
Protecting Intellectual Property Across Borders

By Lothar Katz

Zheng Chensi is the current Director of the Intellectual Property Center with the Chinese Academy of Social Science. He made history by bringing up one of the most curious legal cases in modern China. The defendant was a local company offering several of Professor Zheng's books online on a for-profit basis – without obtaining the author's permission and without paying him royalties. (The company lost the case.)

Ironically, one of Zheng's books that the company had pirated bore this title: "Intellectual Property Enforcement in China."

While this case might illustrate that things are changing a bit, China still has a well-deserved reputation as the copycat center of the world. The list of stories about product piracy and intellectual property (IP) theft in the country seems endless and includes such prominent examples as copy *Rolex* watches, fake *Louis Vuitton* handbags, illicit *Microsoft Windows* clones, pirated *Avatar* DVDs, or unauthorized reprints of the *Da Vinci Code*.

This problem is by no means limited to China. Nor is it restricted to consumer markets. Fake aircraft parts and counterfeit medicines have surfaced all over the world, with countries of origin ranging from Nigeria and India to Taiwan and Singapore. Such examples may be particularly worrisome, but they represent only the tip of an iceberg of cases where stolen intellectual property damaged company profits, jeopardized brand values, and in some instances, even put lives at risk.

Niche luxury brands and industrial behemoths alike are struggling to come up with effective counterstrategies for this complex challenge. In designing such strategies, these aspects warrant particular attention:

- **Economic factors.** While far from being the only contributor, the overall economic situation of a country strongly influences people's attitudes towards IP protection. As a rule of thumb, the lesser developed the country, the higher the likelihood of IP theft and product piracy.
- **Cultural values.** Although the concept of intellectual property protection is a relatively new one, related cultural attitudes anchor deep in the fabric of any society. The United Kingdom established fundamental rules for copyright and patent protection as early as the 17th century. In contrast, Chinese and Koreans, for example, have a tradition of great admiration towards ancient masters who copied the works of others and further perfected it. Some experts believe that the concept of IP protection and copyright "is the product of Western societal development ... and remains a foreign, indeed strange, concept in many other societies."
- **Legal environment.** A well-established legal framework for copyright and patent protection is a requirement for membership in the World Trade Organization. In fact, as a consequence of globalization, most countries around the world have

adopted these fundamental concepts in their legal systems. Nevertheless, differences between these systems can be significant and require carefully analyzing each country's set of pertaining laws.

- **Viability and cost of legal enforcement.** This is where things get most sketchy. A country such as China, which modeled its IP protection framework after the European Union's, may have great IP protection laws. But what good are these laws if it remains hard to get local authorities to take action, judges tend to be partial to the local side, and penalties are often so low that they do little to discourage offenders? Even though things have improved greatly in this area over the last 5-10 years, such challenges remain considerable in China and elsewhere.

Best Practices

While any individual company's strategy must factor in local specifics, industry practices, and risks inherent to the particular markets the company serves, some recommendations apply universally:

- **Closely guard your secrets.** While doing so complicates the collaboration with foreign subsidiaries or partners and potentially creates issues of trust, that price is generally worth it, especially in developing&emerging countries.
- **Secure strong legal protection.** You can do so by registering copyrights, applying patents, defining trade secrets and protecting them through confidentiality agreements, etc.
- **Collaborate with local authorities and aggressively pursue perpetrators.** Even in countries where there may be significant enforcement hurdles, this will make you a harder target. If nothing else, the publicity around such cases builds pressure on local governments to improve IP protection, which in this age of globalization tends to be quite effective.

Lastly, be careful not to consider intellectual property theft a one-sided issue. A historic example illustrates the point: in the early 1700's, Francois Xavier d'Entrecolles, a Jesuit missionary in China, communicated many details of Chinese porcelain making, then a closely guarded secret, to contacts in his native France, where this newly acquired know-how was quickly put to use. Chinese porcelain exports to Europe soon after declined considerably – and remained weak for more than 250 years.

Lothar Katz is an International Business Advisor and the author of "Negotiating International Business – The Negotiator's Reference Guide to 50 Countries Around the World". He has a wealth of experience in achieving productive cooperation across cultures and driving business success on a global scale.

A seasoned former executive of Texas Instruments, a Fortune 500 company, Lothar regularly interacted with employees, customers, outsourcing partners, and third parties in more than 25 countries around the world. He teaches International Project and Risk Management at the University of Texas at Dallas' School of Management and is a Business Leadership Center Instructor at the Southern Methodist University's Cox School of Business.
