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Intellectual Property Piracy: Perception and Reality in China, the United States, and Elsewhere

Aaron Schwabach, Thomas Jefferson School of Law

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Intellectual Property Piracy: Perception and Reality in China, the United States, and Elsewhere

Aaron Schwabach†

“There is probably more misinformation about China than about any other country in the world.”

The Perception Gap

There is a widespread but incorrect perception in the United States that intellectual property (IP) piracy is only or primarily a problem in developing countries, especially East Asian countries, and most especially China. This misperception is most evident in the screeching China-bashing of the mainstream media and some elected representatives, but it pervades discourse at every level. I recently encountered a discomforting example when my publisher sent me a proposed cover for a book on intellectual property law. The cover showed a card table covered with DVDs and VCDs, presumably offered for sale. The DVDs, labeled in Chinese, were recognizable as recent Hollywood movies.

I rejected the cover, partly because the book was a general overview of IP law, and DVD piracy (or even IP piracy generally), for all of the media coverage it receives, is only a very small part of IP law and receives only brief discussion in the book. My initial reaction to the picture, however, was not so calmly reasoned, but visceral: It looked

† Professor of Law, Thomas Jefferson School of Law, aarons@tjsl.edu. This paper grew from a talk I gave at the Conference on the World Trade Organization: Dislocations and Solutions at Southwest University of Political Science and Law, in Chongqing, China, on Dec. 2, 2006: “Perception Gaps between Developed and Developing Countries on Intellectual Property Piracy.” I would like to thank Professor Wang Heng, who organized the conference, and all of the many faculty and staff members of Southwest University who helped make the conference possible.

2 AARON SCHWABACH, INTELLECTUAL PROPERTY (Santa Barbara: ABC-CLIO 2007).
Sinophobic to me. The publisher had not initially realized what message the picture would send, but agreed that it had no wish to send that message; instead it substituted a rather pleasant picture of an approved U.S. patent application.

Shortly afterward, Professor Wang Heng of Xinan (Southwest) University of Political Science and Law invited me to speak on international intellectual property law at a conference on the WTO in Chongqing. The conference organizers expected, another professor later told me, “yet another dreary scolding on IP piracy,” but I knew at once what I had to say: The problem of IP piracy in China is really not as bad as all that.

Politicians in search of a safe, non-voting scapegoat often target foreigners. The unfortunate xenophobia that characterizes public political discourse on everything from immigration to trade policy, not just in the U.S. but worldwide, is the result of this cost-minimizing behavior by politicians. It will always be safer for a senator from Michigan to blame Detroit’s economic woes on Japanese carmakers (for somehow competing unfairly) than on Detroit’s carmakers for making lousy cars. Lawyers and legal academics are not politicians, however, and have no such excuse. Indeed, it is our duty to counteract political hyperbole with facts and reason, rather than buying into it.

A welcome example of the facts-and-reason approach is Peter K. Yu’s 2003 article *Four Common Misconceptions about Copyright Piracy*. The four misconceptions referred to in the title are that “(1) copyright piracy is merely a cultural problem, (2) copyright piracy is primarily a development issue, (3) copyright piracy is a past phenomenon for technologically-advanced countries, and (4) copyright piracy is a

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necessary byproduct of authoritarian rule.” As applied to China (and my apologies to Professor Yu if I stretch his points too far) (1) there has been a frequent and inaccurate portrayal in English-language publications, including scholarly publications, of IP piracy as somehow rooted in Chinese culture and Otherness; (2) China’s rapidly-increasing level of economic development is not directly (or inversely) related to IP piracy rates; (3) technological advances in the U.S. have actually brought about a resurgence in U.S. IP piracy; and (4) authoritarian rule may actually have a dampening effect on IP piracy.

This article addresses these ideas and their consequences: Not only is copyright piracy in China (and perhaps other countries with similar development profiles) less of a problem for US copyright holders than it is often portrayed as being, but copyright piracy in developed countries is a much greater problem.

