
ONLINE FILM AND MUSIC PIRACY IN CHINA: A CULTURAL ANALYSIS

By

MELODY YOUNG

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Melody Winnie Young for the degree of Bachelor of Arts

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Professor Eric A. Priest

This paper analyzes the issue of online piracy from a cultural perspective, tracing the historical and cultural influences that affected modern-day perspectives on the entertainment industry and its creative products. After the Cultural Revolution, traditional Confucian values declined and in spite of improvements in the perception of the performer, their works never gained a level of respect that merited payment. This has developed into a sense of normalcy and entitlement to pirated goods that exacerbates the online piracy issue in China. This paper therefore aims to offer one of perhaps many different cultural underpinnings of this phenomenon in modern day China, and hopes to offer an additional lens from which we can understand its current piracy dilemma.

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PREFACE

As my fellow students nestled into their seats around me, our Chinese professor at Nanjing University excitedly shared his recent acquisition of a renowned American scholar's journals. "I purchased all his works online," he said with pride, "because I respect him."[§] I noticed a few incredulous looks on my Chinese classmates' faces. A majority of them openly admitted to having never purchased a single book legally since they entered university. I myself was shocked by my classmates' reactions, as I was imprinted with the "custom" that intellectual property is purchased, or at the very least, due monetary compensation is given to its creator. To my American mind, it did not make sense that the vast majority did not buy their books. What then did respect have to do with it? Yet this experience and the idea that respect is tied into one's purchasing habits sparked my interest into investigating the prevalence of online piracy in China, particularly with regard to music and film.

Intellectual property and copyright have been called entirely "foreign" notions in Chinese culture, and perhaps rightly so, as these concepts were introduced by the British over trademarks in early 1884.¹ Yet what I find fascinating is that should

[§] It was assumed that the professor procured the material through legal means, though it is sometimes hard to distinguish between illegal pirated goods online as opposed to the legal downloading option. Many downloading websites are often formatted to look legitimate to a degree, but from context, it appeared that the professor purchased it by legal means. Yet I found his statement curious in it of itself. How did respect affect whether he obtained scholarly material legally or not? As opposed to other authors he did not necessarily respect, his tangential comment in class seemed to indicate that he would normally just illegally download the documents online. I decided to investigate this mindset, which seemed consistent at least with the people I interacted with in China.

¹ William P. Alford, *To Steal a Book is an Elegant Offense* (California: Stanford University Press, 1995), 34.

someone violate IP laws in America, we label the act as “stealing.” To the average Chinese, there is no sense of this, nor is there a moral association with the act of piracy as being wrong. As Lu Xun mentions in his short story, “Kong Yiji,” “Taking books can’t be counted as stealing.”² In fact with issues such as illegal downloading and piracy, Chinese feel they have a sense of entitlement, that downloading (whether by legal means or not) is an essential right. This paper therefore aims to investigate the cultural underpinnings of this phenomenon in modern day China, and hopes to draw an understanding of a generalized but perhaps commonplace Chinese opinion (among many) regarding online piracy.

It is necessary that I premise this paper with the fact that I only have a basic understanding of IP laws, if you could even call it that. While it may have been worthwhile to delve into this subject matter in terms of research, the short time frame of this thesis writing process would be insufficient to understanding IP laws in not only an international setting, but how they also functioned domestically in China as well. As a result, this analysis will namely come from a cultural aspect in trying to understand the purveyance of this problem and its persistence in Chinese society. The links I intend on drawing between Chinese culture and the practice of piracy is in no way intended to imply that Chinese culture is bad, nor is it the sole reason for China’s rampant piracy issues. However, it is intended merely to offer an additional insight into the complexity of the piracy problem and how culture has affected its

² Lu Xun, “Kong Yiji,” trans. Yang Xianyi and Gladys Yang in *The Columbia Anthology of Modern Chinese Literature*, edited by Joseph S. M. Lau et al. (New York: Columbia University Press, 2007), 18.

development in China. I suggest that piracy is not simply a matter of infrastructure, enforcement, politics, or even economics, but beyond that; this understanding from a cultural standpoint may offer a greater insight into dissecting the piracy problem at hand.

I. INTRODUCTION

Intellectual piracy is a global phenomenon sweeping the world, which some have described its effects as “nearing epidemic proportions.”³ In light of improved technologies that increase the ease of internet access, online piracy has become not only a rampant issue, but a high-profile one as well. Yet one could arguably contend that due to the attention this problem has gained internationally, intellectual property rights awareness has grown as a response. China’s efforts to combat this issue are particularly difficult due to the sheer scale and magnitude of the problem; its massive population exacerbates matters of enforcement. Yet what is especially troubling is the sense of normalcy that has developed with regard to intellectual piracy. Piracy is a common practice whether on the streets or in the privacy of one’s home. It has blended so seamlessly with daily life that the general public does not perceive it as a cause for concern—and that in itself is disconcerting. Both the habit and indifference towards copyright protection has manifested in a slew of “dishonest practices” that are coming to light in Western media today.⁴ The impacts of piracy has permeated many aspects of Chinese society, including “students who cheat on college entrance exam and “scholars who promote fake or unoriginal research [...]”⁵ Scholars in China and abroad agree that the “lack of integrity among researchers is hindering China’s potential and harming collaboration between Chinese scholars and their international

³ Majid Yar, “The global ‘epidemic’ of movie ‘piracy’: crime-wave or social construction?” *Media Culture Society* 27, no. 5 (2005): 677.

⁴ Andrew Jacobs, “Rampant Fraud Threat to China’s Brisk Ascent,” *New York Times*, October 6, 2010, accessed October 8, 2010, <http://www.nytimes.com/2010/10/07/world/asia/07fraud.html?ref=china>.

⁵ *Ibid.*

counterparts.”⁶ Chinese scholars concur that China must change its ways in order to participate in the global community.⁷ Yet in spite of external pressure from both national governments and international businesses, the problem persists. It should not be overlooked that China has taken great strides in improving infrastructure and addressing enforcement issues. What has been done within the past decade is commendable, but clearly an additional approach is needed to expedite the process and enact changes that span across generations.

Thus this paper aims to analyze the piracy issue in China from a cultural standpoint, theorizing a possible cultural base for its acceptance within Chinese society, though there may be a number of reasons for its seeming permanence in China. Indeed, China’s issue of intellectual piracy as a whole is very complex, and to determine the key reasons for its emergence may not even be possible. The contributing factors may not be one or two variables, such as economics, politics, or infrastructure, but may in fact be an amalgamation of a number of key factors. With that said, I still believe that understanding the problem of piracy from a cultural perspective will at least offer a preliminary insight into what might have helped develop piracy norms in China. In addition, this additional angle may perhaps begin to look into the contributing factors, if only a subliminal one, that justifies its continued presence within Chinese society. All things considered, the subject of piracy in China has been analyzed by a wide range of scholars, and the number of theories proposed

⁶ Ibid.

⁷ Ibid.

as possible solutions is immense. However, this theory I hope to offer may aid scholars and policymakers as they continue to refine their approaches to enforcing intellectual property (IP) rights, even if it is only in their sensitivity and understanding of the Chinese culture. Since piracy in China can manifest in a number of forms (music, film, software, counterfeit, physical piracy, online piracy),⁸ for the purposes of this paper, the research will be limited to online piracy, namely music and film—movies, television series, and dramas.⁹ This paper therefore considers that the prevalence of online piracy in China can in part draw from the lack of respect towards the entertainment industry historically, societal moral shift from traditional Confucian values, and the sense of entitlement to free entertainment that has developed as a result of it. Culture is certainly not the sole cause for piracy's commonplace in China today, but it may on some subconscious level color the perception of these intellectual products, and to a degree may influence China's attitudes towards these forms. My hope is that this understanding will shed some light into a generalized Chinese perspective and can help reinforce efforts to approach the topic through a cultural lens.

DEFINITIONS

Since this paper focuses heavily on the notion of "culture," it is necessary that I premise this term with a discussion of not only its definition, but also how culture

⁸ Eric Priest, "The Future of Music and Film Piracy in China," *Berkeley Technology Law Journal* 21, no. 2 (2006): 796.

