 387). In other words, developing countries may have to consume more resources to develop their desired high-tech because they are unable to acquire it via cheap imitation.

Based on their empirical analysis of panel data from 64 countries, Chen and Puttitanun (2005) confirmed that while looser IPR protection facilitates imitation of foreign technologies, a developing country should gradually update its IPR protection mechanism to meet the international standards and encourage domestic innovation. In the shape of the English letter "U," the implementation of IPR protection first decreases innovation, but it will gradually accelerate innovation as the economy grows and the national technological capacity expands. No wonder strategies and tactics are needed for all countries including the USA and China to maintain the balance between the protection of copyright and the promotion of innovation in the enactment and implementation of their respective copyright laws in different historical phases.

2.2 Studies on strategies and tactics

With regard to the studies on and application of strategies and tactics, Chinese can conveniently talk about one of their classics, Ping-fa (The Art of War), by Sun Tzu in the Warring State (475–221 BEC). As a systematic guide to strategies and tactics for war affairs, The Art of War has been applied to many competitive endeavors in the Chinese society, including trade negotiations. The book has been so influential among Chinese and throughout East Asia that "for a number of years, Westerners have studied The Art of War in the hope of gaining a better understanding of the strategic mindset of Asian business leaders" (Rarick, 2007, p. 1).

According to Johnston and Pennypacker (1993), strategies are overall plans, principles, or goals of significant inquiry while tactics means the practical methods and procedures required to implement the guiding principles. Tactics are more specific than strategies, and one strategy can yield multiple tactical alternatives. To be specific, as de Certeau (1984) remarked, a strategy refers to the calculation or manipulation of power relationships, which comprises three types of places: a place of power, an elaborate theoretical place, and an ensemble of physical places. In contrast, a tactic means a calculated action or maneuver within the enemy's vision. In other words, a strategy is a weapon of the strong while a tactic is an art of the weak. Strategically, the strong maintain their advantages by establishing a defensible institution in a war of position against any outsiders. Tactically, the weak defend their interests or obtain temporary advantages by seizing any possible opportunities and thus engaging in a permanent war of maneuver. The concepts of war of position and war of maneuver actually come from Gramsci, who defined the former as a cultural war against capitalism by gaining a dominant voice in the mass media and leadership in the revolutionary organizations and the latter as the actual insurrection against capitalism with the mass support (pp. 35-47).

For the present study, we used strategy and war of position to mean the Chinese resistance from the governments or corporate institutions and tactics and war of maneuver to refer to the resistance from the Chinese IPR administrators and the ordinary Chinese consumers in the USA-China copyright disputes. As Sum (2003) noted, both strategies and tactics have been adopted in the resistance from developing countries against the IPR regime of the highly industrialized ones. For instance, individual computer programmers like Linus Torvalds developed the Linux operating system, an open-source program from 1989 to 1990 to move away from the structural domination of "Microsoft Windows installed" and "Intel Inside" architectural and operating standards. Besides the strategic open-source movement, Sum (2003) also described the various forms of piracy in East Asia as resistance tactics, including:

- demanding "fair" prices for software through anti-IPR campaigns;

- passing on to friends or colleagues copies of licensed software;
- swapping master disks with others;
- exchanging information on access to new unlicensed software;
- uploading and downloading unlicensed software from bulletin boards or the internet;
- frequent switching of third-party storage sites for illicit software;
- copying a handful of licensed software products to all other computers in an organization;
- transferring licensed software from office to home computers; and
- obtaining unlicensed software from shopping malls, night markets, and mobile hawker stalls (p. 384).

These tactics are adopted as a form of resistance and a way of life in the USA when it was still a developing country before the eighteenth century and China together with some other Asian countries in recent years.

2.3 The US Copyright Act revisions

According to Sirois and Martin (2006), although the First Congress of the USA passed its first national Copyright Act in 1790, foreign copyrights were not officially recognized for over 100 years from 1790 to 1891, during which time "US publishers were completely free to reprint whatever foreign texts they thought would sell" (Anderson, 2007, p. 14). For instance, it was stated clearly in Section 5 of The First Copyright Act of the USA (1790):

> And be it enacted, that nothing in this act shall be construed to extend to prohibit the importation or vending, reprinting or publishing within the USA, of any map, chart, book or books, written, printed, or published by any person not a citizen of the USA, in foreign parts or places without the jurisdiction of the USA (Para. 6).