### Blaming China

The upcoming 2008 presidential election has brought on a wave of China-bashing from presidential candidates. On August 7, 2007, Hillary Clinton declared “I do not want to eat bad food from China[,] or have my children having toys that are going to get them sick.” While voters may be accustomed to taking everything said by candidates for office with several grains of salt, when Ms. Clinton expressed this concern, her only child, Chelsea, was 27 years old. In the same debate, Barack Obama declared, somewhat more moderately, “China is a competitor, but they don’t have to be an

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4 Yu, supra note 3, at 130.
6 Chelsea Clinton was born on February 27, 1980. The toy danger may have been exaggerated by an American company, Mattel, erring on the side of over-recalling. See Ben Blanchard, Mattel Apologizes to China for Toy Recalls, Reuters, Sept. 21, 2007, http://www.reuters.com/article/topNews/idUSPEK10394020070921?rpc=92 (visited Sept. 21, 2007).
enemy.” Someone who hijacks airplanes and flies them into buildings full of people is an enemy. Someone who sells pirated copies of *Rush Hour 3* is not. Apparently, though, political discourse in the U.S. has grown so irrational that concerns about intellectual property rights, currency exchange rates and leaded paint add up to enmity. And China-bashing, like Japan-bashing before it, has become an industry from which people can make money.8

When it comes to intellectual property rights, *Business Week* magazine has been among the reliable beaters of the China-scare drum. A sample of headlines from the past few months includes *China: Putting a Stop to IP Piracy,*9 *Chinese Fakes: Tough to Police,*10 *U.S. Takes Piracy Pushback to WTO – Intellectual-Property Rights Violations in China Cost the U.S. Billions Each Year, Leading to Complaints to the World Trade Organization,*11 *Deaf to Music Piracy: Chinese Search Engines Make It Easy to Steal Net Tunes,*12 and *How to Win the China Piracy Battle.*13 *Business Week* often portrays IP

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piracy as an Asian issue, even when China is not specifically mentioned: *Asia: The Steep Cost of Software Piracy;*\(^{14}\) *Software Piracy Still a Scourge in Asia;*\(^{15}\) *Asia’s Digital Music Free-For-All;*\(^{16}\) *Asia’s Maddening Music Biz – Universal Music Is on a Star Search for Hot Acts in China and Japan, but Illegal File-sharing and CD Piracy Woes Present Major Headaches.*\(^{17}\) Russia also merits mention: *Software Piracy: Will Russia Crack Down?*\(^{18}\) It is rare, however, to see piracy linked to a developed European or North American country, although there are occasional exceptions: *Software Piracy Still Rife in Britain.*\(^{19}\)


\(^{15}\) Jeanne Lim, *Software Piracy Still a Scourge in Asia*, BUSINESS WEEK, May 24, 2006, available at http://www.businessweek.com/globalbiz/content/may2006/gb20060524_858766.htm?chan=search (visited Sept. 19, 2007). The article does observe that “The incidence [of IP piracy] has dropped in India and China[,]” The justification for the headline is that “in the Asia-Pacific region as a whole, [IP piracy has] risen, says a new study[,]” *Id.* The article includes a figure of $6.9 billion for software piracy losses in the U.S., as against $3.9 billion in China and $3.2 billion in France.