⁹ Music and film by and large can be seen as cultural products, of which understanding the cultural perspective on them may offer some additional insight into the seeming ambivalent attitudes of Chinese policy makers and the general population.

affects behavior and interacts with law. The term “culture” is a frequently used term, but can refer to a number of things. It can refer to a set of practices, norms and/or values held by a group. It can refer to an ethnic practice or a communal habit that has developed into a shared sense of identity. It can refer to a social phenomenon, quality, or interest shared by a number of individuals, but not necessarily. It is hard to clarify this term, considering that:

Culture is "learned behavior"; it is not behavior at all but an "abstraction from behavior"; it is "intangible," a "logical construct"; it is a "psychic defense system," a "precipitate of social interaction," a "stream of ideas"; it "consists of n different social signals that are correlated with m social responses," etc.¹⁰

The chief problem with defining culture is “primarily a philosophic and semantic problem,” and so for the purposes of this paper, it is crucial that we narrow that definition down somewhat, if only for simplicity’s sake.¹¹ Culture itself is multifaceted. It can involve social currents or traditional customs that contribute to one’s sense of identity. In Rogers Brubaker and Frederick Cooper’s article titled “Beyond ‘identity,’” they analyze the subject of “identity,” which while not interchangeable as a term with culture, is equally difficult to define. The analysis they offer on the uses of identity can be useful as we discuss the notion of culture. Identity can be understood as 1) “a ground or basis of social or political action,” 2) “a specifically collective phenomenon,”

¹⁰ Leslie A. White and Joseph Greenberg, “Review: [untitled],” *American Anthropologist* 56, no. 3 (Jun. 1954): 462.

¹¹ *Ibid.*

denoting “a fundamental and consequential sameness among members of a group or category,” 3) “a core aspect of (individual or collective) ‘selfhood,’” 4) “a product of social or political action,” “invoked to highlight the processual, interactive, development of the kind of collective self-understanding, solidarity, or ‘groupness’ that can make collective action possible,” or 5) the “evanescent product of multiple and competing discourses.”¹² With this in mind, the culture this paper speaks of is a logical construct, embedded with a history of tradition, politics and customs, and is a collective phenomenon that may contribute to a social identity.

Culture in this sense is not stagnant, as in every society, culture changes and develops over time. Chinese culture has changed gradually with the influences of political shifts in the national agenda, whether it is the rule of the Qing, the Nationalist Party or the Communists. This paper’s cultural analysis looks to those changes in Chinese history, at the changing cultural perspectives and how they might minutely contribute to interpretations and understandings of intellectual property today. Since culture can be perceived as a logical construct, our behavior is a response interpreted through that construct, though culture’s influence on human behavior is limited in the sense that values, priorities, social pressures and other factors affect the decision on a particular reaction. For example, one might be Chinese, but simultaneously Buddhist, so how one behaves in a situation is influenced by the Chinese culture but only to a degree. The religious or perhaps philosophical values also contribute to that

¹² Rogers Brubaker and Frederick Cooper, “Beyond ‘identity,’” *Theory and Society* 29 (2000): 7-8.

behavioral process. On the other hand, culture in its interaction with law may color priorities in the development of the legal framework or even influence the varying degrees of importance or punishments attributed to a law or statute. Culture is influential, but only to a degree.

To clarify a few other common terms referred to in this paper, I offer the following definitions on the subject matter. Piracy itself is such a widely used term, but often lacks a unified definition in the international community, as “all legal and economic uses of the term have their basis in intellectual property (IP) law and protection.”¹³ Intellectual property is therefore often described as an intangible form of “ideas, inventions, signs, information and expression.”¹⁴ IP laws therefore protect or “establish proprietary rights over ‘original’ forms of intellectual production,”¹⁵ often recognized as patents, trademarks, trade secrets, industrial designs, and copyright. Copyright is essentially the “holder’s (e.g. an author’s) rights over a particular form of original expression,”¹⁶ protecting the expression of the idea instead of the idea itself.¹⁷ Having established these as working definitions, piracy is therefore the infringement of copyright and refers to the unauthorized copying and distribution of copyrighted material, often but not necessarily for commercial gain.¹⁸

¹³ Yar, 678.

¹⁴ Yar, 679.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Alford, 2.

¹⁸ Yar, 679.

II. BACKGROUND INFORMATION

METHODS OF PIRACY

Online piracy often takes three forms: streaming, peer-to-peer sharing/torrenting and direct downloading. Streaming offers users free access to viewing full-feature films, music, concerts, or even entire TV-series/dramas on the internet. These videos are stored online through a provider, which users can access by “streaming” the content onto their personal computers. Some commonly known sources are as follows: *Tudou.com*, *Youku.com*, *Sohu.com*, *PPLive* (a downloadable application that streams), *QVOD*, etc. Unlike Western streaming sites such as *Youtube*, *Dailymotion*, or *Veoh* that remove copyrighted videos uploaded onto their media without the owner’s permission, these Chinese streaming counterparts do not remove foreign or domestic copyrighted material that violate copyright practices. (They on rare occasion remove domestic content, but even then it is negligible at best. There are always alternatives to the direct streaming websites that make the domestic material accessible, so in essence, a vast majority of copyrighted films are posted for illegal access without consequence.) Some of these videos are region-encoded to prevent access by IP addresses outside of China. In terms of peer-to-peer sharing, “this behavior appears particularly concentrated on college campuses, with a potent combination of poor students and readily accessible high-speed internet access.”¹⁹

¹⁹ Priest, 800.

Peer-to-peer sharing refers to users that can share files with “peers” on a shared network, hence the name of “peer-to-peer” (sometimes abbreviated as P2P). The term “torrenting” refers to an alternate form of peer-to-peer sharing, referring to the specific program that utilizes “.torrent” files.⁵ Users can download these torrent files from others that make the file available, otherwise known as “seeders.” This downloading process can be separated into multiple sessions, which can stop midway. On the other hand, direct downloading can only be completed during a single session from a server online. These are the primary means that internet users circulate pirated material online. In China, downloading by any of these means is readily available. These venues are easy to search for online and are often linked with streaming sources as well.

PREVALENCE OF PIRACY IN CHINA AND SOURCES OF ONLINE PIRACY IN CHINA TODAY

Due to the ease of access both to these sources of illegal material and the low price of fast internet for households, online piracy in China is not only commonplace, but is circulated at an alarming rate. Legal scholar Eric Priest noted that China is straddling what he called “two eras in development of copyright protection.”²⁰ Priest describes this dilemma as: “while it struggles to defeat what one might call ‘twentieth-century piracy’ (that is, the unauthorized copying and selling of DVDs, VCDs, and CDs, also referred to herein as ‘traditional piracy’), it finds itself careening toward the

⁵ It is worthwhile to note that torrenting can in some senses be seen as a growing global, cultural phenomenon in which multiple users with similar goals pool their resources. It might be seen as a sort of collectivist sharing culture or stealing system.

²⁰ Priest, 801.

growing threat of ‘twenty-first century piracy’ (that is, internet file-sharing, or ‘internet piracy,’ which threatens to overtake physical piracy in value of goods ‘stolen’).”²¹

To provide some context on the significance of these losses, physical piracy alone is staggering, let alone the gravity of uncontrolled internet downloading.

According to copyright industry estimates, “more than 90% of all music CDs, movie DVDs, and software sold in China are pirated.”²² According to the Business Software Alliance (BSA), it claimed China’s software piracy was 82% in 2005,²³ and was above 90% from 1995 to 2004,²⁴ although the Chinese research firm, Chinalabs.com, reports piracy rates as low as 41%, with signs of software piracy rates decreasing.²⁵ Whether that source is entirely reliable should be questioned, but even at 41%, it is double the 20% rate in the United States with regard to PC software as of 2009.²⁶ In terms of counterfeits, China accounted for “66% or over \$62 million of the \$94 million of all counterfeit and infringing goods seized by the US Customs Service at ports of entry into the United States” in 2003,²⁷ 75% according to other sources.²⁸ It is worth

²¹ Ibid.

²² Priest 797.

²³ Wang Xing, “Piracy Debate,” *China Daily*, June 6, 2008, accessed December 3, 2010, http://www.chinadaily.com.cn/bw/2008-06/09/content_6746151.htm.

²⁴ Ibid.

²⁵ Ibid.

²⁶ “New Study Reveals Extent of PC Software Piracy Worldwide,” *Business Software Alliance*, accessed April 24, 2011, <http://www.bsa.org/country/News%20and%20Events/News%20Archives/global/05122009-idc-globalstudy.aspx>.

²⁷ Daniel C.K. Chow, “Intellectual Property as Economic Policy: Will China Ever Enforce Its IP Laws?” *Congressional - Executive Commission on China*, May 16, 2005, accessed December 3, 2010, <http://www.cecc.gov/pages/roundtables/051605/Chow.php?PHPSESSID=64fdb53766d2c1ae1bc3a4c738dcb3>.