The above clause restricted copyright protection over the works of only the American citizens while leaving the works of foreign authors unprotected. Besides, technology piracy in the USA at the time was "often undertaken not only with the full knowledge, but often with the aggressive encouragement of officials of the federal and state governments" (Ben-Atar, 2004, p. 1). For instance, Alexander Hamilton, the US Secretary of Treasury then advocated plundering technology from Europe and attracting skilled immigrants along with the infusion of their technology. Such discrimination against foreign works with double standards resulted from a very practical and strategic choice. The USA was still a developing country during that period, and it desperately needed to "promote the progress of science and useful arts" (Leval, 1990, p. 1108) by imitating or exploiting the advanced knowledge and high technology from the developed countries of Britain and Germany.

To deal with the heavy copyright piracy in the USA and elsewhere, the Berne Convention for the Protection of Literary and Artistic Works was held annually under the suggestions of Britain from 1884 to 1887. Based on the annual Berne Conventions, the International Copyright Act took effect on December 5, 1887. However, the USA just held its own Copyright Act of 1790 supreme as it chose not to participate in any multilateral agreements. Only when it became confident that its own domestic works acquired sufficient international competitiveness, did the US Congress recognize the international copyright law and amend its Copyright Act in 1891. Although the Amendments to the 1870 Copyright Act (1891) authorized copyright protection of foreign works in the USA, there are such restrictive conditions as:

> This act shall only apply to a citizen or subject of a foreign state or nation when such foreign state or nation permits to citizens of the USA the benefit of copyright on substantially the same basis as [to] its own citizens; or when such foreign state or nation is a party to an international agreement which provides for reciprocity in the granting of copyright, by the terms of which agreement the USA may, at its pleasure, become a party to such agreement. The existence of either of the conditions aforesaid shall be determined by the President of the USA by proclamation made from time to time as the purposes of this act may require (Para. 29).

Thus, we can see that, first, foreign authors now could enjoy copyright protection, but only when their countries offered the same sort of protection to US authors. Second, all copyrighted foreign books sold in the USA had to be printed from the typeset or plates made in the USA. Finally, two copies of such printed books needed be either delivered or sent to the Library of Congress, no later than the day of publication in the USA or abroad.

Besides, Tailor (1997) also noted, the USA has been practicing trade liberalization by shifting alternatively between multilateralism and unilateralism since the end of Second World War. When it was necessary to pursue the multilateral path, the USA backed the TRIPS to launch multilateral agreement in 1995 by introducing a series of global minimum standards for protecting and enforcing nearly all kinds of IPR. The USA will turn to TRIPS if the infringement of other countries upon the US copyrighted products can be resolved through the WTO dispute settlement system. Otherwise, it will unilaterally pick up its self-help legislative tool of the Special 301 provisions to identify and investigate those countries that do not offer adequate protection for US IPR and take retaliatory actions such as economic sanctions or trade wars when necessary (pp. 1-6).

The above US history shows that it is for the changing economic benefits that the US copyright undergoes necessary revisions. It also indicates that countries in different stages of development tend to choose different degrees of copyright protection. Just as Varian (2005) noted, “increased per capita income will likely lead developing countries to increased adherence to international intellectual property norms” (p. 124). This does not mean that all developing countries are entitled to follow the footprints of the USA and make compromises in IPR protection under the TRIPS Agreement. However, there might be more fruitful results in the USA-China copyright dispute, if the USA took its own history into consideration and treated its trade partner more flexibly and genuinely.

2.4 Chinese resistance to the US pressure over copyright disputes

Regarding China as a total alien to IPR, the USA has been playing a missionary role to indoctrinate Chinese with the present USIPR perspectives, which represent the interests of the dominant US industries. Scholars (Halbert, 2005; Shao, 2006; Xue, 2005) share the idea that it is for the purpose of expanding its economic interests and global power that the USA has been pressing China to substantively revise its IPR systems and repeatedly restructure its IPR enforcement mechanisms. For instance, the first incident that revealed USA-China tension over IPR was about the drafting of China’s copyright law, which underwent more than 20 drafts over ten years within the context of USA-China IPR negotiations in the 1990s. Under US pressure, China also agreed to continue restructuring its IPR regime by upgrading its patent, trademark, and copyright laws. From the establishment of these IPR laws to the repeated revisions of them, the USA has always been playing the essential role as a catalyst for change (Xue, 2005). However, although the USA:

> [. . .] has forced China to produce a high level of IPR regime while in practice China is reluctant to fully enforce these laws for fear that they may stifle its own energy of creativity (Shao, 2006, p. 1).