\(^{19}\) Sylvia Carr, *Software Piracy Still Rife in Britain*, BUSINESS WEEK, May 23, 2006, available at http://www.businessweek.com/globalbiz/content/may2006/gb20060523_033850.htm?chan=search (visited Sept. 19, 2007). The article even compares Britain unfavorably to China, India, and Russia, noting that while software piracy had decreased in those countries, it had not decreased in Britain. A recent article in the Wall Street Journal also provides a welcome respite: Anil K. Gupta & Haiyan Wang, *How to Get China And India Right*, WALL STREET JOURNAL, Apr. 28-29, at R4. The article advises businesses “Don’t obsess over intellectual property.” In the print edition, however, the effect is somewhat undercut by the China-scare ad that appears on the back of the page: A full-page black rectangle with a tiny red airplane and the nonsensical question “If a plane departs Shanghai at 9:00 PM and flies due west at 500 mph, how much time do you have to stop a deadly pandemic?” The ad provides a link to an equally meaningless IBM video
In the slightly more distant past, Business Week has even linked IP piracy to national security, as if unlicensed copies of *Shrek the Third* might bring down the American political-economic system: *Piracy and “Economic National Security”: From Lost Jobs to Shrunken Profits, Intellectual Property Theft Is a Major Threat to the U.S., Says the Justice Dept.’s David Israelite.*

The reality is somewhat different. Just as more Americans have died from contaminated American-grown spinach than from imported Chinese produce, domestic piracy probably costs the U.S. content industry more money than piracy in any other country (although not more than in all other countries combined). And many developed countries continue to engage in more piracy, per capita, than many developing countries. While much of this piracy may escape media attention because it is online and thus less visible, the card table covered with pirated DVDs and CDs is still more common in the...
U.S. than one might expect from the public, political and scholarly discourse on the topic.\textsuperscript{22}

Even in reports of piracy within the U.S., the identification of IP piracy with the Other continues. Latin music, in particular, is singled out, giving the casual reader the impression that IP piracy within the U.S. is confined to an immigrant, “foreign” subculture.\textsuperscript{23} It is common to read reports of arrests at swap meets containing gratuitous references to the seized discs as containing “100% Latin music,” while in other arrests the content is simply not described;\textsuperscript{24} seeing the content described as “100% Anglo music,” even if accurate, is about as likely as reading an account describing the French Revolution as “white-on-white violence.”

GrayZone, a private anti-piracy firm, provides monthly lists of “RIAA Anti-Piracy Seizure Information” on its website. A particularly egregious example is the listing for September 2003, which describes 48 enforcement actions within the U.S. and in doing so uses the phrase “Latin” nineteen times, including “100% Latin” five times. The same list also describes three enforcement actions in the Dominican Republic, a Spanish-speaking country, and notes, perhaps unnecessarily, that all of the music seized in each of the three raids was also “Latin.” The list notes sixteen raids in which “urban” CDs were seized, while the terms “country” and “pop” appear on the list once each, in describing a raid that also included Latin and urban music. Twenty-four items do not describe the type of music seized. These twenty-four non-specific descriptions may


\textsuperscript{23} Latino-bashing and Mexico-bashing, unfortunately, are also on the rise – mainstream media figure Lou Dobbs, for one, seems determined to make a career of them.

\textsuperscript{24} See generally, e.g, GrayZone, RIAA Anti-Piracy Seizure Information, http://www.grayzone.com/usabusts.htm (visited Sept. 12, 2007).
simply be examples of responsible law enforcement, but it still seems a bit odd that Latin and urban music merit such frequent mention in connection with piracy. (The discs are also variously described as “counterfeit,” “pirated,” and “piratical,” the last term conjuring up images of Captain Jack Sparrow, or perhaps Errol Flynn.)

**Measuring Piracy**

As with any illegal activity, it is difficult to get reliable information on how much digital piracy actually takes place. In addition to this reporting problem, there’s also a problem of valuation: The record industry might like to believe that a single downloaded song (“Sci-Fi Wasabi,” by Cibo Matto) represents a lost $19 album sale. More realistically, it might represent a lost 99¢ iTunes sale, although even that may be too high: Many who download music for free do so out of curiosity, and would not listen to the song if doing so cost even a small amount of money. These free riders benefit from the willingness of someone, somewhere, to pay for the song and of someone (possibly not the same person) to make it available for download, but as the downloaders would not otherwise have bought the song, they do no direct economic harm.\(^{25}\)

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Free-rider downloading also serves an advertising function that may actually benefit music-copyright owners: Some free-rider downloaders may like “Sci-Fi Wasabi” enough to go out and spend 99¢ per song for other Cibo Matto tunes from iTunes, or even $11 for the album *Stereo Type A* or $19 for *Pom Pom: The Essential Cibo Matto*. If the downloader (or another who hears the downloaded copy) becomes a fan, hundreds of dollars in sales may result; if no download takes place, all of these potential future sales would be lost. Even if the total number of such sales represents only a tiny portion of downloads, it still exceeds the number of sales in the absence of downloading, which would be zero.