²⁸ Priest 798.

reiterating that these are merely estimates for physical pirated goods. Therefore, online piracy can possibly account for even more losses for businesses as internet piracy is overtaking physical piracy.²⁹ It is difficult to estimate how great these economic losses are, but as of 2010, China has been the country with the highest number of internet users. There are roughly 420 million users compared to the 239.8 million in the United States.³⁰ It is difficult to fathom the degree and level of intellectual property rights infringements in China.

While I do not mean to overwhelm the reader with the facts and figures, the data is simply alarming. In 2004, searches for “MP3” and “BT” (short for BitTorrent, a torrenting software) respectively ranked first and fifth most popular search terms on Baidu.com—China’s largest internet search engine.³¹ These searches for downloadable music accounted for “20% of Baidu’s total traffic. The [International Intellectual Property Alliance (IIPA)] believes that millions of Chinese users already trade copyrighted material online, either through peer-to-peer networks or FTP servers.”³² The International Federation of Phonographic Industry (IFPI) reported in 2008 “more than 99 percent of all music files distributed in China are pirated, and the country’s total legitimate music market, at \$76 million, accounts for less than 1

²⁹ Granted, these economic losses themselves are near impossible to estimate, and have been said to be overblown by businesses. However, the piracy itself discourages creativity, and that in itself is harmful to the general market in China.

³⁰ Miniwatts Marketing Group, “Top 20 Countries with the Highest Number of Internet Users,” *Internet World Stats: Usage and Population Statistics*, accessed December 5, 2010, <http://www.internetworldstats.com/top20.htm>.

³¹ Priest, 800.

³² *Ibid.*

percent of global recorded music sales.”³³ Needless to say, intellectual piracy regardless of the means of acquisition is pervasive in Chinese society.

INTELLECTUAL PROPERTY LAWS IN CHINA AND ENFORCEMENT ISSUES

HISTORY OF CHINESE LAW AND THE ORIGINS OF INTELLECTUAL PROPERTY LAWS

IP laws did not exist in imperial China, though “there may have been some nominal IP laws on the books from at least very early in the twentieth century.”³⁴

Chinese IP law expert William P. Alford clarifies in his acclaimed book *To Steal a Book is an Elegant Offense*, that contrary to popular belief, copyright did not “emerg[e] with the invention of printing.”³⁵ Alford argues that although Western theorists of economic development believed that the “inexpensive dissemination of texts necessitated the formal legal protection that copyright is intended to provide,”³⁶ Chinese at the time were unconcerned about pirating and relied on an “overwhelmingly penal” legal system, where civil law remained “extremely underdeveloped.”³⁷ Alford theorizes that the Chinese never adopted IP policies as this legal code was incompatible with customary practices in Chinese literature, which necessitated borrowing, synthesis and quotation. Creativity in the Western sense was not encouraged in traditional Confucian culture. In *The Analects of Confucius* 7.1,

³³ Kirby Chien, “Google Launches Free, Legal Music Downloads in China,” *Reuters*, March 30, 2009, accessed December 2, 2010, <http://www.reuters.com/article/idUSTRE52T22P20090330>.

³⁴ William O’Hennessey, “Protection of Intellectual Property in China (30 Years and More): A Personal Reflection,” *Houston Law Review*, (2009): 1269.

³⁵ Alford, 9.

³⁶ *Ibid.*

³⁷ Alford, 10.

Confucius said: “I transmit rather than create. I trust and delight in the ancients [...].”³⁸ According to Alford, “To avail themselves of that understanding in order to guide their own behavior, subsequent generations had to interact with the past in a sufficiently thorough manner so as to be able to transmit it.”³⁹ Literary production in imperial China therefore drew heavily from the past, one’s predecessors and their works. Some scholars have labeled this custom as a “copycat culture” or as contemporary Chinese artist Chen Danqing calls it, a “piracy culture” (*dao ban wen hua* 盜版文化). These terms fail to capture perhaps the synthetic and creative nature of this reproduction, but it was certainly a different literary culture that is very distinct from the West.

What we understand as copyright protection today emerged in China as an incentive for printers to not publish heterodox materials, and was not intended to acknowledge the intellectual property of the author or creator.⁴⁰ The earliest example of this traced back to 1068, where the emperor of the North Song Dynasty “issued an order forbidding reproduction of the ‘Nine Books’ without authorization.”⁴¹ Otherwise, no formal legal protection of copyrights existed; “These concepts were not introduced until the late nineteenth century, when [...] Western powers did so ‘at gunpoint.’”⁴² Thus, as the West began to develop its IP policies in the early seventeenth and

³⁸ Philip J. Ivanhoe, *Confucian Moral Self Cultivation*, second edition (Indiana: Hackett Publishing Company, 2000), 1.

³⁹ Alford, 25.

⁴⁰ Alford, 18.

⁴¹ Fan Zhang, “Chinese Copyright Protection has Storied History, Strong Future,” *Sourcetrax Corporation*, 2002, http://www.sourcetrax.com/docs/whitepaper-China_Intellectual_Property.pdf.

⁴² Priest, 802.

eighteenth centuries, there was no Chinese equivalent in imperial Chinese history.⁴³ IP protection was of little import in ancient China, since less than 20% of Chinese were literate, even by early twentieth century.⁴⁴ Yet the expansion of foreign economic involvement in China in late nineteenth century brought a clash in what might be seen as cultural perceptions about IP. The local disregard for IP in China resulted in a legal battle between David Sassoon and Sons Col. (a British firm) and Wong Gan Ying (a Chinese firm) over trademark issues in 1884.⁴⁵ By the turn of the century, these problems became increasingly commonplace with the popularity of imports. This reflected the general disdain of foreigners “for a system with which they had little familiarity and for which they had even less respect.”⁴⁶ IP concepts were therefore rather forcibly introduced into imperial China, though to of no avail. While foreign consulates attempted to register their own marks to the Imperial Maritime Customs Service, these proved ineffective. China had signed the Mackay Treaty of 1902 with the British and another treaty with the United States in 1903, but the vagueness of these commercial treaties did little to allay rampant IP infringements at the time.

CURRENT STATUS OF INTELLECTUAL PROPERTY LAWS IN CHINA

China has taken notable steps away from its negligible history of IP policy interaction and enforcement within the last 25 years. Since then, China has created many of its own laws, regulations and measures on IP rights. According to legal

⁴³ Alford, 18.

⁴⁴ Alford, 19.

⁴⁵ Alford, 34.

⁴⁶ Alford, 35.

scholar Peter K. Yu, trademark laws were first introduced in China in 1982, followed by patent law in 1983, copyright in 1990 and most recently intangible cultural heritage law enacted in 2011.⁴⁷ In a list of China's current main laws, administrative regulations and department rules regarding intellectual property rights (IPR) compiled by the Economic and Commercial Counselor's Office of the Embassy of the People's Republic of China in the Republic of Bulgaria (中华人民共和国驻保加利亚国大使馆经济商务参赞处), it lists twelve pages worth of IPR laws, regulations or rules that have developed in China as of March 30, 2005. This is indicative of the forthcoming nature of China's IP legal system. These statutes range from a topic as broad as copyright law and implementing regulations on trademark law to regulations as detailed as Rules for Pesticide Administration and Management Measures of Wholesale, Retail, and Rent.⁴⁸

China has acceded to a number of international conventions, signing treaties such as the World Intellectual Property Organization (WIPO), DOHA Development Agenda, Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") of the World Trade Organization, etc.⁴⁹ Since then, it has also formed the State Intellectual Property Office of the P.R.C. (SIPO) and has acceded to the SIPO Patent Cooperation Treaty. China is moving from an imitation model to one of

⁴⁷ Peter K. Yu, "The Middle Kingdom and the Intellectual Property World" (keynote speech presented at Oregon Review of International Law Symposium: "China's Role in Regulating the Global Information Economy," Eugene, Oregon, April 8, 2011).

⁴⁸ Economic and Commercial Counselor's Office of the Embassy of the People's Republic of China in the Republic of Bulgaria, "List of China's Current Main Laws, Administrative Regulations and Department Rules Regarding Intellectual Property Rights," last modified March 30, 2005, accessed April 24, 2011, <http://bg2.mofcom.gov.cn/aarticle/chinalaw/mission/200503/20050300031334.html>.