Under the US pressure, will China be strategically cooperative or tactfully resistant? According to Xue (2005), a product of the 1992 USA-China Memorandum of Understanding is the International Copyright Treaties Implementing Rules, which "grant foreign works a higher level of copyright protection than Chinese works" (p. 303). When China was revising its copyright law in 2001, the pressure from the USA was to "bring China's copyright law in line with the WTO TRIPS Agreement and the network age [. . .] featuring the US Digital Millennium Copyright Act (DMCA)." However, China showed its resistance by aiming at "eliminating the double standards in the Chinese copyright system" (p. 304) so that both Chinese and foreign works and works either in the traditional expressions of hard copies or electronic versions in cyberspace enjoy the same kind of copyright protection.

Next, by integrating China into WTO, the USA managed to make China sign the TRIPS Agreement, which requires each WTO member country to harmonize its intellectual property laws with the minimum standards elaborated in the agreement. Nevertheless, these minimum standards are "generally those already existing throughout the USA, Europe, Australia, and Japan" (Halbert, 2005, p. 2). Thus, scholars (Hamilton, 1996; Patel, 1996; Yu, 2001) considered the US-led TRIPS Agreement coercive because of two obvious reasons. First, by implementing the universal minimum standards of IPR among all WTO member countries, the TRIPS Agreement refuses to consider the diversity of the economic, cultural, and political conditions in developing countries. Second, by bringing less developed countries into the TRIPS Agreement, it allows the developed countries to impose economic sanctions on infringing countries. Thus, the reinforcement of China's copyright law and other IPR regulations has never been satisfactory to the USA because "it is certainly not in China's best interest to enforce strict copyright protection" (Meng, 2007, p. 24).

Finally, the West thinks that China has not been genuinely enforcing its IPR laws and regulations on the one hand regardless of its WTO membership, which might prevent its citizens from making use of others' IPR freely. On the other hand, censorship is built into all layers of China's internet infrastructure known as the "Great Firewall of China." With this firewall, the Chinese Government managed to regulate both domestic and international online media to function within its approved parameter of the marketplace. For instance, facing the dilemma of either holding to the business ethics of committing to free speech or entering the Chinese market by observing the Chinese cyberspace laws and regulations, four US internet companies – Google, Yahoo, Cisco, and Microsoft – all compromised their principles and kowtowed to the technological and political demands of the Chinese Government (Deva, 2007).

3. Research methods

In this study, we adopted both historical analysis based on an extensive literature review of the existing research findings and a qualitative exploration of raw data from in-depth interviews for data collection. For data analysis, we used thematic analysis to reveal the emerging themes in the transcripts of Chinese cultural perceptions of copyright in general and the relationship between innovation incentives and copyright protection in particular. As Zhao (2005) pointed out, historical analysis will illuminate on how our present has come about by providing us with a sense of the past while scholarly research findings may help uncovering those significant features, which might be hidden from view. Smith (1983) noted, the study of human beings can be perceived as the study of moral actors – people acting on the basis of their

own values and interests. In-depth interviews are one of the most commonly used qualitative methods for this purpose.

Via snow-ball sampling, we recruited our participants. From May 2007 to May 2008, the first author went to Beijing, Shanghai, Xi'an, Chengdu, Nanjing, and Weinan in China as well as Chicago in the USA and Montreal in Canada for data collection partially as planned and partially thanks to conference opportunities. In total, we interviewed 45 participants who were either copyright holders like publishers and authors or ordinary consumers. IPR administrators and business people of copyrighted products were excluded from the scope of our participants because trial interviews of the former turned out to be virtually verbatim retelling of government policies or propaganda in their brochures or websites. And the latter, especially those engaged in illegal transactions of copyrighted products, gave almost the same answers to most of the questions that they were doing anything just for profits and for survival. Each interview lasted 30-50 minutes and was tape-recorded with the consent of the participants and their pseudo names used to protect their identity. To ensure quality, we used a pre-designed semi-structured in-depth interview guide with about a dozen questions in both English and Chinese, which had been back translated and checked by Chinese and English native speakers for accuracy. Differences were detected, and necessary revisions were made before actual field use.

