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CHINA'S ROAD AHEAD FOR INTELLECTUAL PROPERTY: HOW ONGOING TALKS AND LEGISLATION SEEK TO SHIFT FROM SHANZHAI TO BONA FIDE

As I have been teaching for a Chinese EMI (English as a Medium of Instruction) university for two years and am looking ahead at my third, I often find myself trying to describe what China is like to my family and friends when I return to my struggling, rust-belt hometown of Erie, Pennsylvania. China is like a beautiful, unwieldy beast trying to find its footing. At one moment I'm startled by its sheer enormity, unevenness, and primordial power, at another, dazzled by its effervescent energy and innovative adaptability. Both President Xi Jinping's "One Belt, One Road Initiative" (OBORI), launched in 2013 (Chatzky and McBride), and his 10-year plan, "Made in China, 2025," (McBride and Shatzky) combine to give its people strong ambitions to dominate high-tech markets and a solid (sometimes literal) path toward its global role.

To that end, China has not only emphasized English mastery starting in 4th grade, but high academic achievement in science, technology, and biomedical sectors, but especially in innovation. With innovation comes new ideas, many of them copied from prior products and/or trademarks, giving birth to a shanzhai⁵ culture, where, instead of *Snakes on a Plane*, we have *Snakes on a Train* (Blankenship, 2019), and Qiaodan (in pinyin, it sounds similar to Jordan) instead of (Michael) Jordan merchandise.

Rampant copyright and trademark infringement have been more the norm than the rule. Zheng Tang (2019) points out in an *Asia Pacific Law Review* article that "China has been accused of being responsible for 72 per cent of the counterfeit goods circulated in the European Union (EU), Japan, and the United States (US) in 2016, while approximately 12.5 per cent of China's total merchandise exports were estimated to be fake" (p. 177). Lawrence Page puts that estimate at 86 per cent (2019). Tang reports that "the value of unlicensed software usage in China reached around \$6.8 billion during 2019."

⁵ *For a good overview of Shanzhai culture and its relationship to copyright piracy, see Blankenship's "Harry Potter & the 'Chinese' Philosopher's Stone: Deconstructing Copyright Piracy Through Shanzhai."

Imitation more often precedes true innovation, and with lax enforcement of infringement, a rich knock-off culture has flourished in China. According to Page's recent law review article entitled, "Goodbye, Shanzhai: Intellectual Property Rights and the End of Copycat China," he predicts that a more "robust IP regime" is on the horizon.

By 2019, President Xi Jinping indicated that China would begin imposing stricter guidelines on intellectual property rights, along with stricter penalties for infringement, and the courts have followed through on these efforts to a certain extent. Indeed, on January 15, 2020, then-President Trump and President Xi Jinping met and agreed upon a "Phase One" US-China trade deal. Pratyush Nath Upreti and Mariá Vásquez Callo-Müller in an article forthcoming this year (2020) note that "it is quite remarkable that the 'IP Chapter' appears as the first chapter of the Agreement," the first time this has happened in US-China trade deals, despite the issue being a longtime central one between the two countries. Included among the provisions that the trade deal covers are trade secrets, pharmaceutical-related intellectual property, patents, piracy, and counterfeiting, software, trademarks, and judicial enforcement (Upreti & Callo-Müller, 2020).

In January 2019, a specialized Intellectual Property Court opened in Beijing, along with two more dedicated courts in Shanghai and Guangzhou so that intellectual property disputes could be held at the national level. In April 2020, leaders of China's Supreme People's Court held a press conference reporting that 481,793 new Intellectual Property Rights (IPR) cases had been accepted for this year, up slightly from the 475,853 cases handled in 2019 ("SPC Reports Progress on Judicial Protection of IPR"). The National Law Review web site lists China's Top 10 Intellectual Property Cases for 2019 among its most recent articles (Wininger). Already, Peppa Pig's owner won damages for a copyright infringement case that was ruled on Dec. 31, 2019 for 30,000 yuan (about \$4,300). Although the amount wasn't much (because the Peppa Pig's owner didn't show enough evidence of monetary loss from the infringement) ("Peppa Pig Owner"), the outcome for the original owner at least shows a start in the right direction.

As Yushu Liu points out, the OBORI requires digitalization as part of its plan, so "the digital Silk Road is also a road of intellectual property rights protection," particularly as it needs to have the cooperation of multiple participating countries to accomplish it. Liu notes that 150 countries have already signed on with the OBORI.

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