Movie piracy is somewhat easier to quantify. The same problem of reporting exists: People are unlikely to be truthful about their illegal downloading habits, and police detection of illegal downloads or DVD seizures can provide only a very rough estimate of actual downloads and sales. The valuation problem is simpler, however: Typically a DVD contains only one movie, so the downloader or purchaser of an unlicensed copy is not likely to buy a licensed copy of the DVD. The free-rider problem still remains: Not every unlicensed copy necessarily represents a lost sale. Many who might have been willing to pay 60 cents for a pirated\(^\text{26}\) DVD of the mind-numbingly awful conclusion to the *Pirates of the Caribbean* trilogy\(^\text{27}\) would have been unwilling to pay $22 for a licensed copy, or $11 per person to see the movie in a theater – or would have demanded their money back if they had. And there is still the possibility of legitimate sales resulting from initial introduction through unlicensed copies: A friend’s

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\(^{26}\) Or piratical.

\(^{27}\) *Pirates of the Caribbean: At World’s End* (Walt Disney Pictures 2007).
recommendation may lead a curious teenager to download *Porco Rosso*,\(^\text{28}\) in turn leading to a lifelong interest in anime and the spending of hundreds of dollars on the work of Hayao Miyazaki and Studio Ghibli alone, and may lead to other interests: If, for example, the hypothetical downloader is a German speaker, the discovery that Sidonie von Krosigk (the voice of Chihiro in the German release of *Spirited Away*\(^\text{29}\)) also starred in two German fantasy films, *Bibi Blocksberg*\(^\text{30}\) and its sequel, *Bibi Blocksberg und das Geheimnis der blauen Eulen*,\(^\text{31}\) may lead to the purchase of licensed copies of those films as well as of recordings of the many, many episodes of the long-running Bibi Blocksberg television cartoon.

**Movie piracy by country: Motion Picture Association study results**

In May 2006 L.E.K. Consulting, a multinational business consultancy, completed a study commissioned by the Motion Picture Association (MPA; the international counterpart of the Motion Picture Association of America (MPAA)) on the global cost of movie piracy.\(^\text{32}\) L.E.K. surveyed more than 20,000 consumers in twenty-two countries: Australia, Brazil, Canada, China, France, Germany, Hong Kong, Hungary, India, Italy, Japan, Korea, Mexico, the Netherlands, Poland, Russia, Spain, Sweden, Taiwan, Thailand, the United Kingdom, and the United States. The study looked at piracy of all movies, with a special focus on movies produced by the MPA member studios: Buena Vista (Walt Disney), MGM, Paramount, Sony, Twentieth Century Fox, Universal City

\(^{28}\) *Porco Rosso* (Studio Ghibli 1992 (in Japan, as *Kurenai no Buta*; U.S. release 2005)).

\(^{29}\) *Chihiros Reise ins Zauberland* (Studio Ghibli 2003).

\(^{30}\) *Bibi Blocksberg* (Kiddinx Entertainment GmbH 2003).

\(^{31}\) *Bibi Blocksberg und das Geheimnis der blauen Eulen* (Bibi Blocksberg and the Secret of the Blue Owls) (Kiddinx Entertainment GmbH 2005).

Studios, and Warner Brothers. The study concluded that in the preceding calendar year (2005) the MPA movie studios had lost $6.1 billion to piracy, 80% of it outside the U.S. This figure is subject to the uncertainties described above, and the report’s description of the method used for valuation does not make it clear whether each pirated copy is counted as a lost sale, or perhaps more than one lost sale: “The study’s piracy loss calculation is based on the number of legitimate movies – movie tickets, legitimate DVDs – consumers would have purchased if pirated versions were not available.”