⁴⁹ Ibid.

innovation. China is beginning to develop IP laws protecting indigenous innovation, *zi zhu zhi shi chan quan* 自主知识产权. China accounted for 6% of patents in the world as of 2008.⁵⁰ The number of patents in China this year is about 1 million, which is remarkable compared to the 170,000 in the year 2000.⁵¹ The goal is to have 2 million by 2015. There is a ratio of 3:1 in terms of utility patents (which are registration only, unexamined patents that can take 3-5 years to process) to invention patents. Invention patents will hog up the system, as it will have the greatest impact on businesses and investment.⁵² Scholars have noted that building innovative capability in industrial enterprises with “emerging strategic industries” policy will have a predicted impact of adding 8% of GDP by 2015, and 15% by 2020.⁵³ Former Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office, Sharon R. Barner, remarked that these are milestone achievements for China. While the United States recognizes this, without some “pushing and cajoling” on the U.S.’ part, we would not be where we are today with China.⁵⁴ The intellectual piracy issue in China is “a veil that cannot be un-wrung,” but in spite of this, innovation will certainly move China forward.⁵⁵ We do not see

⁵⁰ Richard P. Suttmeier, “Technological Aspirations in China’s 12th Five Year Plan” (presented at Oregon Review of International Law Symposium: “China’s Role in Regulating the Global Information Economy,” Eugene, Oregon, April 8, 2011).

⁵¹ Sharon R. Barner, “China: Innovation Leader or Trojan Horse” (presented at Oregon Review of International Law Symposium: “China’s Role in Regulating the Global Information Economy,” Eugene, Oregon, April 8, 2011).

⁵² Ibid.

⁵³ Suttmeier, “Technological Aspirations in China’s 12th Five Year Plan.”

⁵⁴ Barner, “China: Innovation Leader or Trojan Horse.”

⁵⁵ Ibid.

piracy or counterfeiting changing as we saw in Japan, Korea and Taiwan namely because it is happening on a much larger scale. Tackling this complex issue will require much more time.

IPR ENFORCEMENT ISSUES IN CHINA

Yet as Sharon R. Barner expressed in her presentation “China: Innovation Leader or Trojan Horse,” “IP is of no value if you do not protect it.”⁵⁶ How do you have court systems to protect IP? The U.S. government always commends China for setting up a judicial system to address this, but the challenge in itself is that the judicial enforcement needs to meet these challenges. Some case statistics in 2009 are that there have been 4,422 patent cases filed and 6,000 copyright cases.⁵⁷ This is significant considering that there were 3,000 patent cases in the U.S. and 3,500 copyright cases in the same year.⁵⁸ In terms of piracy, counterfeiting, and imprinting issues, these cases are winning, but China is still working on ensuring that the amount in damages are fair and act as a good deterrent to IP infringement. China should enact policies and procedures that will help the economic environment of its own people, but that will require changes to the Chinese mindset with regard to intellectual piracy. The people are so used to pirated goods. How do you convince them that these changes are necessary? In China, there is a very broad-based education that will take time to educate on the importance of intellectual property. IP will only be successful if people accept it. And yet overwhelmingly, the people who are educated are the ones

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

who buy pirated goods, middle class and college students. This indicates that the basis for intellectual piracy is not just for economic reasons. International businesses have responded in kind by significantly lowering the prices of legal DVDs, such as legitimate Windows software.⁵⁹ Yet this undeniable market for pirated goods remains.

IMPACTS OF PIRACY IN CHINA

As a result, there are obvious economic ramifications for companies whose intellectual products are stolen. In 2002, US movie industry representatives “saw annual financial losses through ‘copyright theft’ rise to somewhere in the region of \$3 billion.”⁶⁰ Many companies operating in China are reluctant to “develop state-of-the-art technologies in China for fear that IPR violations will lead the company to not be able to recover its R&D costs.”⁶¹ Outside of the economic consequence, piracy’s impact in China is that it is damaging to these creative industries, harming both local ingenuity and foreign investment. This is of great concern to Chinese policymakers as the nation prioritizes its emergence as an economic power in the global community. In addition, local IP enforcement has been negligent at times, which have led to increased organized crime.⁶² The Chinese government controls the number of imported films that enter the country, and as a result, crime syndicates determine the illegal distribution rights among their firms for films that have not been allowed entry

⁵⁹ Ibid.

⁶⁰ Yar, 677.

⁶¹ Erin Swike, Sean Thompson and Christine Vasquez, “Piracy in China,” *Business Horizons* 51 (2008): 496.

⁶² Ibid.

by the government.⁶³ These crime syndicates have a very strong presence, and the Chinese government has found it difficult to thwart their efforts in the growing effort to enforce IPR.⁶⁴ This is troublesome for the social welfare of the common person and highlights the impact piracy has on multiple facets of Chinese society: business, creativity, society.

III. APPROACHING ONLINE PIRACY FROM THE CULTURAL ARGUMENT

This paper theorizes that the development of piracy norms can find influences from the cultural perception of respect. What is considered respect in traditional Chinese culture may contribute to understanding the ambivalent attitudes towards online piracy in modern-day China, particularly with regard to music and film. This theory rests on the consideration that historically, Chinese have little regard for the entertainment industry. While contemporary China no longer functions from within the Confucian framework, traces of the philosophy remain to this day in Chinese culture. Empirical evidence suggests that products of entertainment do not warrant respect—in modern discourse this would translate as monetary payment or even to its level of importance in policymaking. This may be a subconscious consensus that could explain in part the widespread nature of online music and film piracy in China today, or at least for its struggle to gain attention among policymakers in mainland China.

⁶³ Ibid.

⁶⁴ Ibid.

I see piracy in China as largely a norms issue; it is a behavior and speaks to a general mindset. As Barner had previously iterated, how do you change these Chinese mindsets? Altering the frame of mind, whether it is conscious or subconscious thought, is a difficult task, and to even begin this process will require an examination into what forms that psychology. Since culture often functions as a guiding mechanism for individuals—some more so than others—by analyzing the cultural basis for online piracy's acceptance, strategies can be developed to changing these viewpoints about piracy. In his presentation on censorship in China, Rob Faris offers two strategies to addressing censorship problems: (1) individuals controlling themselves—which is more effective and (2) going after the content—which is very difficult to regulate.⁶⁵ These two strategies, while spoken in context of censorship, would prove true of piracy as well. It is far easier to address a problem if the people themselves refrain from piracy itself, as opposed to setting up a system that tackles piracy as it occurs. At present though, much of the Chinese government's focus has been invested into developing a solid legal framework, infrastructure to hopefully resolve piracy concerns and penalize those that violate the laws. This is necessary for the efficacy of IPR in China, but at the same time, the most effective deterrent may be to look to the people themselves. Should a moral code be attached to piracy and respect associated with original work, it may prove to be a positive reinforcement and foundation for IPR to grow in China. The

⁶⁵ Rob Faris, "Chinese Content Regulation/Censorship" (presented at Oregon Review of International Law Symposium: "China's Role in Regulating the Global Information Economy," Eugene, Oregon, April 8, 2011).

problem of online piracy is like a bad habit. In order to break it, we must not only understand the reasons for it, but also allow the Chinese to recognize this for themselves. That would offer a more solid foundation from which to build strategies to more permanent solutions on the matter. Granted, cultures are constantly changing, and the Chinese culture itself continues to undergo its own growth and development. The permanence of these solutions would therefore be limited as the society continues to change and create new cultures within it, but certainly sensitivity to the cultures of origin can help us orient and understand the directions it may take in the future. This could certainly help refine the techniques and approaches scholars and policymakers take, and hopefully help foresee the dynamics of that culture and where it may go.

