

When Pirates Are the Only Providers:  
The Role of Mass Media in Building Political Will to Enforce IPR Laws in LDC's



(Lanzhou Electronics Market, Gansu, China. The sign below reads: Authentic Movie Discs 1 yuan (14¢) each)



When a third-world entrepreneur sells pirated DVD's on the streets, s/he may be thinking of nothing more than the sacred capitalist code of selling a product for a profit, perhaps to feed a family or raise him/herself out of poverty. For this person to follow international laws of intellectual property rights (IPR<sup>1</sup>), which in many countries and languages may be a very new concept or term, s/he must first be made aware that these are "special" products, not to be sold or distributed freely as one would livestock or agricultural products<sup>2</sup>. Norms and explanations of the profit motive driving innovation had best be internalized if the person's behavior is to be modified to conform to international IPR laws.

An analogous process of understanding may take place at the governmental level, where state leaders have similar financial incentives to grow their national economies by any means possible. Yet at this level there is both greater international pressure to draft IPR laws and enforce them, to show that one's state is a responsible member of the global economy, ruled by laws and thereby a safe destination for investment by patent-holding corporations. Yet in some ways developing countries can have the best of several worlds in IPR terms. As with other illicit economic activities, much can be gained by declaring something illegal, enforcing only selectively or scarcely while it grows into an economy-sustaining industry, and collecting bribes throughout the process.

When violations occur at the individual level, punishment may be severe enough to keep one from returning to the same illicit practice, yet there is no well-defined enforcement mechanism for ensuring that states follow international IPR laws<sup>3</sup>. States in which enforcement is lax may receive less foreign direct investment (FDI) from some sources, but often times others are just as willing to replace them. In the absence of an international norm enforcer, an institution which globalization has yet to provide, states are free to set their own rules of development, playing a game of self-help which includes both global conformity as a source of legitimacy and covert disobedience for immediate, often personal gain.

This study seeks to show the difficulties faced by countries whose rule of law is at best tenuous yet which nonetheless attempt, ostensibly, to implement a standardized IPR policy, whether done as part of

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<sup>1</sup> For a list of abbreviations, definitions of this and other key terms, see APPENDIX C.

<sup>2</sup> Explaining this in the agricultural sector, where genetically modified products are becoming ever more prevalent, must be doubly difficult for farmers in LDC's to grasp, let alone accept.

<sup>3</sup> Le Goff's recent assessment of the power of "global law" concludes that whatever influence it has, admitting it is not very far advanced, is intimately tied to international organizations such as the WTO, itself with only limited enforcement mechanisms.

trade-related requirements of the WTO TRIPS agreement (World Trade Organization Trade-related Aspects of Intellectual Property Rights), or to protect intellectual property in the domestic market as part of a strategy to climb higher on the product cycle. It begins by examining the application of IPR laws in the developing world in general, in relation to the WTO, and the incentives governments face to project an image of compliance to the world while practicing selective enforcement of laws at home. The steps to bringing *de facto* compliance with *de jure* laws will be laid out as fairly straightforward, but it will be shown that governments choose different ways to take them, if they do so at all. The empirical results of this study seek to show relationships between media reporting of IPR issues, the level of economic development in a given country, and the acceptance of IPR protection as a justified, global norm. An exemplary case will be made of the People's Republic of China, which has received a disproportionate amount of attention both for its accession to the WTO in 2001 and for rampant IPR abuse in almost all sectors. Again, it will be of service to understanding the issue if other scholarly works are treated first.

***Previous IPR studies.*** Given the connection or perhaps equation of laws and norms, most scholarly literature addressing IPR is in the field of law, however there have been several significant works linking the issue to economic development and the politics of implementing internationally-sanctioned IPR policy. Joseph Stiglitz devotes an entire chapter of his most recent book, *Making Globalization Work*, to the justice and viability of IPR laws in the developing world, almost adopting the tone of an indignant protester in framing the issue pessimistically but effectively as a matter of life and death. Framed as such, IPR law enforcement, as opposed to other “protective” and truly internationally internalized laws against murder, is costing rather than protecting lives, doing so disproportionately in the Third World. Perhaps the medical industry paints the starkest picture in the case for not abiding by principles of TRIPS, but the dissatisfaction and defiance of it in developing countries extends to all sectors of the global economy. Moisés Naím is similarly unequivocal in outlining the global consequences of IPR infringement<sup>4</sup> stretching across medicine, technology and manufactured goods, agriculture and entertainment products. While Stiglitz's case for lenience may gain sympathy in the case of low-cost access to AIDS medicine in the third world, there is understandably little for those in developed or LDC's who want to download movies without paying for them. Among those owning the rights, however, there is

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<sup>4</sup> His sixth chapter, “The Global Trade in Stolen Ideas” works IPR issues into his thesis that international laws defining illicit goods and trade are both unenforceable and not sustainable for the long term.

just as much incentive to have copyrights enforced internationally and universally.

Defenders of “non-enforcement for development” fit well into Ha-Joon Chang’s thesis that the developed countries are unfairly imposing legal and moral economic norms on the LDC’s, though in an attractive package which is marketed as *promoting* development<sup>5</sup>. In fact, such impositions perpetuate myths that today’s wealthy countries followed these practices in their development process, despite historical evidence that suggests quite the opposite<sup>6</sup>. The eminent IPE scholar Dani Rodrik weighed in on TRIPS on behalf of LDC’s even before its enactment, in 1994 thusly: “TRIPS is a redistributive issue...the impact effect of enhanced IPR protection...will be a transfer from LDC consumers and firms to foreign, mostly industrial-country firms.”<sup>7</sup> To those less restrained by reputation, this amounts to a neo-imperialist relationship of empire and vassal state, and piracy is actually the more justified route “for catering to community needs and staving off predatory outsiders” such as multinational corporations (MNC’s) interested only in profits<sup>8</sup>.

Yet it would be folly to imagine LDC’s growing their economies without investment from abroad, and investors are well aware that danger lurks around every corner in developing markets, where indigent entrepreneurs lie in wait, in employers’ very midst as mid-level managers and all below, to tap the very lifeblood of the MNC’s: the hard-earned fruits of vast R&D expenditures. The United States government has made web publications called IPR “toolkits” available on internet embassy sites, mostly in the early to mid-2000’s and prefaced by a reassuring letter from the ambassador that the local government is doing everything in its power to enforce its IPR laws. These reports are directed largely at such “predatory” MNC’s in need of assurance that their precious intellectual property—ranging from formulas to processes and products—will not be illegally adopted by competitors in the destination country of FDI, essentially “freeriding” on their innovations while likely undercutting their revenues. More frequently, and in generally greater detail, the International Intellectual Property Alliance<sup>9</sup> publishes an annual report for both developing and developed countries’ governments, outlining practical steps to narrow the un-eradicable

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<sup>5</sup> See Ha-Joon Chang’s book, especially pg. 83-86. His 2001 article makes a more explicit link between lax IPR law enforcement and economic development, claiming that having innovations—especially technological ones—in the “public domain” is far more beneficial.

<sup>6</sup> The ultimate effect of Chang’s article is to question the necessity of IPR laws to drive innovation and development, offered by the developed countries as the main incentive for LDC’s to sign on to TRIPS.

<sup>7</sup> See Rodrik, pg. 449

<sup>8</sup> Ross, pg. 748-749

<sup>9</sup> See [www.iipa.com](http://www.iipa.com)

gap between law and reality.

While such reports are highly informative of what is, is not, and “needs” to be done to bring LDC’s into compliance, consideration of government incentives and empirical evidence of government strategies and actions is generally lacking in these analyses. This study will attempt a more well-rounded assessment of the general lack of progress in these areas and make practical, policy-relevant suggestions on what steps may be taken and to show whose interests are being served by international IPR regimes.

***Framing the issue: history of TRIPS, political will, and domestic markets.*** One of the most important results of the Uruguay round of GATT talks, other than the formation of the WTO itself, was the passage of the TRIPS agreement, addressing “Trade-Related Aspects of Intellectual Property Rights”. By the mid-1990’s account of Giunta and Shang, TRIPS aspired to set “minimum standards of intellectual property protection for patents, copyrights, and trademarks”<sup>10</sup>, yet even then they noted that LDC’s “are not major producers of IP...[and] have little incentive to vigorously protect it.”<sup>11</sup>

Shujen Wang’s 2003 article provides the most explicit links between IPR, this paper, and the topic of this class, noting as follows:

“[S]uccess in protecting copyrights still lies in the effectiveness of individual national laws and enforcement; hence, the nation-state still plays a crucial role...Although trade forums such as the WTO further erode state sovereignty, the state is not completely without leverage in how it negotiates its position vis-à-vis global trade and IP issues<sup>12</sup>. [T]he emerging global interdependence under the GATT and the WTO...demand[s] a wide-ranging restructuring of trade policy[, but i]n the case of copyright governance and TRIPS, for example, state power is indispensable and instrumental not only in implementing and enforcing international agreements but also in negotiating and maneuvering positions vis-à-vis transnational regimes and regional and domestic influences (both legitimate and illegitimate) while shaping national policies pertaining to the working of information structure.”<sup>13</sup>

It is hoped that this paper will be able to build on these links with practical considerations and empirical evidence, focusing on the role of mass media for enforcing “new” laws such as those mandated by TRIPS.