Even with these reservations, however, the results show piracy to be a more multi-sided problem than is often assumed. Of the supposed $6.1 billion in losses to U.S. studios, 2.3 billion, or 38%, were lost to Internet piracy, while 3.8 billion, or 62%, were lost to hard-goods piracy. The three countries in which the losses to U.S. studios were highest were not East Asian countries, and two of them were not developing countries: Mexico, the United Kingdom, and France accounted for over $1.2 billion in lost revenues, or 25% of the non-U.S. total – and slightly less than the U.S. total of $1.3 billion. The three countries have a combined population of about 225 million, somewhat less than the United States’ 293 million, giving them a slightly higher per capita piracy rate.

**MPA members’ lost revenues, per capita**

Russia came in fourth on the L.E.K. Report’s dollar-value list, while China came in sixth. When population is taken into account, the differences are still more dramatic:

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<table>
<thead>
<tr>
<th>Country</th>
<th>Revenues lost by U.S. MPA members (in millions)</th>
<th>Population (in millions)</th>
<th>Loss per capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA</td>
<td>$1,300</td>
<td>293</td>
<td>$4.44</td>
</tr>
<tr>
<td>Mexico</td>
<td>$483</td>
<td>105</td>
<td>$4.60</td>
</tr>
<tr>
<td>UK</td>
<td>$406</td>
<td>60</td>
<td>$6.77</td>
</tr>
<tr>
<td>France</td>
<td>$322</td>
<td>60</td>
<td>$5.37</td>
</tr>
<tr>
<td>Russia</td>
<td>$266</td>
<td>144</td>
<td>$1.85</td>
</tr>
<tr>
<td>Spain</td>
<td>$253</td>
<td>40</td>
<td>$6.33</td>
</tr>
<tr>
<td>China</td>
<td>$244</td>
<td>1,299</td>
<td>$0.19</td>
</tr>
<tr>
<td>Japan</td>
<td>$216</td>
<td>127</td>
<td>$1.70</td>
</tr>
<tr>
<td>Italy</td>
<td>$161</td>
<td>58</td>
<td>$2.78</td>
</tr>
<tr>
<td>Germany</td>
<td>$157</td>
<td>82</td>
<td>$1.91</td>
</tr>
<tr>
<td>Thailand</td>
<td>$149</td>
<td>65</td>
<td>$2.29</td>
</tr>
</tbody>
</table>

In only four of the countries listed in the L.E.K. Report as the top ten markets for losses to U.S. producers does the average person steal more from U.S. studios than do the Americans themselves. Three of these four countries are developed members of the European Union: France, Spain, and the United Kingdom. Mexico aside, the developing countries on this list have far lower per capita piracy rates. (As a percentage of total sales, however, these countries’ rates are still high, because they also have lower per capita legitimate sales rates.) Russia, often portrayed in the media as a lawless Wild West dotted with organized-crime fiefdoms, has a per-capita rate only slightly higher than that of notoriously law-abiding Japan, and lower than that of equally staid Germany.

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39 This is not to suggest, of course, that Japan is actually unusually law-abiding (whatever the crime statistics may show) or that Germany is staid, but only that the publicly perceived images of these countries – their national brands – incorporate these stereotypes.
With China, the difference is exceptionally stark: The per capita cost of piracy is negligible, an order of magnitude lower than Germany’s. While it might be that a significant percentage of China’s 1.3 billion people are excluded from participation in the modern information society – that is, don’t have televisions and DVD or VCD players – the probable explanation lies elsewhere. China has over 400 million televisions (approximately one for every 3.25 people), which suggests that pretty much everyone has access to video entertainment.\(^{40}\) And even if only the wealthiest one-tenth of China’s population is considered, the per-capita cost of piracy would be no higher than Germany’s. It seems that if any countries are systematically looting U.S. intellectual property rights in movies, they are to be found not in Asia but in the European Union.