PERCEPTIONS OF THE PERFORMER AND CONFUCIAN HIERARCHY

As was previously mentioned, I suggest that respect significantly contributes to the prevalence of online piracy. To prove this will require empirical evidence, of which understanding and establishing the role of respect in traditional Chinese society is key. “Respect” is arguably one of the foundations to two of the five cardinal virtues of Confucianism, *yi* 义 righteousness and *li* 礼 propriety.⁶⁶ *Yi* 义, loosely translated as righteousness, honesty, or uprightness, involves rational thinking, but in addition “demands concern for [one’s] neighbor: to be righteous is to wish that one’s neighbors

⁶⁶ “三纲五常” (SanGang Wu Chang) in 《百度百科》 (Baidu Encyclopedia), last modified December 23, 2010, accessed April 25, 2011, <http://baike.baidu.com/view/16468.html#sub16468>.

be as happy as oneself.”⁶⁷ This preliminary value of the Golden Rule reasons that treating others as good as one’s self is a positive thing, but in order to do so, this “righteousness” to some degree demands respect of the individuals that one treats. To respect another as much as one would to one’s self indicates that respect is an underlying value that the cardinal virtue draws from. Likewise, in terms of *li* 礼, loosely translated as propriety, speaks to ceremony/rites and custom, the balance of an orderly society based on status and respect for one’s elders/superiors. Confucius’ disciple You Zi (Yu Tzu) said: “To be respectful is close to being observant of the rites [...]”⁶⁸ Mencius in turn likewise said: “The courteous man respects others. [...] he who respects others is always respected by them.”⁶⁹ While Confucianism maintained a hierarchal order in Chinese society, respect was at the heart of maintaining harmony in their relations. In the *Kongzi Jiayu* 孔子家语 or “The School Sayings of Confucius,” the Three Ways of Reciprocity (*san shu* 三恕) emphasized that reciprocity is not possible without respect, stating: “君子有三恕。有君不能事，有臣而求其事，非恕也。有亲不能孝，有子而求其报，非恕也。有兄不能敬，有弟而求其顺，非恕也。士能明於三恕之本，则可谓端身矣” (see footnote below for translation).^{70,§} To highlight

⁶⁷ Yamamoto Yasuo, “The Structure of Oriental Values and Education” in *The Humanization of Technology and Chinese Culture: Chinese Philosophical Studies, XI*, edited by Tomonobu Imamichi, et al. (Washington, D.C.: Council for Research in Values and Philosophy, 1998), 302.

⁶⁸ Dim Cheuk Lau, trans., “Book I” in *Confucius: The Analects* (New York: Penguin Books, 1979), 61.

⁶⁹ Dim Cheuk Lau, trans., “Book IV, part B” in *Mencius: A Bilingual Edition* (Hong Kong: The Chinese University Press, 2003), 185.

⁷⁰ Robert Paul Kramers, trans., *K’ung Tzu Chia Yu: The School Sayings of Confucius*, (Leiden: E.J. Brill, 1950).

§Translation by Robert Paul Kramers: “A noble man has three ways of reciprocity. When you have a

its importance, You Zi (Yu Tzu) states: “Of the things brought about by the rites, harmony is the most valuable,”⁷¹ and the respect which brings about harmony can thus be inferred as equally if not even more important in ancient Chinese society.

Respect or *jing* 敬 functioned as a pillar in traditional Chinese culture. In Confucius’ classics, “Confucius outlined a series of principles and norms for showing respect for, and sympathy to, people, based on an appreciation of human values and human dignity. [...] These philosophical teachings penetrated the hearts of everyone in ancient China.”⁷² Confucianism, while not a religious text, became embedded within Chinese culture, becoming the *modus Vivendi* (way of life). These teachings became guiding principles that embedded the notion of respect in one’s actions and thoughts. According to Sin Yee Chan’s “The Confucian Notion of *Jing* (Respect),” “If *jing* [respect] is where one’s mind rests, it can be understood as a general condition of the mind. Therefore, it is more like a frame of mind.”⁷³ Respect in this sense could be perceived as a subliminal force driving Chinese culture.[§] Understanding its importance in traditional Chinese culture may then shed light on its role in context of entertainment.

Confucianism categorized people into social classes to maintain order in society.

According to Confucian philosopher Xun Zi, the logic behind this was that “Human life

ruler whom you cannot serve, yet to expect your servant to serve you, this is no reciprocity. When you have a father towards whom you cannot be filial, yet to expect your son to requite you with filial piety, this is no reciprocity. When you have an elder brother whom you cannot respect, yet to expect from your younger brother to be compliant, this is no reciprocity. If a knight is able to have an insight into the roots of these three ways of reciprocity, then he may be said to have corrected himself.”

⁷¹ Lau, *Confucius: The Analects*, 61.

⁷² Sin Yee Chan, “The Confucian Notion of *Jing* (敬 Respect),” *Philosophy East and West* 56, no. 2 (April 2006): 230.

⁷³ Chan, 230.

cannot subsist without society. A society will sink into fierce rivalry without differentiation. The rivalry will cause chaos, which will lead to poverty.”⁷⁴ Chinese at the time therefore stuck closely to these Confucian principles, and it became a “model” for treatment of the entertainment industry. In ancient China,

The people who performed the regional operas were very low in social status; they were regarded by the law as slaves and suffered serious discrimination. It was a symbol of the contempt of society towards them that they were forbidden to sit for the official examinations, but of course very few of them wanted to or would have thought of doing so anyway.⁷⁵

As the “lowest rank of society (executioners, slaves, beggars, boat people, actors, laborers),”⁷⁶ actors/performers were treated with disdain. Entertainment, seen as a form of frivolity, did not merit respect during the heyday of Confucianism. While it was enjoyed, this work was second-rate in comparison with the Classics. Furthermore, it is worth distinguishing the differences in status between the playwright and the actor himself. While the playwright’s works—though questionable in content (as plays often focused on themes of sexual intimacy, lascivious fantasies, etc.), served as entertainment, those that entertained were low in social status. Even though the

⁵ Of course, this may not be the case depending on how Chinese culture changes, where it changes and among whom, such as among the diaspora or in regional areas of mainland China.

⁷⁴ Yasuo, 303.

⁷⁵ Colin Mackerras, ed., *Chinese Theater: From Its Origins to Present Day*, (Hawaii: University of Hawaii Press, 1983), 98.

⁷⁶ Richard H. Robbins, *Global Problems and the Culture of Capitalism*, (Massachusetts: Pearson Education Company, 2002), 186.

playwright's material was dubiously respected, his intellect was likely celebrated in Confucian hierarchy. Playwrights were a class above entertainers and performers, which assigns scant worth to these products of entertainment as opposed to art or literature.

In Confucian hierarchy, one's status and the level of respect one deserves was determined by the individual's contributions to society. Chinese philosophers, writers, and poets were highly respected in ancient China, as they promoted and preserved the culture in the kingdom. Art and literature were perceived as cultured displays of intellect. "Literature,' referring only to the literary forms of the scholar-official class written in classical Chinese, was not to be confused with popular stories, novels, song, or drama in the vernacular language, which were deemed merely 'entertainment.'" ⁷⁷ Their work benefited society by passing wisdom from one generation to the next, "transmit[ing]" as Confucius said, "rather than creat[ing]." ⁷⁸ Entertainment on the other hand did not serve society, and as a result, they were paid a pittance for it. In fact, Confucian hierarchy maintains the four major classes as (1) literati/intellectuals, (2) peasants, (3) worker/craftsmen, and (4) merchants. ⁷⁹ Literati/intellectuals served the emperor, and were ranked first in the hierarchy under the emperor. They were respected for their contributions to society, and their work was held in high esteem. Peasants followed in ranking as their production of agricultural goods benefited the

⁷⁷ O'Hennessey, 1271.

⁷⁸ Ivanhoe, 1.

⁷⁹ Xiaoquan Raphael Zhang, "The Sea of Regret vs. Stones in the Sea," CHN 307: History of Chinese Literature in the Twentieth Century, University of Oregon, Eugene, April 6, 2011.

society's subsistence needs. Workers and craftsmen manufactured tools of use for society. Yet merchants did not give anything back to the people, and therefore were ranked last, seen as parasitic members of society. Actors and performers were ranked beneath merchants, beneath even beggars, who in the modern mindset would be the most useless member of society. This was reinforced by the Qing dynasty laws, which stated: “城市乡村，如有当街搭白悬灯。唱演夜戏者，将为首之人。照违制律杖一百，枷号一个月。”⁸⁰ (In cities and villages, if anyone hangs his lantern in the street and sings a night show, this individual is in violation of the laws and will be stricken by stick 100 times and put in the stocks/pillories for a month.) Scholar Xie Bing (谢冰) elaborates further that: “当时的社会舆论也把唱戏之艺人列入“下九流”，与妓女、赌徒同等看待。因此，凡有身份地化之家，大都禁止率家之人与之往来，更不准以此业谋生。可见，对戏曲表演业的歧视具有广泛性。”⁸¹ (At the time, the prevailing social opinion categorized artists who sang as part of the “lower order,” on the same level as prostitutes and gamblers. Because of this, families of status were mostly prohibited from interacting with them, and were especially forbidden from pursuing this as a livelihood. As you can see, the breadth of prejudices/discrimination against the opera performing industry was great.)

⁸⁰谢冰, “20 世纪初中国戏曲界的变迁,” 《中南民族大学学报 (人文社会科学版)》第 23 卷 第 03 期 (2003): 153.