Enforcement of any law is ultimately a political decision: is the government willing and able to expend its own resources to curtail behaviors deemed undesirable by itself, domestic industry and society, or the international community? If the behavior is seen as such only by one of those three, the chances of enforcement occurring are high only in the first case. A government intent on using its legitimate force

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<sup>10</sup> See Giunta and Shang, pg. 336

<sup>11</sup> Giunta and Shang, pg. 330. Focusing on China and India, they draw optimistic conclusions that both are “eager” to begin implementing IPR laws and, contradicting this early citation, they conclude by pg. 358 that there are in fact “obvious incentives for developing countries to protect IP”.

<sup>12</sup> Wang, pg. 32

<sup>13</sup> Wang, pg. 34-35

for its own purposes is one of the defining characteristics of a state government. Intervening on behalf of industry and society may aid in a government's legitimacy, the popular perception of it as moral and in defense of both the nation and people's interests. In the third case, however, the labeling of a behavior as "undesirable" or "illicit" is likely to be seen as an imposition, and to act upon it may easily be framed as a shameful submission to external power and foreign norms. Only by internalizing such norms itself, as in the interests of the government and/or nation, and by disseminating them among the population of a state, may enforcement be seen as just and likely to succeed, make progress, or be the least bit sustainable. So-called "political will" is thus a function of the government's ability to frame morally and economically difficult decisions as in the interests of as many of its constituents<sup>14</sup> as possible.

Once the reasons and beneficiaries behind a decision to enforce IPR laws have been established, there remains the secondary decision of what mechanisms of enforcement to use, the extent to which they are used, and how to spread the normative values among the population to make enforcement firstly easier and ultimately unnecessary. The initial mechanisms tend to be co-optation of existing law enforcement institutions, such as the police, judicial and prison systems. Deterrent punishments at the individual level vary by country from simple fines (expending less enforcement resources while possibly *generating* state revenue) to criminalization and prison sentences (taxing all levels of enforcement and judicial systems but theoretically being a much stronger deterrent). IIPA reports consistently criticize states for relying more on "administrative" deterrents as in the former case, deemed ineffective due to fines being too low, while advocating the more severe and costly use of the latter<sup>15</sup>.

The choice of how much effort to put toward IPR law enforcement falls on a spectrum of extremes between none and absolute, with strong implications for a country's IP, rule of law, and economic development in both the long and short term. Fig. 1 below shows the incentives and implications governments face to set the level of enforcement within their jurisdiction. As with any law, sustained non-enforcement will render it meaningless and could even have a deleterious effect on citizens abiding by other laws. Absolute enforcement, by contrast, expends state resources at an unsustainable rate, adding a great burden to every level of a state's legal system—a system which may already be struggling with

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<sup>14</sup> Which may not necessarily extend beyond the government itself, along with a few key elites and oligarchs, though chances of real progress rise immensely when initiatives are framed as in the "national interest".

<sup>15</sup> China's IIPA report is an exemplary case of this scenario, discussed in the final section of this paper.

“keeping order” in society.

| Strict Enforcement   | Selective/Preferential  | Lax/No Enforcement   |
|--|---|--|
| <ul style="list-style-type: none"> <li>•Approval of international community</li> <li>•Increased FDI into state economy</li> <li>•Increased domestic incentive to innovate</li> <li>•Reinforce rule of law in general</li> <li>•Long-term benefit of formal state economy</li> <li>•High costs (police budget increase)</li> <li>•Increased litigation</li> <li>•Organized crime must evolve with enforcement mechanisms</li> <li>•Potential to appear weak before foreigners or prioritize their preferences over domestic/popular ones</li> <li>•Presumably low in LDC “hierarchy of needs” (i.e. as opposed to feeding population) (High opportunity costs)</li> <li>•Safety/quality standards maintained</li> </ul> | <ul style="list-style-type: none"> <li>•Appearance of compliance &amp; occasional, highly publicized seizures often enough to satisfy international community, encourage some FDI into state. Sustained publicity is key to both keeping foreign investors from exiting; domestically, this may eventually change societal norms, allowing less costly enforcement.</li> <li>•Reinforces view of government as personalistic.</li> <li>•Opportunities for bribery/corruption (benefits individuals in government, unless/until held personally accountable)</li> <li>•Organized crime thrives</li> <li>•Mix of both sides (strict/lax), can be tailored to preferences of particular governments</li> </ul> | <ul style="list-style-type: none"> <li>•Open violation of international norm may lead to isolation, sanction/exclusion from multilateral trade organizations (generally negative effect on FDI, international trade and political relations)</li> <li>•Questionable domestic disincentive to innovate</li> <li>•Reinforces informal economy, can become an important national industry over long term, low-skill and low entry-cost entrepreneurs benefit</li> <li>•Organized crime integrated/legitimized</li> <li>•May serve as ISI, then ELG foundation</li> <li>•Access to needs (medicine, technology) and wants (entertainment) at lower cost</li> <li>•Government can focus on more pressing domestic issues as it sees fit (Low opportunity costs)</li> <li>•Increase in counterfeit goods usually means lower safety/quality standards</li> </ul> |

Fig. 1: Governmental incentives and implications for three levels of IPR law enforcement. Though the extremes are ideal types and governments in both developed countries and LDC’s tend toward strict enforcement (especially in the globalized environment), costs move governments toward the center in the long term. Ideal extremes can be attained but are unlikely to be sustained or sustainable.

As any government must be aware, laws are less costly to enforce if they have been internalized by individuals in society. A goal of socializing laws, indeed requisite to being part of a society, is to convince society as a whole that the laws are justified, working ultimately toward a utopian ideal of self-enforcement based on a shared ethical code and requiring little or no state enforcement expenditure. The claim that mass media plays an important role in achieving these goals is central to this study, as modeled in APPENDIX D and more thoroughly ahead in the research questions section. Before delving into this primary topic, it is important to address the influence of state market size on IPR regimes.

States with a higher population, a larger domestic market in economic terms, have higher stakes in establishing a functional IPR regime. All incentives may be amplified, most especially the need to establish a long-term economic strategy for attaining and maintaining status as a leading country. Their population may be prouder, justifiably so, of their civilization’s contribution to human culture, and nationalist pride may lead to a sense of exceptionalism as well as greater sensitivity to gestures which may

belittle their nation. Among these, submitting to an international norm which may be against the financial and cultural interests of such a nation may be seen as both a sign of weakness and an admission of inferiority. There is, at the same time, a greater incentive to enforce IPR laws in large, developing countries because they are a huge potential market, a base which could financially support domestic innovators able to aid in returning one's nation to its rightfully esteemed, even exalted international status<sup>16</sup>.

The plight of smaller LDC markets is summarized by Sharma:

*"[I]f the justification for exclusionary rights under the TRIPS agreement is that they allow firms to recoup their research and development (R&D) expenditures (implying that in the absence of IP protection, R&D benefits would fall and benefits from innovation be reduced), the question is whether the small markets typical of many developing countries are sufficiently large for the absence of IP protection to affect the supply of R&D. Since most developing country markets are not large enough, the additional costs to developing country consumers paying for IP protection represents a welfare loss that is not recouped through enhanced R&D benefits."*<sup>17</sup>

Thus the calculus of consumer benefits and the potential to support an IP-intensive economy in the future (given by Sharma as a function of the population size) must weigh heavily on the minds of LDC leaders, affecting their enforcement choices greatly. By most developed country accounts, they have chosen poorly, allowing rife disobedience and showing little political will to reverse the situation.

In the view of LDC governments and people, it is both irresponsible and arrogant for advocates in the West of strict IPR law enforcement to focus solely on the long-term benefits of doing so. These states face more immediate challenges which have apparently been forgotten by most developed societies, such as hunger, extreme poverty, and ethnic strife. The diffusion of technology and information brought in part by globalization has led to a much greater awareness among the global poor of the developed world's affluence<sup>18</sup>, and it is not surprising that these same poor—above all their governments—are increasingly imbued with a sense of entitlement to IP as a socioeconomic human right<sup>19</sup> and the desire to raise their standards of living by any means and as quickly as possible.

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<sup>16</sup> At the 2008 Global Forum on Innovation, Creativity, and IP, U.S. Consul General to India Michael S. Owen carefully frames the issue in terms of interest to the Indian government, emphasizing the incentives for strict enforcement thusly: "Every film or music CD pirated means less money to support the Indian artists who create them...Counterfeiting and piracy cost India's entertainment industry over 800,000 lost jobs and over 4 billion U.S. Dollars per year. The remedy is obvious: increased enforcement actions..." He follows this with the assertion that FDI and technology transfer are positively correlated with IPR protection.

<sup>17</sup> Sharma, pg. 72, italics added.

<sup>18</sup> Chang (2003), pg. 67, discusses the exponentially greater ratios of per capita income between rich countries and LDC's today, compared to the 19<sup>th</sup> century.

<sup>19</sup> See Ostergard, who expounds on this view throughout his article

**Research Questions.** This study seeks to shed light on why certain countries enforce IPR laws more consistently and effectively than others. It argues that too much focus has been placed on the concept of “political will” of governments, while the internalization of norms among the population, especially in situations with mixed incentives to accept and abide by them, has not been adequately treated. Insufficient attention has been given, in the context of IPR enforcement, to the factors which lead to the accumulation of political will.

“Political will” to make and enact decisions is naturally more likely to be sufficient if both are less politically and economically costly. A central argument to this paper is that the costs of enforcing IPR laws are highest in areas where little or no grasp of the concept of IP exists, a condition which tends to be found in LDC’s<sup>20</sup> and coexists with a tenuous rule of law and less-effective enforcement capacities in general. Addressing the first concern, the education of a population on IP, should be fundamental to an enforcement agenda in an LDC, and while this aspect may be less taxing on police forces, it is also a slow process with incremental and less visible signs of progress. A primary mechanism for this process, essentially a specialized and government-directed norm inculcation, is the mass media of a particular state.