Language might be one reason. There’s more incentive to buy and steal English-language movies if you speak English. No matter what Rex Harrison might have said, everyone in the U.K does; many Europeans do; few Russians or Chinese do. China also has a robust film industry of its own, producing films in Chinese and more closely suited to the tastes of Chinese audiences than imported films.\(^{41}\) Video piracy is indeed a serious problem in China, but piracy of U.S. movies is only a tiny part of it.


\(^{41}\) Protectionism may be another reason: Chinese law severely limits the theatrical release of foreign films, possibly reducing demand for those films on DVD – although, as many films are thus available only on DVD, the effect of protectionism might actually be to increase demand for certain DVDs. China has the highest percentage of MPA members’ potential market lost to piracy – 90% -- of any country in the study, possibly because the legitimate outlets for MPA movies are restricted in order to protect China’s film industry, forcing viewers to purchase unlicensed copies if they want to see certain movies at all. See L.E.K. Report, *supra* note 32, at 6; on unfair non-IP-related trade practices in the international film industry generally, see Claire Wright, *Fugitive Production*, L.A. DAILY JOURNAL, Sept. 12, 2007, at 6. Pirated movies may also be manufactured for export; exporting these movies to the U.S. market would be easier from Mexico or Canada than from China or Russia.
Total cost of movie piracy, per capita

The L.E.K. Report puts the total cost of movie piracy in China at $2,689 million – the highest total amount of any country in the study, although far from the highest per capita. Listed by total amounts of consumer spending lost to piracy, rather than just piracy of MPA members’ IP, China takes the top spot, followed by France, Mexico, the UK, and Russia.

<table>
<thead>
<tr>
<th>Country</th>
<th>Total consumer spending lost to movie piracy</th>
<th>Population</th>
<th>Loss per capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>$2,689</td>
<td>1,299</td>
<td>$ 2.07</td>
</tr>
<tr>
<td>France</td>
<td>$1,547</td>
<td>60</td>
<td>$ 25.78</td>
</tr>
<tr>
<td>USA</td>
<td>$1,300 *</td>
<td>293</td>
<td>$ 4.44</td>
</tr>
<tr>
<td>Mexico</td>
<td>$1,114</td>
<td>105</td>
<td>$ 10.61</td>
</tr>
<tr>
<td>UK</td>
<td>$1,007</td>
<td>60</td>
<td>$ 16.78</td>
</tr>
<tr>
<td>Russia</td>
<td>$901</td>
<td>144</td>
<td>$ 6.26</td>
</tr>
<tr>
<td>Japan</td>
<td>$742</td>
<td>127</td>
<td>$ 5.84</td>
</tr>
<tr>
<td>Spain</td>
<td>$670</td>
<td>40</td>
<td>$ 16.75</td>
</tr>
<tr>
<td>Germany</td>
<td>$491</td>
<td>82</td>
<td>$ 5.99</td>
</tr>
<tr>
<td>Thailand</td>
<td>$465</td>
<td>65</td>
<td>$ 7.15</td>
</tr>
<tr>
<td>Italy</td>
<td>$442</td>
<td>58</td>
<td>$ 7.62</td>
</tr>
</tbody>
</table>

*The report does not provide a total for the U.S., although there must be a significant amount of piracy of foreign movies in the U.S. The amount for lost revenue to U.S. MPA members is provided to give a very rough comparison.

Once again, China’s per capita piracy rate is the lowest on the list, but it is about eleven times as high as the rate of piracy on the previous chart. While that total may include movies from England, France, Japan, and other countries, the majority is probably made up of Chinese movies. No other country on the chart shows such a

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dramatic change, although once again France, Spain and the United Kingdom are at the top of the piracy league.