English title: Xie Bing, “The Social Change of Chinese Theatrical Circles at the Beginning of the 20th Century,” *Journal of South-Central University for Nationalities (Humanities and Social Sciences)* 23, no. 3 (2003): 153.

⁸¹谢冰(Xie Bing), 153.

I should qualify these statements by mentioning that perceptions of entertainment in ancient China were not the same as today. In the West, entertainment was at best a luxurious pastime for the wealthy, but in China, it was considered a waste of time. Pleasure should be drawn from academic learning. Confucius said in *The Analects* “To learn and from time to time to apply what one has learned, isn’t that a pleasure? [...] Learning without thought is labor lost; thought without learning is perilous.”⁸² The Superior Man (or Gentleman in other translations) was one that was “anxious to see clearly,” “anxious to hear distinctly,” where entertainment would merely act to muddle his thoughts.⁸³ As was criticized by scholars in twentieth century China, plays, music and entertainment gave a contrived sense of reality, a false sense of security in the midst of more pressing matters of the state. Therefore, entertainment was perceived as useless drivel. The Superior Man sought to “cultivat[e] [...] himself in reverential carefulness” as cultivation of the self gives to the people in society.⁸⁴ Entertainment did not contribute to this process. Not only did much of the themes and messages within these plays go against Confucian values, these performances were unnecessary and thus were not treated as high rate artworks. It would not go too far to suggest that the general populace treated these products of entertainers with little regard. This emphasis on respect “leads us to appreciate the worth of a person and the claims that are associated with that person’s

⁸² Rex Pay, “Confucius,” *Humanistic Texts*, last modified in 2000, accessed April 26, 2011, <http://www.humanistictexts.org/confucius.htm>.

⁸³ Pay, “Confucius.”

⁸⁴ *Ibid.*

worth. Understood in this light, Confucian ethics is concerned with more than just caring for or loving others. It also involves rendering what is due to others because of their worth.”⁸⁵ Payment therefore was unlikely to people of such little worth. At best it was an exchange of an expression of frivolous enjoyment for these useless members’ continued presence in society. Their works (opera, plays, etc.) could not have been worth any more than their own status.

This is indicative of the poor opinion of entertainment in ancient China. Yet the question remains as to how this may have trickled down to modern day Chinese culture. Certainly, the imperial exams no longer exist and actors/musicians are very successful in their own right in modern China. Entertainers, whether musicians or actors, have moved up the social ladder, since they are no longer held in disdain by the general public. Yet the cultural opinion of the occupation as an entertainer is still questionable in Chinese society. Indeed, the entertainer is now an equal thanks to communism and has raised socio-economic status, but the industry itself is still seen as low-grade among some and even not respectable among the more traditional, conservative Chinese. Attitudes therein large had remained fairly the same in China at the height of modernization, as can be seen in the 1930s Shanghai popular culture.

MODERNIZATION OF CHINA AND THE 1930S SHANGHAI POPULAR CULTURE

During the nineteenth century, Shanghai steadily developed as a result of foreign trade and investment, becoming a cultural and economic hub. This was the

⁸⁵ Chan, 229.

start of the Chinese popular music industry, with nightclubs, restaurants, ballrooms, live broadcasts from home, and even film as the venues for these songs.⁸⁶ According to Chinese scholar, Szu-wei Chen, “The close cooperation among those different groups of people and the vast and brilliant production they left behind suggest the beginnings of Chinese popular music in modern times.”⁸⁷ The first popular song in Shanghai was “Drizzles” (*maomao yǔ*), which utilized a folk song base but was accompanied by Western instruments, combining elements of basic New Orleans jazz.⁸⁸ As time went on, other international influences were incorporated into Chinese popular music and fused to produce the classic “*Haipai* (‘Shanghai style’).”⁸⁹ The prosperity of music and film worked hand in hand, as the film industry incorporated theme songs to movies and played songs during intermission to capture the audience. This marked the rise of popular music and film in China up until the Communist regime, which brought a political agenda to the industry, shifting popular songs to Hong Kong and Taiwan. While the 1930s and 1940s symbolized a new era of mandarin classics, sentiments towards the entertainment industry had not changed much during this period, albeit the traits of past Confucian hierarchy were profoundly diminished. With the introduction of Western modernization and ideology, occupational shifts and changing roles in society loosened the stringent standards of China’s imperial period.

⁸⁶ Szu-Wei Chen, “The Rise and Generic Features of Shanghai Popular Songs in the 1930s and 1940s,” *Popular Music* 24, no.1 (2005): 120.

⁸⁷ Chen, 108.

⁸⁸ Chen, 108.

⁸⁹ Chen, 108.

Actors and songstresses of this era (female singers as referred to in this period) were popular in their own right, yet the opinion of these individuals remained the same.

With reference to the 1930s in Shanghai, China, Chen remarks that:

A Chinese saying goes that “a whore has no feeling for love; an opera player has no sense of honour and justice” (*biaozi wuqing xizi wuyi*). In spite of being looked down upon in such a way, in the past the players used to comfort themselves with the proverb that “whoever is human listens to opera” (*fanshi ren jiudei tingxi*). These words indeed shed light on the views of the public on Shanghai popular singers at that time – while entertainment was essential for life, it was low and degrading to provide entertainment.⁹⁰

While the perception of entertainment arguably began to shift during this era—though musical works were [still sometimes] dismissed as “decadent sound,” performers struggled to gain respectability in the public eye.⁹¹ The public perception was that “show biz [was] a dirty biz.”⁹² It did not help matters that the public perceived suffering as a “necessary quality for the film songstress. That’s because entertaining has always been considered a shameful profession. This is especially true of Shanghai singers, who often doubled as hostesses or even prostitutes.”⁹³ Public opinion of actors and singers were still poor during the 1930s and 40s in spite of what seemed to

⁹⁰ Chen, 120.

⁹¹ Chen, 122.

⁹² Sam Ho, “The Songstress, The Farmer’s Daughter, The Mambo Girl and the Songstress Again,” *Mandarin Films and Popular Songs: 40s-60s* (Hong Kong: Urban Council, 1993): 59.

⁹³ Ho, 59.

be an opening and liberalizing market. Perceptions of these industry artists did not change until the Xinhai Revolution.

THE ROLE OF REVOLUTIONS IN SHAPING MODERN DAY PERCEPTIONS AND MORALS

With the nascence of the Xinhai Revolution (also referred to as the Revolution of 1911), the Kuomintang (KMT) or Nationalist Party struggled to form the provisional central government. Yet this marked the beginning of revolutionary ideology that worked to change social constructs, of which the perception of the performer was on the political agenda. With the growing propagation of equality, Marxist communism, and some developing notions of democracy, the class of “performers” was targeted as something to change during this period. According to Xie Bing: “真正关心戏曲艺人社会地位问题的是辛亥革命时期的资产阶级革命派，在他们的大力宣传下。”⁹⁴

(Those that sincerely cared about raising the social status of traditional opera performers were supported by the propaganda by the Bourgeois Revolutionaries during the Xinhai Revolution.) The Xinhai Revolution proclaimed performers as “qualified citizens,” raising not only their political statuses substantially, but also their level of respectability within society.⁹⁵ This was safeguarded by a few measures enacted by the national government during the early establishment of the Republic of China, of which these policies included:

⁹⁴ 谢冰(Xie Bing), 153.

⁹⁵ 谢冰(Xie Bing), 157.

终止封建社会时期称戏曲艺人为“戏子”的歧视性叫法，而改称“艺员”。另外，为了破除将戏班与妓班同等看待的旧观念，由著名评剧演员、戏曲界政治活动家田际云与余玉琴共同倡议，将戏曲演出和培训团体由“班”改称“社”。⁹⁶

Termination of the discriminatory feudal period of addressing opera performers as “actors,” and changing this form of address to “artistes.” In addition, in order to rid the people of old perceptions of the equal standing of the performing troupe with prostitutes, under the mutual advocacy of famous opera performer Tian Jiyun and political opera activist Yu Yuqin, they changed the name of the opera training “troupes/class” to “society.”

This renaming of the title of opera performers along with a few other policies and increases in salaries established the entertainment arts as an entirely new profession and society in its own right. These changes were embodied in the means and structure of salary distribution for performers (“体现在分配方式和收入结构的变化上”).⁹⁷ Yet this transformation of the feudal performer was not so much out of a newfound respect for them, as it was a calculated tactic to help educate the masses on escaping the shadows of feudal cultural perceptions through propaganda (“他们的宣传有助于民众，尤其是知识界走出封建文化观的阴影。”) ⁹⁸ Granted, perceptions of the performing artist gradually improved as a corollary result. This was reflected in the

⁹⁶ 谢冰(Xie Bing), 154.