The primary role of mass media is to disseminate information. Concomitant in this process, as each source and form of media in a state is imbued with particular values, is the spread of cultural and *legal norms*<sup>21</sup>. Reports of law enforcement, beyond stating facts of what has occurred, carry with them a reinforcement of what behaviors will and will not be tolerated in a given society—an embedded morality which is absorbed in one’s formative years and throughout life in a given society. When a seizure of illicit goods is made and reported in the news, a message is sent to the citizen both that the government is doing its job of protecting law-abiding industries and the population--generally agreed as primary national interests--and also that the rule of law is absolute. Laws in general, especially “new” ones, are much less costly to enforce when a society is aware of them and has accepted them as just, often a process which progresses or regresses according to the levels of “education” and enforcement.

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<sup>20</sup> Granted, some infringement of IPR occurs in developed countries without the “perpetrator’s” knowledge that s/he is breaking any laws, however many argue that it is a conscious calculation of costs and the convenience provided by new technologies (i.e. internet downloading) which leads to most IP theft in rich nations. See APPENDIX D for models of potential causes of IPR infringement.

<sup>21</sup> Many books and articles on communication theory treat the relationship between media and norms. See, for examples, the essays in Demers

The empirical results of this study seek to show relationships between media reporting of IPR issues such as enforcement and violation, the level of economic development in a given country, and the acceptance of IPR protection as a justified, global norm. Given that high levels of economic development correlate with a strong and stable rule of law, and thereby IPR laws, this seeks to show how media attention to the issue of intellectual property relates to these factors, for the reasons given above. Will all developing countries report and enforce evenly, and do IIPA reports appreciate the difficulty of disseminating rather “high-concept” norms among poor populations?

***Hypotheses and Testing Methodology.*** *Primary Hypothesis:* Media in LDC's under strong international pressure to conform to IPR laws will pay greater attention to IP issues, at once to reduce the costs of enforcing the laws among their populations, to assuage foreign and domestic accusations of lax enforcement, or in the extreme, to deflect pressure from foreign sources as an unjust North-on-South imposition. *Secondary Hypothesis:* While the salience of the IP issues will generally be greater in developing countries, media attention, like states' decisions on how many resources to devote to enforcement, will vary by source, intended audience, and the state in which it is published or broadcast.

To assess the amount of media coverage of intellectual property issues, here a proxy for the salience of the issue and the priority placed upon it in norm-diffusing media and governments, I conducted an internet search of 180 internet newspaper websites in both developing and developed countries. This search will be treated as a salience test for the term “intellectual property”, as compared to other internationally newsworthy topics, in mass media across a range of sources and countries. It should be noted that the country sample, while somewhat global, is not fully representative, due to linguistic constraints. Details of assumptions about this method and the exact terms searched can be found in APPENDIX A and APPENDIX B.

***Results and Analysis.*** In what is not surprising and obvious enough at a glance, IPR protection tends to be highest in developed countries with advanced judicial systems, low in most LDC's<sup>22</sup>. Media attention suggests, however, that the “political will” to enforce laws which have been effectively globalized since TRIPS was enacted, varies by source, readership<sup>23</sup>, and country, as predicted by the primary and

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<sup>22</sup> See the World Economic Forum's Global Survey 2005-2006 for full results, which are mirrored in the countries used in my study.

<sup>23</sup> Not discussed elsewhere, but it should not be surprising that a business-minded publication such as the Wall

secondary hypotheses.

High amounts of coverage in the media may suggest many things, while negligible coverage can be generally interpreted as deeming IPR unimportant to the government, media, the country and/or society as a whole. Newspapers in countries with a high portion of coverage may be seen as either under international scrutiny or pressure, reporting major initiatives, enforcement procedures such as trials and seizures or “busts”, and also may be directed at the public in general to raise awareness of the issue. As outlined in the introduction, a law will be broken far more often by a population if it is broken without one’s knowledge, or if seen as unjust and wrongfully imposed upon those “just trying to make a living”. Articles in mass media, in all societies, are among the primary instruments for diffusion of norms from the government to its society, all the more so in countries with a strongly government-controlled press, as exist in most LDC’s.

Salience test results show a wide variance in the amount of coverage devoted to intellectual property, generally higher in developing countries than in developed ones. Below are the results of the salience test, divided between developed and developing countries.

| Source  | IP Ratio   |
|---|------------|
| El Universal (Mexico)   | 0.94091285 |
| El Diario (Xalapa, Veracruz) ( <a href="http://www.oem.com.mx">www.oem.com.mx</a> )                                       | 0.4963131  |
| El Nacional (Venezuela)   | 0.13664074 |
| El Diario de Guayana (Venezuela) ( <a href="http://www.eldiariodeguayana.com.ve">www.eldiariodeguayana.com.ve</a> )       | 1.61290323 |
| Al Día (Costa Rica)   | 1.39749666 |
| Tico Times (Costa Rica, in English)   | 0.50316088 |
| Buenos Aires Herald (English Language Paper)  | 0.85391975 |
| La Nación (Argentina)   | 1.19937584 |
| La Capital (Rosario, Santa Fe, Argentina)   | 12.4517375 |
| El Universal (Venezuela, English edition)   | 0.24891101 |
| El Mercurio (Chile) ( <a href="http://www.mer.cl">www.mer.cl</a> )  | 2.78956944 |
| La Prensa (Bolivia) ( <a href="http://www.laprensa.com.bo">www.laprensa.com.bo</a> )                                      | 1.4379622  |
| El Tiempo (Colombia)  | 7.83410138 |
| El Comercio (Ecuador)   | 3.061792   |
| ABC Color (Paraguay) ( <a href="http://www.abc.com.py">www.abc.com.py</a> )   | 9.50522648 |
| El Comercio (Peru) ( <a href="http://www.elcomercio.com.pe">www.elcomercio.com.pe</a> )                                   | 2.59412718 |
| Trinidad and Tobago Express ( <a href="http://www.trinidadexpress.com">www.trinidadexpress.com</a> )                      | 1.64917541 |
| El Nuevo Día (Puerto Rico)  | 0          |
| Granma (Cuba) ( <a href="http://www.granma.cubaweb.cu">www.granma.cubaweb.cu</a> )  | 1.15322581 |
| Juventud Rebelde (Cuba) (.cu)   | 11.025641  |
| Juventud Rebelde (English Version)  | 0          |
| 5 de Septiembre (Cuba) ( <a href="http://www.5septiembre.cu">www.5septiembre.cu</a> )                                     | 0.3003003  |
| Vanguardia (Cuba) ( <a href="http://www.vanguardia.co.cu">www.vanguardia.co.cu</a> )                                      | 0.99933378 |
| El Diario de Hoy (El Salvador) ( <a href="http://www.elsalvador.com">www.elsalvador.com</a> )                             | 0          |
| Diario Los Tuxtlas (Veracruz, Mexico) ( <a href="http://www.lostuxtlasdiario.com">www.lostuxtlasdiario.com</a> )          | 0          |
| Prensa Libre (Guatemala)  | 1.10765125 |
| El Herald (Honduras) ( <a href="http://www.heraldoh.com">www.heraldoh.com</a> )   | 0.71667463 |
| Folha de Sao Paulo (Brazil) ( <a href="http://www.folha.com.br">www.folha.com.br</a> )                                    | 1.22168491 |
| Diário de Pernambuco (Brazil) ( <a href="http://www.pernambuco.com">www.pernambuco.com</a> )                              | 1.49040425 |
| Diário do Nordeste (Ceará, Brazil) ( <a href="http://www.diariodonordeste.globo.com">www.diariodonordeste.globo.com</a> ) | 0.38663172 |
| Diário da Manhã (Goiânia, Brazil)   | 0.78099577 |
| O Estado de Sao Paulo ( <a href="http://www.estadao.com.br">www.estadao.com.br</a> )                                      | 1.51246603 |

Street Journal devotes a greater portion of news coverage to IP issues than other newspapers in the USA, as borne out in the results of the salience test.