The pirating in China of Chinese movies offers the greatest incentive for enforcement of intellectual property protection of movies in China.\(^\text{44}\) A property regime that protects the interests of foreign rather than domestic stakeholders is unlikely to prove popular anywhere. China retains bitter memories of the European and Japanese colonialist onslaught of the nineteenth and early twentieth centuries, which saw the country’s sovereignty and property handed over bit by bit to foreigners and which China barely survived as a nation. Foreign insistence on enforcement of IP rights arouses an intensity of resentment in China that it does not in France or the UK. People have apparently been sentenced to death in China in the name of U.S. IP interests;\(^\text{45}\) many in China see the penalties imposed on IP pirates as a sacrifice made by their government to appease the U.S. This raises unhappy echoes of the colonialist era, when Chinese civilians were killed at the insistence of foreign powers as reprisals for crimes committed against foreign missionaries (but not committed by the people who were killed). Mark Twain famously condemned the practice in his essay opposing the U.S. imperialist adventure in the Philippines, “To The Person Sitting in Darkness,” describing an incident


\(^{45}\) See WILLIAM ALFORD, TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION 91 (1997)(“such undertakings [to enhance IP protection] have led to the imposition of the death penalty on at least four individuals…”); see also Peter K. Yu, The Copyright Divide, 25 CARDOZO L. REV. 331 (2003).
in which Western missionaries in China demanded not only excessive cash reparations, but also 680 human heads.\textsuperscript{46}

**Lost consumer spending due to movie piracy, per capita**

Looking at the L.E.K. Report’s figures for lost consumer spending (as opposed to MPA members’ lost revenues or total lost spending) gives different numbers, still falling into the by-now familiar pattern:

<table>
<thead>
<tr>
<th>Country</th>
<th>Total MPA member consumer spending lost to movie piracy\textsuperscript{47} (in millions)</th>
<th>Population\textsuperscript{48} (in millions)</th>
<th>Loss per capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>$565</td>
<td>1,299</td>
<td>$0.43</td>
</tr>
<tr>
<td>France</td>
<td>$604</td>
<td>60</td>
<td>$10.07</td>
</tr>
<tr>
<td>USA</td>
<td>$1,300 *</td>
<td>293</td>
<td>$4.44</td>
</tr>
<tr>
<td>Mexico</td>
<td>$954</td>
<td>105</td>
<td>$9.09</td>
</tr>
<tr>
<td>UK</td>
<td>$787</td>
<td>60</td>
<td>$13.12</td>
</tr>
<tr>
<td>Russia</td>
<td>$622</td>
<td>144</td>
<td>$4.32</td>
</tr>
<tr>
<td>Japan</td>
<td>$375</td>
<td>127</td>
<td>$2.95</td>
</tr>
<tr>
<td>Spain</td>
<td>$478</td>
<td>40</td>
<td>$11.95</td>
</tr>
<tr>
<td>Germany</td>
<td>$353</td>
<td>82</td>
<td>$4.30</td>
</tr>
<tr>
<td>Thailand</td>
<td>$271</td>
<td>65</td>
<td>$4.17</td>
</tr>
<tr>
<td>Italy</td>
<td>$316</td>
<td>58</td>
<td>$5.45</td>
</tr>
</tbody>
</table>


\textsuperscript{47} L.E.K. Report, supra note 32, at 10.

*Once again, the report does not provide a total for the U.S., and the amount for lost revenue to U.S. MPA members is provided to give a very rough comparison.

As with the previous two charts, three countries – France, Spain and the UK – have a significantly higher per capita piracy rate than the others, with Mexico not too far behind, while one country – China – has a significantly lower per capita piracy rate than the next lowest country, Japan.

The actual difference in piracy rates may be even higher: While assessing the quantity of any illegal activity is difficult, the value of online piracy (which does not involve a physical product) is probably even harder to assess than the value of DVD piracy (which does). And online piracy of movies, which requires broadband to be practical, is likely to be more concentrated in countries with greater access to broadband. With only 4 broadband connections per 100 inhabitants as late as June 2006, compared to about 20 per 100 in the U.S., France and Japan and about 22 per 100 in the UK, China has a lower percentage of people able to pirate DVDs online. Thus piracy is forced out into the open, relatively speaking: Out to the swap meets and card-table sidewalk vendors, whose wares can be more readily seized and counted.