⁹⁷ Ibid.

⁹⁸ 谢冰 (Xie Bing), 155.

government's attitudes towards the performing arts, which incorporated opera as a means of universal education for the masses (“[政府]提倡将戏曲作为向民众进行普及教育的一种方式或手段”).⁹⁹ It is undeniable that the Xinhai Revolution is responsible for the acceptance of entertainment in modern society. Yet in spite of these seeming improvements, the Cultural Revolution forced a social regression of these perceptions of the industry, which has manifested itself in the piracy of modern-day China.

As with the Confucian opinion of entertainment, the Communist Party condemned entertainment as “bourgeois,” a distraction that frustrated party efforts. Since the lyrics of romance songs often utilized “poetic phrases and romantic clichés” and expressed longings for a “better life,” the Communist Party did not welcome the indirect commentary on current social and political issues.¹⁰⁰ The Cultural Revolution therefore marked a regression from the transformed perceptions post-Xinhai Revolution to one of ambiguity. In his 1942 talk on literature and art, Mao Zedong expressed that the party needed to ensure that “literature and art fit well into the whole revolutionary machine as a component part, that they operate as powerful weapons for uniting and educating the people and for attacking and destroying the enemy, and that they help the people fight the enemy with one heart and one

⁹⁹ Ibid.

¹⁰⁰ Alison Groppe, “CHN 152: Intro to Chinese Pop Culture (Spring 2011): week 3 day 1,” CHN 152: Intro to Chinese Popular Culture, University of Oregon, Eugene, April 12, 2011.

mind.”¹⁰¹ Songs and films that aided the propagation of Communism were welcomed as a result, but entertainment was once again perceived as a frivolity, one of which if it did not play an active role in the War of Resistance, would suffer the brunt of criticism. Matters did not help as the Cultural Revolution oppressed creativity and “fostered anti-intellectualism,” “all but decimat[ing] the entire legal system, including all previous policies and regulations concerning author’s rights. Piracy effectively became the official state policy.”¹⁰² As nationalism surged and the common person struggled to survive, darwinistic instincts became the primary value system governing society. Consequently, any positive semblance of the former Confucian values of morality and integrity had all but disappeared. It is therefore not surprising that both the social opinion of entertainment—something frivolous and of luxury—and respect towards intellectual property were altogether disregarded. To the Chinese in this period, they questioned the necessity of protecting intellectual property. Granted, during the cultural revolution, notions of property had begun to change substantially, as the popular saying at the time was : “Is it necessary for a steel worker to put his name on a steel ingot that he produces in the course of his duty? If not, why should a member of the intelligentsia enjoy the privileges of putting his name on his intellectual product?”¹⁰³ This saying reflects the changing understanding of property as no longer an individual matter, but a collective or communal one. What is worth noting though

¹⁰¹ *Selected Works of Mao Tse-Tung*, Vol. 3 (Peking: Foreign Languages Press, 1965), 70.

¹⁰² Priest, 805.

¹⁰³ Ibid.

is that this saying specifically contrasts a material object with an intellectual product. It is interesting that during the redistribution of wealth and property during this period that the physical is equated with if not superior to the intellectual, which marks a significant shift in social priorities from the past. With Confucianism, the intellectual and educated are ranked above the products of workers, yet with the introduction of communism, the emphasis was placed on the contributions of the working class. The level of respect towards these products changed substantially, as learning now was from the workers in fields and not those in classrooms. This marked a dramatic shift in attention to the creative works, be it intellectual scholarship or entertainment. Any prior notion of respecting any work, intellectual or entertainment-related for that matter, went out the window with the destruction of these prominent Confucian values.

PRESENT DAY PERSPECTIVES: A LOOK INTO CHINESE POPULAR OPINION

In spite of the shift in value paradigms from Confucianism to communism, many notions behind Confucianism survived the Cultural Revolution and remain in Chinese culture today. What was once perceived as a social value has now become a cultural value in etiquette and priorities. This does not mean Chinese culture is stagnant. Indeed, many changes to cultural norms have developed over the years; however, many of these traditional considerations surprisingly have not changed as much as we might believe from its roots in its imperial past. Instead, today we find that “[d]efinitive views on parental control, obedience, strict discipline, emphasis

on education, filial piety, respect for elders, family obligations, reverence for tradition, maintenance of harmony, and negation of conflict are [still] attributed to the influence of Confucianism.”¹⁰⁴ These antiquated attitudes have been reinforced by the present Chinese government’s focus on preserving a sense of unity, identity, and nationalism—all of which are undercurrents hounded in the modern population via education. While it certainly seems odd to a Western audience that China has retained its deference to traditional culture in such a rich form, it could be argued that as a result of this, the emphasis in patriotism and nationalism may have preserved the very connotations associated with film itself, though perhaps subconsciously. Indeed, actors are no longer considered the lowest in the social hierarchy, thanks to the Xinhai Revolution and modernized perspectives, but their work is still considered entertainment. It is not so much the hierarchal structure that has been preserved as it is the attitudes and perception of their industry that has lingered to this day. Music and film are therefore creative products enjoyed by the public, something shared among people and not necessarily deserving payment. Granted this may be a result of communist era ideas about collective property in this domain, but to some degree, the respect towards this field is questionable. As Confucianism ethics is concerned with “rendering what is due to others because of their worth,” if entertainment is still seen as “lowly” to some degree, then it is not

¹⁰⁴ Chin-Yau Cindy Lin and Victoria R. Fu, “A Comparison of Child-rearing Practices among Chinese, Immigrant Chinese, and Caucasian-American Parents,” *Child Development* 61, no. 2 (Apr., 1990): 429.

surprising that the average Chinese does not feel the need to pay for music and film.¹⁰⁵

In fact, as a result of this perhaps subconscious mindset, present-day Chinese have developed a sense of entitlement towards online pirated goods.

When some of the largest BitTorrent websites in China were shut down in 2009, such as BTChina, VeryCD and the Garden of Eden, netizens (internet citizens) responded with fury. User “lv118232” expresses his/her dismay, rationalizing that the State Administration of Radio Film and Television’s (SARFT) actions to shut down these sites were completely illegal:

姑且不论btchina是否需要领取视听许可证！互联网视听作品传播条例只规定了没有视听许可证不能提供视听服务，可没说到广电总局可以以没有视听许可证为由封杀网站！一向视法律为废纸的广电总局，以为互联网也是他家的有线电视，疯狂违法乱纪。大家打死广电总局的人是没有任何错误的！因为广电总局本身就不遵守国家的法律，那么自然也不受国家法律保护！

Translation by George Sun: Without reference to the necessity of holding the license, the communication regulation of web video and audio productions only says it is [not] allowed to provide the online users pirate video and audio service, but it doesn't mean that SARFT can shut down the websites that go against the regulation! SARFT disrespects laws and rules all along, regarding Internet as its own cable TV. It's not against the law if we killed the officials at

¹⁰⁵ Chan, 229.

SARFT, because the organization which [i]s against the law won't get any protection from it.¹⁰⁶

User “Young Modern” responded by saying: “未来大家想通过网络BT下载免费的影视歌资源，将变得越来越难。对此，不少网友惋惜。更有人称，最终受益的其实是盗版商，不久后，已经快被互联网取代的盗版碟肯定又将死灰复燃。

Translation by George Sun: And it will be increasingly harder for us to get free BT resources. Some netizens regret about this saying that the pirate businessmen receive all the benefits and will surely revive.”¹⁰⁷ This indignation is further fueled by the sheer fact that many seemingly “legal” sites also propagate illegal material. User “bearbingyang” says: “如果说BTCHINA和VERYCD要封的话，那以下网站都要封。百度-呵呵，央视，中国广播网，新浪，QQ，迅雷，FLASHGET，华军，天空，等等，各种音像点播软件下载网站，总之大大小小，不计其数，全部都要封。理由只有一个：偶从没有对以上网站付一分钱。 Translation by George Sun: If they shut down BTCHINA and VeryCD, then the following websites should also be closed: Baidu (lol), CCTV, Chinese National Radio, Sina.com, QQ, Xun Lei, FLASHGET, Huajun, Skycn and so on. There are countless radio and video sharing websites in China and they all should be shut down for one obvious reason: I have never paid

¹⁰⁶ George Sun, “China: Government shuts down BitTorrent sites, netizens distressed,” *Global Voices*, December 11, 2009, accessed May 2, 2011, <http://globalvoicesonline.org/2009/12/11/china-shuts-down-bt-sites-netizens-distressed/>.