As for data analysis, we first transcribed all the recorded interviews and then used thematic analysis to generate emerging themes. We used thematic analysis for this study because it is "a method for identifying, analyzing, and reporting themes within qualitative data" (Braun and Clarke, 2006, p. 79). Themes here refer to "units derived from patterns such as conversation topics, vocabulary, recurring activities, meanings, feelings, or folk sayings and proverbs" (Taylor and Bogdan, 1989, p. 131). To determine the emerging themes, 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. As the themes emerged, we identified and categorized the relevant portions of the transcriptions and parts of the field notes into classified folders. 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 literature review and theoretical framework, we tried to build a valid argument for the themes.

4. Research findings

As discussed earlier, we used strategy and war of position to mean the Chinese resistance from the governments or corporate institutions and tactics and war of maneuver to refer to the resistance from the Chinese IPR administrators and ordinary Chinese consumers in the USA-China copyright disputes. Strategically, the Chinese Government strongly supported the open-source movement launched by Linux in 1991 with the intention to challenge the cultural control of Microsoft and build its own post-PC industries, which might be safe in terms of national security. There are also interview illustrations, which form two major themes of strategies and tactics.

4.1 Strategies

Strategies are overall plans, principles, and goals, which result from the calculation or manipulation of power relationships. The interview transcripts demonstrate the Chinese strategies in various aspects during the USA-China copyright disputes:

> Example 1: To join WTO and develop its economy, China has made compromises in front of the developed countries. Some of the IPR policies may be something new to Chinese and some standards somewhat too high. To me, the strategies China has been taking to deal with the USA-China copyright disputes are selectively cooperative and tactically resistant. By selectively cooperative, I mean that the Chinese Government has been selecting those areas of priority for development and sincerely cooperate with the USA in such areas as establishing the IPR regime and issuing the IPR laws. By tactically resistant, I mean that the Chinese Government has been showy in occasionally cracking down upon copyright infringement facilities and punishing the relevant criminals. In reality, the IPR enforcement may not be so seriously taken at the stage of its economic development (P-44, P stands for participant, and P-44 means the forty-eighth participant; Taylor and Bogdan, 1989, p. 131).

As a university law professor, P-44 gave a detailed depiction of the major strategies of the Chinese Government in terms of IPR protection. To him, the Chinese Government has made efforts in passing the copyright law, but it may not have been the real intention to carry it out. The main reason may have been that the Chinese Government has established the copyright regime in China to gain a ticket to accede to WTO and attract more direct foreign investments. After joining WTO, China has been "selectively cooperative and tactically resistant" to deal with the USA-China copyright disputes:

> Example 2: From my view at this developing stage of its economy, Chinese Government might not have been taking its copyright laws seriously enough. In a sense, it is opening one eye and closing the other to some of the copyright infringement that is going on. Copying is a cheap way of development. Copyright piracy has also created a chain of industries, lessening the employment burden and bringing lucrative revenue to the local governments. This is why the local governments do not want to kill the golden goose for the time being (P-08).

As many scholars (Chen and Puttitanun, 2005; Liao, 2006; Montgomery and Fitzgerald, 2006; Odagiri et al., 2010) remarked, at the developing stage of their economies, developing countries are unwilling to tighten the enforcement of their IPR rules. Strict copyright protection will not only hinder their import and digestion of the urgently needed foreign IPR, but also facilitate the developed countries to secure more advantages in their manipulation of IPR control. In Brazil:

> [. . .] the weakening of IPR protection accomplished in 1945 and 1969 was meant to spur imitative efforts by national firms and thus the closing of the gaps between them and their foreign competitors (Mazzoleni and Povoa, 2009, p. 35).

In the USA, IPR policies "evolved to provide increasing pretection" (Odagiri et al., 2010, p. 59) throughout the nineteenth century as the number of domestic copyright holders kept increasing. China is no exception. P-08 commented on the local governments' strategies as "shutting one eye and closing the other," and unwillingness to "kill the golden goose" in the practice of their local protectionism:

> Example 3: The Chinese economy is mainly based on manufacturing of mostly labor-intensive products. There is limited innovation going on. Though China is headed toward an innovative country with increasing investment in its research and development (R&D), the major part of the country is engaged in labor-intensive products for overseas markets. Therefore, we just receive orders and designs from overseas with little innovation of our own. At this stage, people do not pay so much attention to copyright protection because they do not depend on innovation so much. However, 10-20 years from now on when China has shifted from a manufacturing country toward an innovation-oriented nation emphasizing on the production of new ideas, and R&D, then people will realize the importance of protecting IPR. When they become the creators and inventors as well as IPR holders, they will naturally protect their benefits from the innovations. In other words, lots of products are now made in China, but we do need more and more products invented in China (P-11).