|   |            |
|---|------------|
| Manila Times (Philippines English language newspaper)   | 2.88299341 |
| Mindanao Times (Philippines English language newspaper)   | 7.96460177 |
| Pakistan Times  | 0          |
| The International News (Pakistan) (thenews.jang.com.pk)   | 0.4757085  |
| Dawn (Pakistan)   | 0.94071374 |
| The Telegraph (Calcutta, India) (www.telegraphindia.com)  | 0.79966225 |
| The Hindu (www.hindu.com)   | 2.27977962 |
| The Himalayan Times (Nepal?)  | 0.23543261 |
| The Daily Star (Bangladesh) (www.thedailystar.net)  | 0.79340861 |
| Brunei Times (www.bt.com.bn/en/)  | 1.1449825  |
| Pacific Daily News (Guam) (www.guampdn.com)   | 19.4444444 |
| New Straits Times (Malaysia) (www.nst.com.my)   | 0.77084793 |
| Daily News (Sri Lanka) (www.dailynews.lk)   | 0.88710477 |
| China News Service (News source for non-PRC newspapers) (www.chinanews.cn)  | 6.27519685 |
| Times of India  | 1.31949331 |
| Hindustan Times   | 1.24190878 |
| New Light of Myanmar (http://myanmar.com/newspaper/nlm/index.html) (combined w/ weekly Myanmar Times)             | 1.96428571 |
| Workers Daily (PRC) (www.grrb.com.cn)   | 5.20435714 |
| PLA Daily (PRC newspaper of the People's Liberation Army)   | 3.00528136 |
| Beijing Evening News (www.ben.com)  | 5.91318709 |
| Beijing Youth Daily (www.yynet.com)   | 4.59799576 |
| China News Digest (www.cnd.org) (PRC newspaper???)  | 1.03672541 |
| Farmers Daily (www.farmer.com.cn)   | 4.22497309 |
| China Daily (English Language Chinese newspaper)  | 8.16556888 |
| Beijing News (PRC newspaper said to be "reformist") (www.thebeijingnews.com)                                      | 4.33146231 |
| Chongqing Daily (www.cqnews.net)  | 4.47146724 |
| Gansu Daily (www.gansudaily.com.cn)   | 4.63622784 |
| Guangzhou Daily (www.gzdaily.dayoo.com)   | 1.39204659 |
| NDDaily (PRC newspaper in Guangdong said to be "questioning")   | 3.61445783 |
| Nanfeng Daily (PRC newspaper in Guangdong)  | 7.14342534 |
| Guangxi Daily (www.gxnews.com.cn)   | 4.12454198 |
| Qilu Evening News (Shandong) (www qlwb.com.cn)  | 12.2691834 |
| Jiefang Daily (Shanghai) (www.jfdaily.com)  | 4.53456561 |
| Shanghai Daily (English language newspaper in PRC)  | 7.48099747 |
| Wenhui News (Shanghai newspaper which had been shut down in past for political views) (www.wenhui.news365.com.cn) | 7.46683512 |
| Xinmin Evening News (Shanghai) (www.xmwb.news365.com.cn)  | 4.05266406 |
| Sichuan Daily   | 6.52506372 |
| Tianjin Daily   | 7.05923774 |
| Xinjiang Daily (www.xjdaily.com)  | 5.01871157 |
| Yunnan Daily (www.yndaily.com)  | 7.2230014  |
| Zhejiang Daily (www.zjdaily.com)  | 4.53285202 |
| Life of Guangzhou (PRC English but not a newspaper?)  | 4.04411765 |
| People's Daily (Official PRC newspaper)   | 6.39353769 |
| Global Times (www.huangjiu.com)   | 0.49329812 |
| China Youth Daily (Youth newspaper in PRC) (www.cyou.com)   | 4.47866949 |
| People's Daily (English version)  | 5.61335067 |
| Xiamen Daily (www.xmnn.cn)  | 4.14630362 |
| Anhui Evening News (www.hf365.com)  | 2.59626604 |
| Zhongshan News (Guangdong) (www.zsnews.com)   | 33.7625628 |
| Dalian Daily News (www.daliandaily.com.cn)  | 4.70501939 |
| Ningbo Daily (www.cnnb.com.cn)  | 4.92727211 |
| Hohhot Evening News (www.nmgnews.com.cn)  | 7.89341313 |
| Tibet Daily (www.tibetinfo.com)   | 2.48262165 |
| Ningxia Daily (www.nxnet.net)   | 3.76901333 |
| Harbin Daily  | 3.35769105 |
| Heilongjiang Daily (www.hljnews.cn)   | 4.05249609 |
| The East African (Kenya) (www.nationmedia.com)  | 1.83574879 |
| Botswana Gazette (www.gazettebw.com)  | 1.52284264 |
| The Times (South Africa) (www.thetimes.co.za)   | 0.86829048 |
| Tehran Times  | 0.27027027 |
| The Daily Star (Lebanon) (www.dailystar.com.lb)   | 5.51982851 |
| Turkish Daily News (www.turkishdailynews.com.tr)  | 0.58605799 |
| Gulf News (UAE)   | 0.9700849  |
| Syria Times (www.syriatimes.tishreen.info)  | 0.56768559 |
| Yemen Times   | 0.51753437 |
| Jordan Times  | 4.60409815 |
| Cyprus Mail (www.cyprus-mail.com)   | 0.71942446 |
| Gulf Daily News (Bahrain) (www.gulf-daily-news.com)   | 0.44444444 |
| A Semana (Praia, Cape Verde) (Portuguese edition) (.cv)   | 13.3811231 |
| A Semana (Praia, Cape Verde) (English edition)  | 3.67965368 |
| AVERAGE Developing Countries  | 3.67702406 |
| Taipei Times (English language newspaper in Taiwan)   | 0.89385475 |
| Straits Times (Singapore English language newspaper)  | 11.6414435 |

|   |             |
|---|-------------|
| China Post (English language newspaper in Taiwan)                                 | 2.57483103  |
| United Daily News (Taiwanese newspaper) (www.udn.com)                             | 0.15384615  |
| Liberty Times (Taiwanese newspaper)   | 0.07203573  |
| Mandarin Daily News (Taiwanese children's newspaper)                              | 0           |
| Daily Yomiuri (English Version) (www.yomiuri.co.jp/dy)                            | 3.75        |
| Korea Herald (www.koreaherald.co.kr)  | 1.26155592  |
| South China Morning Post (HK English Language Paper) (www.scmp.com) @             | 2.80373832  |
| The Australian  | 0.46797535  |
| The Age (Melbourne) @   | 1.51785714  |
| Border Mail (.au) (Albury - Wodonga)  | 0.29092023  |
| International Herald Tribune  | 1.69559242  |
| The Standard (HK English newspaper)   | 2.40725007  |
| Takungpao (HK newspaper)  | 4.25434584  |
| Apple Daily (HK newspaper) (www.atnext.com)                                       | 3.05857594  |
| The Press (New Zealand) (www.stuff.co.nz)   | 1.14982337  |
| Revista Macau   | 0           |
| Jornal Tribuna de Macau (Portuguese Language Newspaper in Macau) (www.itm.com.mo) | 4.21286031  |
| Macao Daily Times (English Language Newspaper in Macao)                           | 2.84023669  |
| USA Today   | 0.59539919  |
| Birmingham News (AL) (www.al.com)   | 0.41412631  |
| Arizona Daily Sun (Flagstaff) (www.azdailysun.com)                                | 0.15174507  |
| Sacramento Bee (CA) (www.sacbee.com)  | 0.6959707   |
| Colorado Daily News (Boulder) (www.coloradodaily.com)                             | 0.42583392  |
| Washington Post   | 1.3741049   |
| Miami Herald  | 0.4634009   |
| El Nuevo Herald (Spanish version of Miami Herald)                                 | 0.67769146  |
| Honolulu Advertiser   | 1.30039012  |
| Chicago Tribune   | 0.90744102  |
| Des Moines Register   | 0.74657818  |
| Courier-Journal (Louisville, KY)  | 0.49358342  |
| Kennebec Journal (Augusta, ME)  | 0.11048961  |
| Daily Hampshire Gazette (North Andover, MA)                                       | 0.63039151  |
| Lansing State Journal (www.lsj.com)   | 0.59127864  |
| Sun Herald (Biloxi, MS)   | 0.43272481  |
| Helena Independent Record (MT) (www.helenair.com)                                 | 0           |
| Reno Gazette-Journal (NV) (www.rgj.com)   | 0.58324496  |
| Concord Monitor (NH)  | 0.575       |
| Albuquerque Journal (www.abqjournal.com)  | 0.98575426  |
| The News Observer (Raleigh, NC) (www.newsobserver.com)                            | 3.44217687  |
| Plain Dealer (Cleveland, OH) (www.cleveland.com)                                  | 2.44379277  |
| Statesman Journal (Salem, OR)   | 0           |
| Philadelphia Inquirer (www.philly.com/inquirer/)                                  | 0.43084237  |
| The State (Columbia, SC)  | 0.39374105  |
| Chattanooga Times Free Press (www.timesfreepress.com)                             | 0.49934678  |
| Deseret News (Salt Lake City, UT)   | 0.68473811  |
| Virginian-Pilot (Norfolk, VA) (www.pilotonline.com)                               | 0.58754407  |
| Charleston Gazette (WV) (www.wvgazette.com)                                       | 0.34997839  |
| Casper Star-Tribune (WY) (www.trib.com)   | 0.23026316  |
| New York Post   | 0.3649635   |
| New York Times  | 0.9827668   |
| Milwaukee Journal-Sentinel  | 0.06114595  |
| Wall Street Journal   | 3.4084507   |
| Toronto Star (www.thestar.com)  | 0.90010583  |
| The Guardian (Charlottetown, Canada) (www.theguardian.pe.ca)                      | 0.49916805  |
| The Province (BC, Canada) (www.canada.com/theprovince)                            | 0.09066183  |
| Hoy (Chicago, USA) (www.hoyinternet.com)  | 0           |
| El Mundo (Spain) (www.elmundo.es)   | 1.26461774  |
| Las Provincias (Valencia, Spain) (.es)  | 1.38811771  |
| The Economist   | 1.68625744  |
| El País (Spain)   | 8.33369404  |
| Daily Telegraph   | 0.4990269   |
| Heraldo (Zaragoza)  | 1.33708656  |
| The Guardian  | 1.18299717  |
| The Herald (Scotland)   | 0.4784689   |
| The Irish Times   | 0.48786689  |
| Metro (Dublin?) (www.metro.co.uk)   | 5.69910593  |
| Connacht Tribune (Ireland)  | 0.01670206  |
| The Moscow Times  | 1.32190476  |
| Público (Lisbon, Portugal) (www.publico.pt)                                       | 0.46063652  |
| O Primeiro de Janeiro (Porto, Portugal) (.pt)                                     | 0.8322325   |
| Diário do Minho (Braga, Portugal) (.pt)   | 0.30715226  |
| Haaretz (Israel)  | 9.8265896   |
| AVERAGE Developed Countries   | 1.455324797 |