While this may contribute some error to the assessment of losses due to IP piracy, the greater harm it causes is to public perception. People see street vendors selling DVDs, and they see images of the vendors in the media. They don’t see online downloading, which happens inside private homes and would be fairly boring to watch.

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Online piracy may lead to lawsuits, but rarely to arrests. Even when it does, the arrests are rarely spectacular. But arrests of DVD pirates and vendors are mediagenic; they present the spectacle of thousands of videos scattered on the ground, crushed beneath the feet of police officers. These images – card tables covered with obviously pirated DVDs, street vendors being led away in handcuffs, huge piles of DVDs being destroyed – stand out in the memory. And when the images come mostly from East Asia, the impression left in the public mind is that IP piracy is an East Asian problem, rather than a North American, European, or world problem.

**Retail sales value of music piracy, per capita**

While, as noted above, music piracy figures are less reliable, they also tend to show a low per-capita piracy rate in China. The figures provided by the International Federation of the Phonographic Industry (IFPI), a recording industry group, probably overstate the actual cost of piracy, but place the per capita level of pirated recording sales at about one-third of the level in the U.S.:

<table>
<thead>
<tr>
<th>Country</th>
<th>Total retail sales value of pirated recordings (^{51}) (in millions)</th>
<th>Population (^{52}) (in millions)</th>
<th>Per capita value of pirated recording sales</th>
</tr>
</thead>
</table>


In developed countries, pirated recording sales are probably only a tiny portion of online piracy figures, as nearly everyone in these countries has Internet access and downloading music files is simpler and faster than downloading movies. Thus Spain, viewed by the IFPI as “Europe’s most serious piracy problem country where rampant street CD piracy has shrunk the legitimate market by one third in the last three years,” actually shows a per capita pirated recording sales value no higher than that of the UK. Another Industry group, however, the Entertainment Software Association, “reports that Spain, along with Italy and France, is consistently among the top five countries in which infringing activity occurring online (particularly through P2P networks) is persistently high. In addition, the ISPs in Spain are generally non-responsive to the notices of infringement sent to them by the ESA.”

Why does the perception gap matter, and what can be done to correct it?

IP owners, more intent on watching the money than on gaining viewers, readers, or votes with scare stories, are more inclined to concentrate efforts on developed

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countries such as Canada, where half of the world’s pirated movie recordings may originate. 55 Unfortunately, distortions of public perception and extrinsic political concerns may ultimately distort U.S. trade law and policy in ways that can be harmful to U.S. IP owners’ interests.

The gap between the perception and reality of international IP policy matters because it affects U.S. policy. Trade laws and foreign relations may be influenced by incorrect understanding of the problem, and law enforcement resources may be misallocated. And if the U.S. fails to appreciate the efforts already made by developing countries to address IP piracy issues, those countries may have little incentive to continue those enforcement efforts.

To a certain extent, the problem may correct itself: Particular countries, like China, may find that they have a strong stake not only in enforcing IP laws but in being seen to do so. The currently high overall piracy rate (as a percentage of total domestic sales) in China is high, but total pirate sales are falling and should continue to fall, while licensed sales continue to increase. This attacks the piracy percentage problem from both ends at once. While there will be some lag, public perception should improve as China’s piracy percentage falls. However, even with low per capita piracy rates, China’s total piracy level will remain high, because it is the world’s most populous country. In addition, the effect of increased IP protection in China will be to move the problems of real and perceived piracy to other countries, like Vietnam and Ukraine. The problem will remain unless and until responsible commentators restructure the discourse to reflect reality, reason and accuracy rather than media scare-mongering or political vote-chasing.