As a researcher, P-11 made an analysis of the nature of the Chinese labor forces, which are still mainly engaged in the manufacturing of some repetitive, labor-intensive, and low-level products. Taking orders and receiving designs from abroad, Chinese themselves are hardly doing anything innovative. However, the participant is hopeful that there will be more creators and innovators in China in the near future when the nature of the labor forces is oriented toward the direction of innovation. There has been scholarly echo of such voice of stage development with increasingly stringent IPR protection. For instance, Maskus et al. (2005) remarked, "the effectiveness of IPR in expanding growth and technology development depends heavily on economic circumstances" (p. 307). Varian (2005) noted, the USA was:

> [. . .] a developing country in the nineteenth century, and it was hardly surprising that it found it attractive to free ride on the intellectual products of other, more advanced countries, such as Britain (p. 124).

It was not until the nineteenth century when the American technology began flowing out of the country, did the USA begin strengthening its international IPR laws and more and more Americans gradually changed their attitudes toward copyright protection. Thus, a shift in the balance of trade resulted in a shift in legal philosophy and change of attitudes toward the copyright policy (Anderson, 2007, pp. 178-9).

4.2 Tactics

A tactic is a practical method that can be a calculated action or maneuver within the rival's vision. It is the weaker side that often adopts various tactics to defend its interests or obtain temporary advantages by seizing any possible opportunities.

Tactically, the Chinese IPR administrators and ordinary consumers have adopted each and every one of the nine resistance tactics described in the theoretical framework. Here are some examples from the interview transcripts:

> Example 1: The Chinese are involved in copyright piracy mostly in an unconscious and unintentional way. Even if they do know, it does not matter much because there is no absolute law that stops them from doing so. They feel pretty safe. The sellers of pirated copyright products are playing a kind of hide-and-seek game with the government and the representatives of the foreign copyright holders. Usually, these business people sell legal and illegal products at the same time. When the supervisors come, they hide the pirated products. When they are caught, they may be forced to shut down their shops today, but tomorrow they will open them again like

> nothing has happened. Those street peddlers may pass on the message that the government officials are coming, and they just hide themselves from the supervisors. As soon as the supervisors are away, they come out again to continue selling their pirated IPR products. The government may have IPR policies or laws, but the enforcement of the laws is not so effective. It seems that it is very inconsistent because one day you may see bulldozers crashing the pirated copyright products, and they put it on the news when there is foreign pressure. However, the next day, the same business is resumed. I think the approach to the enforcement could be changed and then the enforcement may be improved (P-01).

P-01 is a civil servant from Beijing, the capital of China. He hit the point when he described the hide-and-seek games between the businesses and peddlers involved in pirated IP products and the government officials and representatives of copyright holders. There are three messages here. First, some copyright violators are engaged in the piracy business intentionally while many others, especially consumers, are doing so unawares. Second, both copyright law violators and enforcement personnel in China are not taking the enforcement of copyright law seriously when they are playing the hide-and-seek games. Third, some government officials do not intend to take the anti-piracy routine job seriously:

> Example 2: We have been bombarded with the news concerning the USA-China copyright disputes from various media. Last year I heard in Beijing that if any Chinese carrying pirated IPR 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 do not buy pirated IPR products. However, unawares, I have consumed some IPR 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 USTR, Charlene Barshefsky, was stopped in the US customs because she had carried some counterfeit dolls after her WTO negotiation trip from Beijing. Even 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 the country competitive. There have been nationwide campaigns to awaken the 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 more and more 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. Thus, we can imagine the favorable environment in which a myriad of tactics has been applied to make piracy, a negative form of opposition to pressure, available all over China. However, what is hopeful in the ideas of P-08 is that, just as the USA 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 have been signs of this progress.

5. Discussion

Since there is not a hard-and-fast line between the optimal scope of copyright protection and appropriate degree of innovation, there are various voices from scholars in the academia and different emphasis in the copyright policies of different countries at different stages of their economic or IPR development. From the literature review and research findings in the above sections, we can derive the following theoretical and practical implications.