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|---|--|
| For analytical purposes, Guam and Puerto Rico are treated as developing |  |
| Taiwan, HK, and Macau are treated separately from the PRC as developed  |  |

“IP Ratios”, the primary unit of analysis, are the *percentage of total articles containing the words “intellectual property”*, a relative measurement of salience relative to the other search terms. Absolute percentages are not attainable, as most sources do not list the total number of articles in their archives. Those concerned about the validity of this method for testing salience are encouraged to peruse APPENDIX E for the ratios of other terms, which conform precisely to expectations. Note from the table above that the average “IP Ratio” in developing country sources was about 3.68, more than double that of sources in developed countries at about 1.46. The “developing” sample is skewed by Chinese sources, which had the highest “IP Ratio” of all countries (at about 5.75), but even excluding them, the developing countries averaged 2.45. Below are results for sources in individual countries for which three or more sources were sampled, with country data from other studies.

| Country/Territory (In descending order of sample size) | Average IP Ratio | IP Ratio Rank | IPP | IP Rank | PWL Total | WL Total | SM Total |
|--|------------------|---------------|-----|---------|-----------|----------|----------|
| People's Republic of China (40)                        | 5.66             | 1             | 3.2 | 63      | 4         | 0        | 0        |
| United States of America (37)                          | 0.74             | 12            | 6.4 | 1       | 0         | 0        | 0        |
| Brazil (5)   | 1.08             | 9             | 3.2 | 65      | 2         | 2        | 0        |
| Taiwan (5)   | 0.74             | 13            | 4.9 | 26      | 0         | 4        | 0        |
| Cuba (5)   | 2.7              | 5             |     |         | 0         | 0        | 0        |
| Hong Kong (4)  | 3.13             | 3             | 5   | 25      | 0         | 0        | 3        |
| Spain (4)  | 3.08             | 4             | 4.4 | 31      | 0         | 1        | 0        |
| UK (4)   | 0.96             | 10            | 6.1 | 4       | 0         | 0        | 0        |
| Argentina (3)  | 4.84             | 2             | 3.1 | 71      | 4         | 0        | 0        |
| Mexico (3)   | 0.48             | 17            | 3.3 | 60      | 0         | 4        | 0        |
| Venezuela (3)  | 0.67             | 14            | 2.4 | 106     | 4         | 0        | 0        |
| Macau (3)  | 2.35             | 6             |     |         | 0         | 0        | 0        |
| Portugal (3)   | 0.53             | 15            | 5   | 22      | 0         | 0        | 0        |
| Canada (3)   | 0.5              | 16            | 5.6 | 16      | 0         | 4        | 0        |
| India (4) (oops)                                       | 1.41             | 8             | 4   | 41      | 4         | 0        | 0        |
| Pakistan (3)   | 0.47             | 18            | 2.6 | 88      | 2         | 2        | 0        |
| Ireland (3)  | 0.76             | 11            | 5.6 | 13      | 0         | 0        | 0        |
| Australia (3)  | 2.07             | 7             | 5.7 | 11      | 0         | 0        | 0        |

IPP= Intellectual Property Protection Index score by the World Economic Forum (Global Survey 2005-2006)

IPP index is from 1 (weak/nonexistent) to 7 (equal to USA/most stringent). Mean IPP was 3.7

IPP Rank= Rank of IPP on Global Survey of 117 nations (2005-2006)

Note that the IPP rates the LAWS, not the ENFORCEMENT

PWL and WL totals are the number of years from 2005 to 2008 the country appeared on the "Priority Watch List", "Watch List", or "Special Mention" of the International Intellectual Property Alliance ([www.iipa.com](http://www.iipa.com))

One might assume that a majority of press coverage in developed countries would focus on bringing the LDC's into compliance with global laws, yet in fact there is a mix of these articles along with

seizures, lawsuits, and new challenges posed by advanced technologies also occurring in the North. In short, the content is similar to that in the LDC's.

A surprising result is the apparent lack of correlation between the World Economic Forum's Global Survey of IPP indices and being placed on a 301 "Watch List" or "Priority Watch List" by the IIPA. Two developed countries (Taiwan and Canada) are regulars on the "Watch Lists", while Spain has recently been added, yet all have relatively high levels of IP protection in national laws<sup>24</sup>. Pakistan's IPP index is lower than all sampled countries other than Venezuela's, yet is on the "Priority Watch List" only twice, as opposed to all four years examined for India, China, and Argentina. Pakistan, Venezuela, and Mexico are also exceptional for having rather low IPP indices and among the lowest amount of media coverage devoted to the issue, suggesting that these countries have other, more pressing priorities. Two countries in the same range for IPP indices and leading by large margins in media coverage of IP issues are Argentina and China, possibly showing interest in announcing their governments' efforts to address the problem, an intended effect of being placed on "Priority Watch Lists" by the IIPA for at least the past four years. A more sophisticated quantitative analysis may be able to parse out precise relationships between media coverage, IPP indices, and IIPA listings, however it can be said that these results are strong evidence for varying levels of government priorities—political decisions on the national and media attention given to IPR law enforcement and guided normative change.

If used as a proxy for the importance assigned to a particular topic by the media, the case of China is especially illustrative. Evidence of a national enforcement campaign can be seen in that articles on IP are found in a higher ratio than any other sampled country's media, based also on a much larger sample. More explicitly, government-directed IPR norm diffusion has been extremely active for the past five years<sup>25</sup> as part of "IPR Protection Publicity Weeks", one of many campaigns undertaken by the largely state-controlled media<sup>26</sup> to address social ills. Further justification for examining China is its declared

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<sup>24</sup> This suggests that many developed countries also suffer from a wide gap between law and enforcement on this issue. As Schwabach notes, this is largely due to the difficulty of policing the use of new technologies.

<sup>25</sup> The "IPR Protection Week" is held annually from April 17<sup>th</sup>-26<sup>th</sup> and combines lectures by press and other ministers with "special raids" of violators' operations. See the People's Daily article: Public Called on to Lead Fight against Piracy.

<sup>26</sup> Especially for the Olympics and recent Tibetan protests, the Chinese media has received much attention for consistently ranking with unseemly peers as Cuba, Burma, and Eritrea in terms of press freedom. For reports on the state of Chinese state-controlled media, see Freedom House: [www.freedomhouse.org](http://www.freedomhouse.org), International Press Institute: [www.freemedia.at](http://www.freemedia.at) Reporters Without Borders: [www.rsf.org](http://www.rsf.org), Committee to Protect Journalists:

status as a “strategic competitor” by President George W. Bush, its status as the progenitor of the “IPR toolkits”, and the world-leading totals of “lost revenue”. A clear perception gap can be seen between U.S. and domestic media accounts of Chinese progress in protection in recent years, with the former deriding it as “only limited” and the latter trumpeting it as “huge”<sup>27</sup>. The following section assesses these claims and their implications.

***IPR in the PRC.*** The IPR regime in the PRC dates at least to the 1980’s, when China first “enacted IP legislation and opened patent and copyright offices in Beijing”<sup>28</sup>, and foreign complaints of violation, especially by the U.S., have only increased since then. Scholarly defenders of the PRC in terms of IPR policy are neither many nor unequivocal. A rather radical assessment can be found by Laikwan Pang, claiming, among other broad assertions, that piracy is a result of state controls and “copyright has become a form of censorship”<sup>29</sup> in the country—the problem isn’t insufficient enforcement or a lack of “political will” but rather too much of both. Less extreme but no more convincing is the cultural explanation provided by Ross, a general defender of LDC non-enforcement:

“Individual IP rights do not resonate well in cultures in which creativity and knowledge are more likely to be considered a collective characteristic of expression. Western efforts to impose IP regimes on China...have repeatedly foundered on a combination of Confucian legacies and pastoral rule on the part of the state.”<sup>30</sup>

A more moderate apologist can be found in Schwabach’s, whose article performs the usual cognitive sleight of hand to downplay China’s problems<sup>31</sup> by dividing IP losses among the entire population.

With a prominent article describing a possible country slogan entitled “To Screw Foreigners Is Patriotic”<sup>32</sup> and ongoing IPR violation, one might expect that FDI into the PRC would be limited. Contrarily, as the world’s highest recipient of FDI it has seen exponentially more of it than most LDC’s, largely as a result of abundant labor and the sense of order in the country, maintained by laws which fall

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[www.cpi.org](http://www.cpi.org) The international press freedom indices from 2002-2007 are best viewed on Wikipedia: [http://en.wikipedia.org/wiki/Reporters\\_without\\_borders#Worldwide\\_press\\_freedom\\_index](http://en.wikipedia.org/wiki/Reporters_without_borders#Worldwide_press_freedom_index)

Each has a new report on the Chinese media, focusing on unmet promises and continuing suppression.

<sup>27</sup> See Office of the United States Trade Representative and People’s Daily

<sup>28</sup> Simons provides a brief history of IP protection in China, noting that enforcement has been “sporadic and somewhat selective” from the start, even after the U.S. “designated China a Section 301 priority country” in 1994. Heavy “crackdowns” followed, but the problem persisted, especially as technology advanced.

