

Chapter XI

Digital Convergence and IP Divergence: Resolution of Potential IP Trade Wars and Establishment of Proper Digital Copyright Policies

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ABSTRACT

This chapter proposes a legal, political, and social framework for a nation to formulate proper copyright policy and minimize the risk of potential IP trade conflicts in the digital age. It examines the challenges that the Internet and digital technology present to the traditional copyright legal system. It reviews and compares the copyright history in the U.S. and China, and explores major rationales behind copyright policies of these two countries as well as the main reasons why they were able to avert potential IP trade wars in recent years. By drawing on their experiences, the author argues that the interest of a country is only best served by tailoring its IP regimes to its particular economic and social circumstances. The author believes a nation's copyright policy should always strike a sound balance of IP protection and social development, and makes some specific suggestions on how to achieve this in the digital age.

INTRODUCTION

In recent years, the application of Internet and digital technology has become increasingly “ubiquitous, embedded, and animated” in our society. The advent of the Internet, VoIP and digital TV has digitized the transmission of data, voice and TV contents in IP packets. As some commentators observed, the “digital convergence” has become a tendency (Knemeyer, 2004). “If the line between cyberspace and real space has grown increasingly difficult to draw, it may soon become impossible” (Kang & Cuff, 2005, p. 94). Ever-improving Internet technology and digital convergence have changed the traditional rules of information distribution and dissemination of information and copyrighted works. They enable users to more efficiently access and disseminate information online. However, they also facilitate copyright piracy, and enable unauthorized works to spread via various media.

Over the past two decades, a number of international Intellectual Property (IP) treaties have been established in order to address new digital challenges. In response to these treaties, many countries (particularly advanced copyright exporting nations) have adapted their domestic IP laws and tried to impose stronger protections to copyright products (even stronger than what international treaties required). Nevertheless, many other countries (particularly copyright importing countries) often hold opposite positions. They believe overly strong copyright protection would not only hurt their economic development, but also would harm public interests generally (such as limiting the public’s rights to access and use digital works) (Okediji, 2004). Such divergence would, arguably, strengthen inherent conflicts of these two benefit groups in international copyright trades and international IP law/policy-making process. It might even increase the possibility of potential IP trade wars. Thus, how to establish a proper copyright policy in order to facilitate the resolution of potential international IP trade

conflicts and realize the harmony of social development and IP protection has become an importation issue that all countries have to face up to in the digital age.

An ancient book named *I Ching* (also known as the “Book of Change”) which originated thousands of years ago among the courtly shaman-diviners of ancient China, may possibly give us some inspiration for dealing with current IP conflicts. The *I Ching* views “all of the changes” in the world as “an unfolding of the immutable laws and principles of existence,” and contends “by explaining our present situation in terms of the natural laws that have given rise to it, we can know where we are headed and what the future is likely to be.” This same principle might also be applicable to the resolution of the problems in the ever-changing Internet world. Many traditional problems still stay unchanged or unresolved in the digital age. Neither the Internet nor the development of digital technology has changed the conflict between copyright holders and copyright users, or weakened the link between trade and IP. Neither has conflict between copyright importing and exporting countries in the international trade arena been resolved. Nonetheless, these unresolved problems might constitute direct reasons for potential IP trade wars or sanctions. Based on the principle in *I Ching*, in order to cope with such problems and facilitate the resolution of potential IP trade conflicts, we should identify “the natural laws” that have given rise to them. Thus, it is necessary to review the history and examine how other countries have addressed similar issues.

This chapter will mainly focus on the situations in China and the United States. Specifically, Part II of this article will examine the impacts of the development of digital technology on international copyright protection and IP trade. It will also briefly review major legal responses that the US and international society have made, and the danger of potential IP trade wars in the digital age. Part III will review and compare the copyright

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