5.1 Theoretical implications

In the literature review, strategies are defined as overall plans, principles, or goals and tactics as the practical methods and procedures for the implementation of the guiding principles. In the words of de Certeau and Gramsci, a strategy can be the calculation or manipulation of power relationships, and a tactic may be a calculated action or maneuver within the rival's vision. A strategy is a weapon of the strong used to maintain their advantages by establishing a defensible institution of war of position against any outsiders. A tactic is an art of the weak for defending their interests or obtaining temporary advantages by seizing any possible opportunities and thus engaging in a permanent war of maneuver.

Our research findings reveal that both the USA and China applied strategies and tactics in the enactment and implementation of their copyright laws according to the needs of their respective economic development stages. On the one hand, it is characteristic of the US Copyright Law to be non-existent during the whole colonial period and non-protective of foreign works when the country needed free access to the advanced knowledge and high technology from foreign countries. It is also characteristic of the US Copyright Law to continue discriminating against and offering restrictive protection of foreign works for another century after domestic works began to be protected. The final feature of the US Copyright Law reveals a strong coercive feature, which forces other countries to meet its high standards on the one hand and uses double standards to gain its own benefits. On the other hand, the Chinese Government has established the copyright law and kept revising and updating it under the US pressure; however, due to its hidden agenda of attracting more foreign direct investment as a WTO member, it is not enforcing it fully on a regular basis and cooperated with the USA by selecting those areas of priority for development.

What is worth mentioning here is that there can be a dynamic change in the roles of the strong and the weak? Just as the USA changed from a weak IPR country to a strong one in its history, China is probably to follow suit. When their roles gradually change along the continuum of the weak to the strong, the concerned countries or parties will definitely adjust their relevant strategies and tactics.

5.2 Practical implications

The practical implications of the study are threefold.

5.2.1 Realistic copyright laws for genuine innovation. Instead of being forced to accept a one size fit all universal international copyright law, each country should enact and implement a copyright law based on its specific historical, political, and socio-economic context and make it adjustable in accordance with the international IPR regime. Only in this way, can the enacted copyright law genuinely be implemented and reinforced and maximum innovation guaranteed. Negatively, both the features of the US Copyright Law and the efforts of the Chinese resistance clearly demonstrate this point. In order to ensure maximum

acquisition of foreign copyrighted products and provide its citizens with learning opportunities at the minimum costs, the USA applied double standards in its copyright protection. When free access to foreign works kept bringing rapid and enormous economic and cultural benefits, the USA did not issue any copyright acts to protect foreign copyrighted works during the colonial period. Even when it passed the period of a developing country with its IPR growing internationally competitive, the USA still amended its copyright law just with theoretically legal protection of foreign works with severely restrictive conditions. Nowadays, as one of the most developed countries possessing a great deal of IPR in the world today, the USA has become the predominant power advocating stringent IPR protection throughout the world.

Similarly, China made compromises at the beginning stage in the USA-China copyright disputes. In order to attract direct foreign investment and become a member of WTO, China completed its IPR regime and kept updating its copyright law under the US pressure and in accordance with the international IPR standards. For example, just before and after China's accession to the WTO in 2001:

> [. . .] over 147 laws concerning all facets of intellectual property have been amended, and out of the 343 paragraphs of the Working Party Report on China's accession, 55 cover trade-related IPR (Taplin, 2005, p. 1).

However, when it comes to the actual implementation and enforcement of the copyright law and other IPR regulations, various tactics have been brought to their full use by the governments at different levels, as well as the majority of the consumers within the border of China. To maintain its decade-long economic boom, China constantly needs to import maximum high tech from developed countries at affordable prices. Like the USA in its colonial time and the developing period, China has to apply strategies and tactics in its IPR sector while dealing with more urgent issues in many other social sectors.

5.2.2 Promising signs in China to implement the copyright law. It is well known that the components of an innovation system include universities and research institutes, public and private sector R&D, the education system, the technology transfer system, and all other organizations and institutions that influence the development, diffusion and use of innovations. Although China still lags far behind the USA in most of the components of the innovation system, it keeps increasing its investments in the "growth of knowledge through innovation" (Potts, 2009, p. 97).