<sup>29</sup> Pang, pg. 104-105, 111

<sup>30</sup> Ross, pg. 761.

<sup>31</sup> By this logic, China is still a very poor country, doesn’t contribute much to global warming, etc. Schwabach’s point that developing countries actually have a greater problem controlling IPR infringement is better taken.

<sup>32</sup> See Barme, an article actually about film and nationalism but nonetheless illustrative of sentiments described here.

far short of standards in developed countries, yet backed by often draconian enforcement practices. These contradictory facts can be partially explained by the Chinese economy's status as "too important to fail"<sup>33</sup> and a domestic market too potentially lucrative to divest from, though over the long term the asserted connection between lax IPR law enforcement and reduced FDI inflows must be weakened.

The PRC is also cited frequently as an example of a developing country with tremendous capacity to enforce its agenda, as evidenced in the CCP's strict and adaptive control of informative media, its suppression and punishment of dissidents, and general obsession with stability as a multi-national and the world's most populous state. If the Communist Party has the political will to do something, it tends to be done, and often by overwhelming, well-coordinated force. Much of the lack of "political will" criticism is drawn from this observation and continues to be the crux of IIPA reports which call for greater criminalization of IP theft, albeit while virtually ignoring the problem that a sizeable portion of the PRC's population still has never heard of IP or the developmental arguments for why it must be protected.

"Moving up the value-added chain" is a national development priority as evinced by no less than the Chinese Communist Party<sup>34</sup>. Acknowledgment of the profit motive in driving innovation and its relationship with IPR law enforcement, combined with norm-dissemination through the media and a latent capacity to implement government initiatives make for considerable optimism that China will soon see real progress and finally be taken off the IIPA's "priority watch list"<sup>35</sup>.

Among Chinese media sources, quantitative evidence of the PRC campaign is rather striking. There is only a 1% difference in IP coverage between media in rich versus poor areas, while media in poor PRC provinces still cover IP at a ratio higher than either Hong Kong, Macao, or Taiwan. Notable further is that Hong Kong and Taiwan's World Economic Forum rankings in terms of IPR protection are nearly identical (25<sup>th</sup> and 26<sup>th</sup>, respectively), yet Taiwan, which is under far less control of the Chinese Communist Party than Hong Kong, reports on IP in its media at a rate slightly below its developed country peers<sup>36</sup>,

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<sup>33</sup> See Frieden's analysis of developed countries propping up large developing ones, reducing overall accountability.

<sup>34</sup> See People's Daily articles for government initiatives toward a "knowledge-based" economy, claims of "tremendous strides" in IPR protection, \$129mil. in seizures in 2006, successfully forcing pirates in Beijing "underground", and general deflection of Western criticism (and counterclaims that the West is using IPR cases in the WTO as thinly-veiled protectionism)

<sup>35</sup> The PRC, with few other countries, has remained on the priority list possibly since its inception and at least since their online publication began in 2005.

<sup>36</sup> This despite being consistently "watchlisted" by the IIPA, denoting a concern stronger than Hong Kong's "special mentions".

while HK media ranks third of 18 countries in my results. These results hold across the language of the source, with PRC English sources also reporting on IPR at a higher rate than elsewhere<sup>37</sup>. Indeed, the fact that Taiwan and HK media in English show slightly more coverage in Chinese than English suggests the PRC English sources are particularly significant<sup>38</sup>. These results strongly suggest that PRC media are pursuing an aggressive IPR norm and propaganda campaign on both domestic and foreign fronts: it is acting to instill the value of IPR protection in its population, and it is acting to counter critical foreign accounts which raise serious doubts about its “political will” to enforce IPR laws implemented after the TRIPS agreement.

National pride, ranging to hyper-nationalism, and an extraordinarily large domestic market should be strong forces for at least the protection of domestic companies’ intellectual property<sup>39</sup>. A troubling tendency in Western media conflates domestic litigation to protect Chinese companies with a growing “political will” to respect foreign IPR<sup>40</sup>. The PRC is a rare case in which the instances of IPR violation is near 100% for foreign goods<sup>41</sup>, yet Western media appears to be increasingly optimistic, hardly “grasping at straws” for signs of progress. If increased litigation can be taken as a sign of progress, two April 2008 articles in *The Economist* and *New York Times* suggest that the situation in China is on track at last to make substantial improvements<sup>42</sup>.

The IIPA 2008 and 2006 USTR reports<sup>43</sup>, by contrast, veer beyond gloominess into full frustration, having leveled largely the same criticisms for the past several years: the IPR laws are good, but enforcement in the PRC is poor. For these official reports, the solution is simple: vastly higher

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<sup>37</sup> Rank of IP reporting ratios among English sources: 1. Pacific Daily News (Guam) 2. Straits Times (Singapore) 3. Haaretz (Israel) 4. Mindanao Times (Philippines) 5. China Daily 6. Shanghai Daily

<sup>38</sup> In other words, in HK and Taiwan, there is slightly more IP coverage in Chinese sources than in English ones; PRC English sources reverse this relationship.

<sup>39</sup> As quoted for dramatic nationalist effect in the People’s Daily, a student entreats, “It is important for university students to raise awareness and to resist buying pirated goods. Our country will lose its originality and creativity if we do not protect IPR.”

<sup>40</sup> Especially in the prevailing view, as Simons suggests, “the only immediate benefit [of expensive enforcement] is received by the IP holder—a foreigner”, Chinese nationalism can only be expected to work against IPR law enforcement.

<sup>41</sup> See the 2008 IIPA report for the most recent statistics

<sup>42</sup> *The Economist* article shows a drastically rising trend in IPR litigation in the PRC, updating a 2006 article seen as the among the first positive signs: a Chinese company winning an IPR lawsuit against a Western company. Nocera’s *New York Times* article also notes that the burgeoning number of lawsuits filed by Chinese companies against one another shows an acceptance of the system, that a functioning legal process will allow China to move up the “value-added chain” into the levels of innovation and design.

<sup>43</sup> See International Intellectual Property Alliance (2008) and Office of the U.S. Trade Representative (2006).

criminalization of IPR infringement (as opposed to status quo fines which are too low to be effective deterrents). The scale of losses from U.S. copyright infringement, “fundamentally unchanged for the past 20 years” and totaling nearly \$3 billion in 2007, are enough to suggest that “China’s joining the WTO in 2001 has had almost no impact”<sup>44</sup>. In the absence of a credible threat of FDI exit, there is little incentive for the PRC to make these changes other than arguments for domestic IPR protection. The domestic PR campaigns are at least somewhat effective in giving the impression of strict enforcement, while illicit industries continue to play a major role in the domestic economy, lining the pockets of corrupt politicians where necessary.

**Conclusions.** Criticism from developed countries with many patents and copyrights on intellectual property is premature in several respects. To focus exclusively on a government’s “political will” to implement and enforce IPR laws neglects incentives at the individual and governmental level to bypass norms which are likely to be seen as imposed, if acknowledged at all. Such also assumes, inappropriately, that said country is functioning by rule of law to an acceptable Western standard, even in cases where the concept of unbiased law goes directly against well-established traditions. IPR theft is increasingly perpetrated by means of new technologies which, in financial terms, developed countries actually have a *greater* problem controlling, due to greater access to these technologies.

Applied universally to countries in various levels of economic development, and in various levels of general law enforcement, it is no wonder that few states have met these standards or show any progress toward doing so. Factors which must precede the expectation that IPR laws be enforced include a respect for laws in general<sup>45</sup>, an awareness among the population of the concept of intellectual property, and finally the political will of the government to prioritize long term economic goals of being a responsible state in the global economy.

A large domestic market for domestically-created IPR and a history of cultural and national innovations are facilitating factors for progress toward full enforcement. These entail domestic industries which are somewhat innovative and whose target markets are largely domestic. Pride for national innovations can spur a domestic IPR regime, while laws regarded as protecting foreign corporations at the

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<sup>44</sup> See Office of the U.S. Trade Representative, pg. 87.

<sup>45</sup> that they are reasonable, apply to all, and will be enforced without discrimination or preference. This also requires a low level of government and police corruption.

expense of the local population and its economic development are doubly doomed to failure. Promotion of IPR-intensive exports to foreign countries, conversely, may have a universal strengthening effect on international norms and enforcement, especially if highly publicized in the media. A practical and more effective measure which developed countries could undertake would be to intervene on behalf of innovators in the LDC's, providing the international effort to globalize this norm with a friendlier, less foreign face.

The interests of multinational corporations and the WTO in developing countries have largely centered on the international implementation of standard IPR laws, yet the more serious problems in general are between the LDC governments' conflicting incentives and limited resources, leading to selective and insufficient enforcement of these laws. Disseminating through mass media the norm of respecting IPR may eventually make enforcement less costly for these governments, yet any significant progress in this endeavor may not be seen for several more years of highly-publicized campaigns.

One should expect to see real signs of progress in countries, such as China, which prioritize such campaigns in their media and already have strong law enforcement infrastructure. This should be in contrast to others which make no visible efforts (or which actively oppose such measures as a North on South imposition) to indoctrinate their domestic markets with IPR norms. The case of China also presents a strong challenge to the assumption that FDI into a developing country will be severely restricted in the absence of an effective IPR law enforcement regime. An LDC champion of IPR compliance has yet to be found and placed upon a high FDI pedestal, though this study provides evidence that some states are putting forth far more efforts than others in nominating themselves for placement. Should the continued violations continue in the long term, without visible consequences for FDI inflows, one of the primary incentives for LDC's to enforce IPR laws will be severely diminished, leaving little hope for foreign IPR-holders other than that domestic innovators will be able to make protective gains, eventually shared with foreigners. If no less than a Nobel laureate in Joseph Stiglitz calls for the non-enforcement of certain IPR laws in LDC's, at least some slack must be cut to states to get their legal houses in order before imposing norms to which the developed world has yet to conform fully.