¹⁰⁷ Sun, “China: Government shuts down BitTorrent sites, netizens distressed.”

these websites a penny.”¹⁰⁸ The key problem behind online piracy’s prevalence lies in this acceptance of pirated goods and perception that it is “right.” Indeed, greater attention on the Chinese government’s part has brought improved understanding about concepts of intellectual property, but the problem still remains because the general populace fails to see why this industry *deserves* payment. Online piracy in particular is a simple matter of access. It is available, and the populace has no qualms with participating in piracy. The ramifications have historically been minimal, and this norm/pattern has caused people to feel entitled to that access. Purchasing these intellectual products legally therefore is not seen as respecting the work or creativity behind it. It does not help matters that the collective property mindset or even file sharing culture deems intellectual piracy as a permissible phenomenon.

This is exacerbated by the change in morals as a result of the Cultural Revolution. While China is on the rise globally and has modernized in many senses, the destruction of Confucianism as the prime moral motivator and the banning of religion in the nation are problematic. As legal scholar Rob Faris expressed in terms of censorship, there are in turn two main ways of addressing piracy problems in China: 1) self-censorship/restraint, and 2) regulation of the content, the first of which is more effective than the other.¹⁰⁹ As with the notion of respecting these works through payment, what is highlighted by online piracy is that the average Chinese does not perceive it as being wrong, morally so or otherwise. As is case in point by these

¹⁰⁸ Ibid.

¹⁰⁹ Faris, “Chinese Content Regulation/Censorship.”

discussion boards and blog posts, these users not only feel they are entitled to the illegal content, but feel figuratively “protected” by the seeming anonymity the internet brings. The sense that “no one knows” combined with the lack of moral conscience (such as a higher power watching even though no one knows) merely aggravates the issue of online piracy in China. They find no qualms with participating in this illegal activity.

IV. ADDRESSING THE CHINA PIRACY PROBLEM

While the general populace may perceive the entertainment industry with little or perhaps a lesser degree of respect, in the grander scheme of things, it would be curious to see how this cultural perception may affect those that enact policy that are tied to these products of entertainment, or on an even greater scale, with copyright in general. Entertainment in the modern sense has substantially transformed. Unlike the imperial era with limited technologies, entertainment encompasses more than its cultural form and can be anything from books (intellectual or otherwise), software, electronic/online games, or even brand-name products. Anything that evokes pleasure can in part be interpreted as a form of entertainment. As a result, this very industry has become inseparable with luxury incarnate, and to that degree, may have inherited some of the historical “baggage” the entertainment industry carried by and large. It is worth noting that there appears to be a distinction in pirating practices between copyright materials in general and copyright of entertainment works. In

2009, 40% of all books being sold in China are pirated,¹¹⁰ and 45% of all software installed on computers in China is pirated.¹¹¹ Considering that these might have been categorized as “intellectual” products in China’s imperial past, the piracy of these creative works are in stark contrast to the percentages of pirated content found in entertainment. In 2008, about 99% of all music “accessed by consumers in China” was pirated,¹¹² with about 90% of movies being pirated.¹¹³ The Movie Copyright Protection Association of China (MCPAC) reports that in 2007, more than 61% of netizens in China watched free movies online.¹¹⁴ From these statistics, it seems that copyrighted content related to intellect are pirated less compared to entertainment (music/film), which seems somewhat significant to the idea that respect might play a small role in copyright infringement practices or the “respect” of copyright itself. It would seem that on some level, to the general public that practices piracy, some level of respect is given to intellectual property that is considered educated, if only among a little over half of the population that does not acquire these products illegally. These statistics seem to indicate that on some small level, the consensus is that it is permissible to download entertainment products illegally, and as an extension, it is acceptable to

¹¹⁰ Clifford Coonan, “China’s publishers struggle to overcome book piracy,” *The National*, August 27, 2009, accessed May 31, 2011, <http://www.thenational.ae/business/media/chinas-publishers-struggle-to-overcome-book-piracy>.

¹¹¹ Wang Yan, “Software piracy rate declining,” *China Daily*, May 11, 2010, accessed May 31, 2011, http://www.chinadaily.com.cn/china/2010-05/11/content_9831976.htm.

¹¹² Loretta Chao, “China Sets New Rules For Music Sold Online,” *Wall Street Journal*, September 5, 2009, accessed May 31, 2011, <http://online.wsj.com/article/SB125207664547286713.html>.

¹¹³ Chen Jia, “Net tightens on pirated movies,” *China Daily*, January 1, 2010, accessed May 31, 2011, http://www.chinadaily.com.cn/china/2008-01/10/content_6383358.htm.

¹¹⁴ *Ibid.*

infringe the copyright of entertainment content. But this acceptance seems to be questionable when we turn to intellectual products. There may be a number of reasons for this phenomenon to emerge, yet it would appear to indicate that culture does have an effect, if only somewhat, on the public's reaction to copyright, intellectual and entertainment. How this translates in terms of policymakers' priorities in the development of laws is hard to say, but it certainly may color their prioritization of different forms of copyright.

Chinese policymakers are not separate from cultural norms and perceptions. In fact, the notion of "face" and other traditional perceptions still influence the actions of the government. We see this in a number of seemingly short-sighted expenditures (i.e. 2008 Olympics, 2010 Shanghai Expo, etc.) that were intended to protect the face of China. It would not be too preposterous to suggest then that the notion of respect may also affect the government's priorities in a similar manner. Policymakers perceive "patents to be more essential to China's overall economic growth and stability than copyright."¹¹⁵ The government instead places a "strong emphasis on developing intellectual property rights to spur high-tech innovation, and typically make little or no mention of copyright" – much like the nonchalant attitudes the general populace has towards the entertainment industry.¹¹⁶ Understanding the effect that respect plays into policymaking is significant, as it will take convincing for these

¹¹⁵ Priest, 845.

¹¹⁶ Priest, 845.

individuals to look at copyright in a new light—one that deserves attention and respect. If we look to China's IP laws as of 2005, only three laws are specific to entertainment copyright: the Management Regulations of Audio and Video Product (effective date: February 1, 2002), Management Measures of Wholesale, Retail, and Rent of Audiovisual Production (effective date: April 10, 2002), and Management Measures of Audiovisual Production Import (effective date: June 1, 2002). These were namely rules and regulations. This minimal priority can be seen in the overwhelming number of laws that pertain to patents and intellectual property (of which I would contend relates more to the intellectual or educated products of copyright). There have been roughly 18 laws and treaties enacted as of 2005 pertaining to patents, and 7 of which are directly related to IP. The disparity between the importance given to entertainment and other forms of copyright seems significant, as the policies towards entertainment are less influential as merely regulations and not laws. This highlights policymakers' differing priorities, and while it certainly may not mean much in the grand scheme of things, it seems to point to a different perception of entertainment in light of copyright and IP in Chinese policymakers' eyes.

V. CONCLUSION

Indeed, the theory I propose on the notion of respect and its effects on copyright in China has very minimal effects at best, but it does change the landscape, if only incrementally, on how we understand the piracy challenge in China. I recognize that the problem of piracy in China is and has been a complicated one, and cannot be

explained by a single theory on respect. Yet it may offer an additional aspect from which to analyze the problems piracy presents. In the history of Sino-American relations, the United States government has stressed IPR protection as a matter of great importance. Throughout the years, significant improvements have been made domestically in China's legal system, yet enforcement has been a roadblock to the advancement of IPR. While the national government enacts a top-down approach to addressing piracy as a problem, many local government officials fail to perceive its importance in the same light. The cultural notion of respect and its partial influence on approaches to copyright may be one of a number of reasons that impedes the progress of IPR enforcement in China at a local level. Understanding this consideration, if perhaps on a subconscious level, may offer a deeper insight into approaches to the challenge of piracy in China. While culture is not the sole driver for an individual's decisions, its influence cannot be dismissed either. As American policymakers and others continue to work on solutions to this problem, perhaps stressing the strengths of copyright as something deserving respect and not simply structure could help incrementally alter the situation in China. As Confucius says, it is about "appreciate[ing] the worth of a person and the claims that are associated with that person's worth" that truly matters.¹¹⁷ In the case of IPR, understanding the worth and value of copyright can gradually help China combat its rampant piracy dilemma.

¹¹⁷ Chan, 229.

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