In early 2006, the State Council of China made the strategic deployment of reinforcing the indigenous innovation to build China into an innovation-oriented country. To program and implement the building of indigenous innovation, the country established a national innovation system, which is an institutional and organizational network used to promote innovation in a regional and nationwide economic system (Zhou, 2006). According to Chen and Puttitanun (2004), the two widely used measures of innovation are: R&D expenditures, which measure the input of innovation, and the number of patents applied and granted, which measures inventive output (p. 13). As reported in the Battelle Magazine (2011), while growth in the US R&D investment is slowing down, China has increased its R&D investments by 10 percent each year for the last decade. The magazine estimates that, while the USA is expected to invest $405 billion in its R&D in 2011, China will invest $154 billion this year, passing Japan's $144 billion. Meanwhile, the R&D Magazine (2009) also reported that the number of patents filed by China increased from 93,485 in 2005 to 153,060 in 2007.

The above clearly demonstrates that it is promising for China to seriously implement and enforce its copyright law and other IPR regulations. As Acemoglu et al. (2002) remarked, "countries at early stages of development benefit from strategies that encourage technology adoption, while countries closer to the world technology frontier benefit from switching to strategies that encourage innovation" (p. 2). Chen and Puttitanun (2005) also stated, "a rational developing country will choose an optimal level of IPR [. . .] and exhibit a U-shaped relationship with per capita GDP" (p. 5).

5.2.3 Genuine communication. Although the USA is in no position to claim any moral superiority over China in the USA-China copyright disputes, it has been playing a missionary role to indoctrinate Chinese with the present US IPR perspectives, representing the interests of the dominant US industries. As Meng (2007) noted, such behavior is "not only self-serving but also totally ahistorical" (p. 23). Therefore, instead of merely putting pressure on China to make its copyright law enforcement effective, the US IPR officials and experts need to sit down and carry genuine talks with the Chinese counterparts about some in-depth investigations into the problematic areas. Only when the problems in the major areas are detected, the nature of the problems is completely understood, and the causes are analyzed, can real solutions be finally worked out. Only through genuine communication between the two sides, can the USA and China achieve a win-win result in their decade-long IPR disputes and, more importantly, in their mutual efforts to maintain a relatively optimal balance between copyright protection and innovation motivation. Encouragingly, a mechanism of bi-lateral dialogue between China and the USA has already been established. The American Chamber of Commerce in the People's Republic of China (AmCham-China) and the US Embassy co-hosted the first annual Ambassador's IPR Dialogue in November 2010, and in May 2011 the third annual Ambassador's IPR Dialogue is taking place in Washington, DC. Such high-level and regular meetings between the two countries will surely move the USA-China IPR discussions to "a higher and more productive level than ever before" (AmCham-China News, 2010, p. 1).

6. Conclusion

The present study aims at exploring the hidden agenda in both the USA and Chinese efforts in keeping the balance of innovation and copyright protection with an emphasis on the Chinese strategies under US pressure in the context of the USA-China copyright disputes. Through the theoretical lens of strategic and tactical resistance and via the research methods of extensive literature review, in-depth interview, and thematic analysis, we have achieved the following research findings. First, both the USA and China used strategies for the calculation and manipulation of power in the enactment and implementation of their copyright laws at different stages of their economic development. Although the route the USA has been taking appears smoother and more active while the path China had to take seems passive and under greater pressure, the hidden agenda in the strategies of both countries are the same: trying to obtain free access to adopt advanced foreign IPR at the initial stage of the economic development but switching to more stringent IPR protection when one's domestic IPR becomes internationally competitive. Second, in order to defend their own interests and obtain national advantages first temporarily and then permanently, both the USA and China made full use of all kinds of tactics by seizing any possible opportunities. However, it is comforting and promising to find that both countries would invest heavily in their R&D to encourage innovation when their economies could afford them to do so.

The significance of the present study lies in the fact that the research findings have revealed the genuine intentions of both the USA and China in the enactment and implementation of their respective copyright laws and the strategies and tactics taken by both countries in their communication with the relevant parties at different stages of their own economic development. Hopefully, the research results of the present study will help IPR representatives from both countries shorten their physical and psychological distances and facilitate a win-win result in their decade-long IPR disputes and mutual efforts to protect copyright and boost innovation through genuine communication. However, our study results are based on a snow-ball sampling of 45 participants as copyright holders and consumers just from China. Future studies may either broaden the sample size and diversity of participants from both China and the USA or apply quantitative methods to further clarify the relationships between innovation and copyright protection with empirical results.

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