## **APPENDIX A: DETAILS OF QUANTITATIVE SALIENCE TEST METHODS, (THE**

## UNSOPHISTICATED AND OCCASIONALLY UNSAVORY)

This section explains what was done to obtain the data for the quantitative salience test section. For practical and theoretical considerations behind these methods, see APPENDIX B (ASSUMPTIONS) on the following pages.

DATE UNDERTAKEN: March, 2008.

MEDIUM OF SEARCHES: internet newspaper sites with built-in search engines or links through major search engines to search their sites.

LANGUAGES OF NEWSPAPER SITES: English, Chinese (Simplified 简体中文), Chinese (Traditional 繁體中文), Spanish, Portuguese. Note that newspaper sites in a language other than the official language of the country where the newspaper is published (i.e. Buenos Aires Herald, Hoy Chicago, Yemen Times, China Daily, etc.) should not be taken to be representative of the mass media in those countries.

SELECTION OF SITES: In countries where English is the (*de facto*) official language (i.e. USA, Canada, UK, India, etc.), at least one site based in the national capital and one in another city was taken. This was attempted for all countries, though in developing countries whatever newspaper site had a functional search engine was sampled. USA newspaper sites were randomized by selecting from every other state (from an alphabetical list) and alternating between a state capital paper and a non-capital city. For newspapers in the PRC, an attempt was made to sample official CCP, national, semi-private, provincial, and city papers, though again subject to limitations of websites and search engines. A slight bias is to be expected in favor of newspapers with higher circulations (more influential as news sources and also more likely to have good search engines/full archives online).

TERMS SEARCHED FOR EACH SITE: English- U.S.- intellectual property, democracy, human rights, terrorist, global warming, United Nations, bribery, protester, success, Milwaukee, panda, paella, wicket.

Chinese (Simplified 简体中文)– 知识产权, 民主, 人权, 恐怖分子, 全球变暖, 联合国, 受贿, 抗议者, 成功, 密尔沃基, 熊猫, 锦饭, 三柱门。

Chinese (Traditional 繁體中文)- 知識產權, 民主, 人權, 恐怖分子, 全球變暖, 聯合國, 受贿, 抗議者, 成功, 密爾沃基, 熊貓, 錦飯, 三柱門。

Spanish - propiedad intelectual, democracia, derechos humanos, terrorista, calentamiento global, naciones unidas, soborno, en protesta por, éxito, Milwaukee, panda, paella, criquet.

Portuguese - propriedade intelectual, democracia, direitos humanos, terrorista, aquecimento global, Nações Unidas, suborno, manifestante, suceso, Milwaukee, panda, paella, criquet.

## APPENDIX B: ASSUMPTIONS ON THE NEWSPAPER SEARCH DATA

### QUANTITATIVE SALIENCE TEST:

That the data and analysis of newspapers' coverage of intellectual property are both relevant and accurate rests on the following ASSUMPTIONS (with comments): 1. Newspapers still matter. (While readership of newspapers is in a decreasing trend, especially among the young, they remain one of the most significant sources of news. Where the internet—and in some cases television— is less pervasive, i.e. China and developing countries, the influence of newspapers may be assumed to be greater.) 2. Online and paper newspaper content for each company do not differ significantly. (Major differences would create different ratios depending on the newsprint or electronic version.) 3. State-controlled media generally represent the view of the state, to the extent of state control. Articles which criticize the state or diverge from the “party line” on an issue represent what the state will tolerate. (Judgments of the state’s position on the alliance in China and elsewhere are based primarily on this.) 4. Searching different ranges of time in different newspaper sites will not have a significant effect, unless the range is very small. (This is both a major and shaky assumption regarding my results. Almost none of the sites in China allowed for a specific date range of articles to be searched, even in the “advanced search” option. The maximum portion of sites archives for which results were illustrative was searched in each case. Where results were capped, an attempt was made to narrow the range of dates until the most numerous search term was below the cap. Where searches by individual year were the widest range available, 2007 was used. In some cases, the range of dates searched was very narrow, and thus assumption 4 becomes very shaky indeed. Thus results in general, with only a moderate sample size, are acknowledged to be crude but still useful.) 5. Measuring “democracy” against the other search terms provides an accurate ratio of total coverage within the source, which in turn approximates the salience of the issue for a particular media source. (A better measure would be to divide the number of articles containing the word “democracy” by the total number of articles, however the standards of newspaper site search engines varied widely. Most did not show the total number of articles in the archive, and none gave the total available when searching only a specific date range.) 6. Search engine function/inclusiveness did not influence results significantly. (A major issue for search terms of more than a single word is whether results are for “any” or “all” of the terms. The vast majority of sites did not allow for this to be adjusted; those that did were toggled to “all” of the words for terms such as “United Nations” and “intellectual property”.) 7. Linguistic differences in the search terms did not significantly influence results. (It is hoped that with several terms searched, linguistically-influenced results would “even out”, with those used more frequently or with more parts of speech in a language [i.e. 民主 *min zhu* =

democracy/democratic, 成功 *cheng gong* = success/successful/successfully/succeed] offsetting those used for less [i.e. A search engine in English, Spanish, or Portuguese would not return articles containing “democratic” if “democracy” was the entered search term]. Geographic, cultural, and political differences, conversely, are precisely those in which this study is interested, and which are expected to be represented in the results for the specific search terms chosen.) 8. Differences in the day of the search will not affect results significantly. (Searches made earlier in the month would have fewer results for “protester” than those done later, as Tibetan protest coverage grew, for example. This would mostly affect sources for which the total number of articles retrieved, due to a limited time range, was smaller.)

In retrospect, other search terms may have been more appropriate to address some of the concerns listed above. To test further the results that PRC news is more positive in general, terms such as “war”, “recession”, “applause”, “surplus”, etc. may have been substituted or added, pending time constraints.

Methodological consultation, with previous studies and experienced researchers, on the soundness of these methods was undertaken post-hoc, unfortunately. If found to be wholly unsound, let this stand as an example of the dangers of reckless research!

## APPENDIX C: ABBREVIATIONS AND DEFINITIONS OF KEY TERMS

CCP= Chinese Communist Party

FDI= foreign direct investment

GATT= General Agreement on Tariffs and Trade (became the WTO after the “Uruguay Round” of GATT talks, formally “entered in to force” in 1995)

IIPA= International Intellectual Property Alliance

IP= intellectual property (includes patents, copyrights, trademarks, industrial designs, inventions, technology, technical information, and brand names)

IPR= intellectual property rights (legal right to use intellectual property, as stipulated by national laws)

LDC= less-developed country, i.e. a developing or “Third World” country

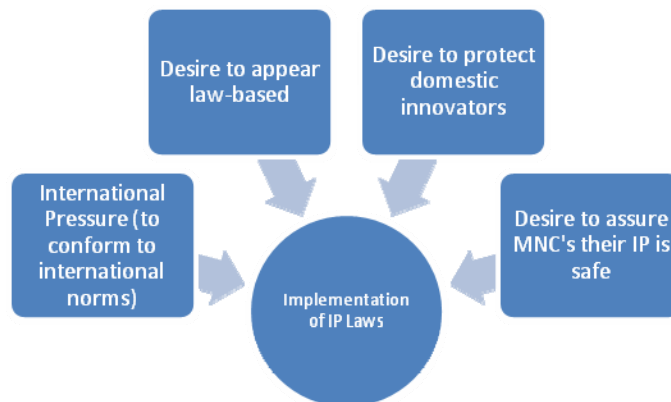
PRC= People’s Republic of China (founded 1949 and governed by the CCP)

TRIPS= Trade-Related Aspects of Intellectual Property Rights (effective 1996 as part of “Uruguay Round” agreement, developing countries given up to 10 years to bring their laws into compliance)

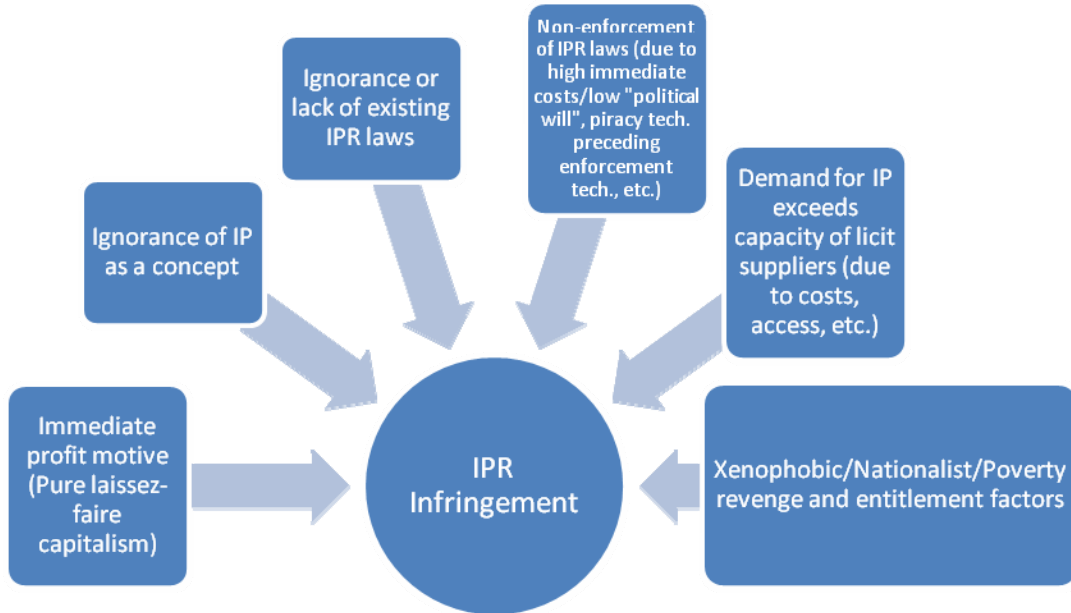
USTR= United States Trade Representative

WTO= World Trade Organization

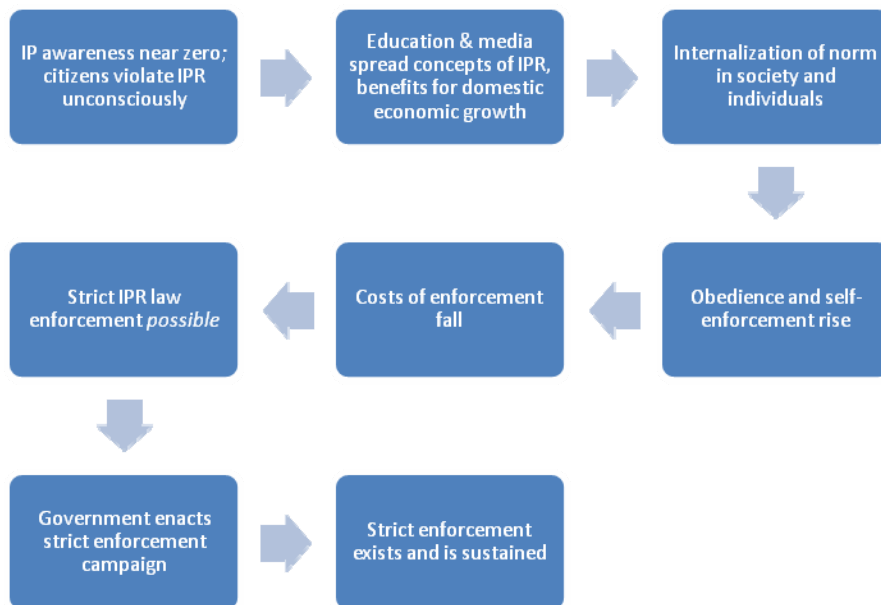
## APPENDIX D: MODELS OF RELATIONSHIPS CENTRAL TO THIS STUDY



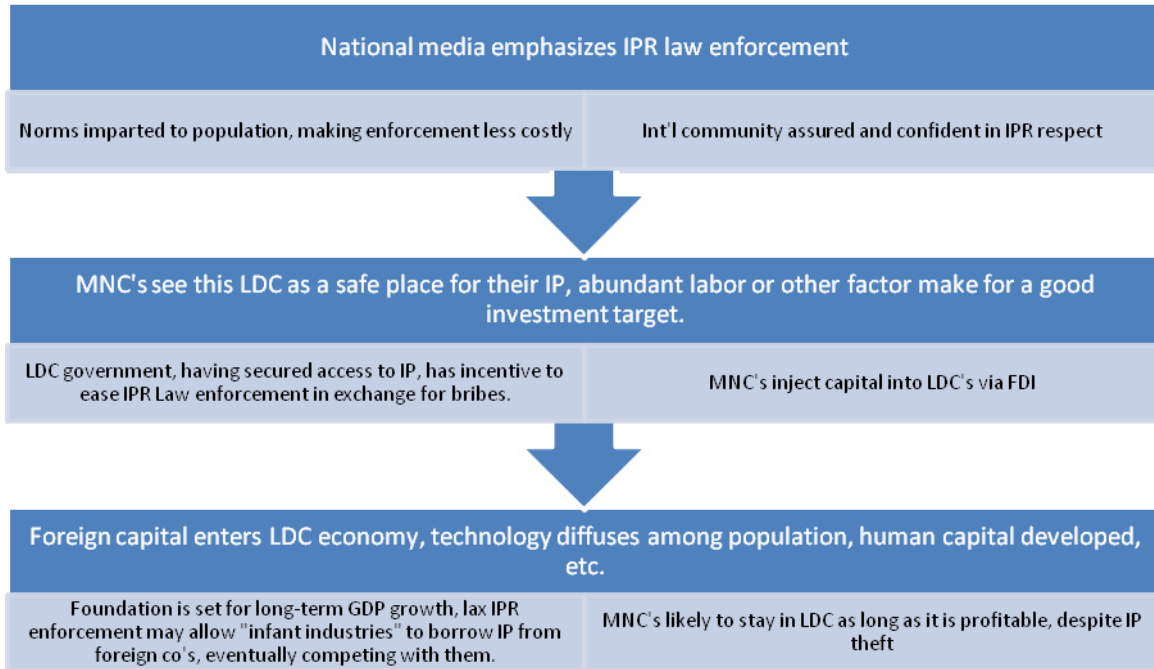
Model 1: Why are IP laws implemented in developing countries?



Model 2: Why is IPR infringement presumed to be higher in LDC's?



Model 3: How an LDC might ideally go from total ignorance of IP as a concept (among the population) to strict and effective enforcement of IPR laws.



Model 4: Why is IPR protection supposed to matter and be good for LDC's? Left side= LDC domestic considerations, Right side= foreign/international considerations.

For Models 1-4, please note: “—>” Should be taken as a “facilitative” and explicitly non-causal link. No causal claims, especially not mono-causal claims, are made here. Factors not related to this study have been excluded. The ultimate goal of LDC governments is taken to be long-term national GDP growth, with each successive action to be taken with the intent of furthering that goal.

## APPENDIX E: SALIENCE TEST PERFORMANCE ASSESSMENT

Based on the terms searched (see APPENDIX A), the media of certain countries are expected to contain more articles with geographic and cultural ties to particular terms. If search results conform to these expectations, confidence in the methods of this salience test may be improved. Conversely, if results do not conform to expectations (i.e. if there are more articles about pandas in Canadian sources than anywhere else, we would have little reason to expect that higher or lower ratios for “neutral” terms such as IP are caused by country-level factors but rather by chance), the validity of these unorthodox methods may be further compromised.

|  | Democracy          | H. Rights            | Terrorist             | G. Warming         | UN                   | Bribery           | Protester     |
|--|--------------------|----------------------|-----------------------|--------------------|----------------------|-------------------|---------------|
| TOP 3 or so (descending order)   | Pak, Tai, HK       | Can, Aus, Arg.       | Cuba, Pak, Spa/Ind    | UK, Can, Aus       | Ven, UK/HK, Ire/Cuba | PRC, HK, Mac      | Ven, Spa, Ire |
| bottom 3 or so (ascending order)   | Ire, Spa, USA      | PRC, Cuba, Mac       | Mex, PRC, Ire         | Ven, Mex, PRC, Spa | Can, Aus, Arg, USA   | Ire/Ven, Port/Spa | Pak, Ind, HK  |
| Int. Proper.   | Success            | Milwaukee            | Panda                 | Paella             | Wicket               |                   |               |
| PRC, Arg, HK/Spa   | PRC, Bra, Tai, Ire | USA, Can, Tai/HK     | PRC, HK, Tai, Mac/Ind | Spa, Mex, Aus      | Ind, Pak, Aus        |                   |               |
| Can, Mex/Pak   | Cuba, Pak, Ven     | Port, Cuba, Ven, Pak | Ven/Pak, Arg/UK       | Pak, Cuba, Ind     | Ven, Mex, Bra        |                   |               |
| Rank of IP Article Ratio: 1. PRC, 2. Arg., 3. HK, 4. Spa, 5. Cuba, 6. Mac, 7. Aus., 8. Ind, 9. Bra, 10. UK, 11. Ire, 12. USA, 13. Tai, 14. Ven., 15. Port., 16. Can, 17. Mex., 18. Pak |                    |                      |                       |                    |                      |                   |               |
| Name/Name denotes a near tie   |                    |                      |                       |                    |                      |                   |               |
| Remember: for PRC and USA, N=40 or so; for others n=3 to 5   |                    |                      |                       |                    |                      |                   |               |

Geographic and culturally sensitive terms appear to align as expected, while more interesting research term results are fairly easy to explain.

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<http://beijing.usembassy-china.org.cn/ipr.html> , Egypt: [www.buyusa.gov/egypt/en/iprtoolkit.pdf](http://www.buyusa.gov/egypt/en/iprtoolkit.pdf) , India: <http://newdelhi.usembassy.gov/ipr.html> , Korea:  
<http://www.buyusa.gov/korea/en/iprtoolkit.html> , Malaysia: <http://malaysia.usembassy.gov/IPRtoolkit.htm> , Mexico:  
<http://mexico.usembassy.gov/eng/IPR.html> , Paraguay: <http://paraguay.usembassy.gov/washfile.html> , Russia:  
[http://www.usembassy.ru/bilateral/bilateral.php?record\\_id=ipr](http://www.usembassy.ru/bilateral/bilateral.php?record_id=ipr) , Taiwan: [http://www.ait.org.tw/en/economics/IPR\\_Toolkit/](http://www.ait.org.tw/en/economics/IPR_Toolkit/) , and Vietnam:  
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