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China’s Accession to the WTO and its Effects on Electronic Commerce, the Internet, and Digital Piracy Under the Agreement on Trade Related Aspects of Intellectual Property Rights

Frederick H. Wen and Ilisa B. Haimes*

I. INTRODUCTION

China and Taiwan were both admitted to the World Trade Organization (WTO) during the talks in Doha, Qatar on November 10, 2001. The effective linkage of China and Taiwan has been “hardwired” into the WTO accession process since 1992, when the WTO—then known as the General Agreement on Tariffs and Trade (GATT)—made it clear that China would not get through the WTO accession process without Taiwan.¹ The two countries will continue to be chained at the hip as they were approved at the same time in the WTO ministerial meeting.² The U.S. position had been that China and Taiwan, given their proximity and history, naturally should be admitted to the WTO at the same time at the Doha meeting.³ Thus, it is important to include at least a brief mention of how Taiwan has dealt with some of the problems it faced while awaiting WTO approval when discussing China’s recent WTO accession. In addition, although China reclaimed authority over it in 1997, Hong Kong is still considered a somewhat separate entity, at least by the United States Trade Representative office.

This Note discusses how WTO accession has affected, and likely will affect, China’s policies on regulation of intellectual property rights and digital piracy, the Internet, and electronic commerce. In order for China to move from its current command and control economy to the free market system of the WTO, it will have to reduce the number and power of the state-owned enterprises, establish a truly enforceable rule of law, and strengthen its infrastructure. Though the WTO does not seem to have specific agreements on the regulation of the Internet or electronic commerce (“e-commerce”), it does contain agreements on the regulation of intellectual property. In particular, one of the biggest challenges China will face will be to fight digital piracy and conform to the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The second part of this Note will focus on Hong Kong and Taiwan’s comparatively successful attempts at curbing rampant affronts to intellectual property rights in their countries. It also will compare how the Chinese tradition of guanxi, networking connections or using relationships for business gains, is prevalent throughout Hong Kong, Taiwan, and China and almost as old and entrenched as the cultural tradition of not realizing the concern for

¹ See id.
² See id.
³ See id.
intellectual property rights. The third part will deal with the state of the Communist Party in China and how the systemic corruption may hurt the government’s attempts to liberalize laws concerning free trade and intellectual property standards. The fourth part will deal with what China needs to do to be able to conform to the TRIPS Agreement under the WTO agreement they signed on November 10, 2001. This section will also discuss a recently proposed Electronic Commerce Congressional Resolution proclaiming a greater interest and priority in the use of the Internet for business. Finally, the last part will address the current state of the Chinese government’s attempt to censor and restrict the flow of information on the Internet. In conclusion, this Note will argue that before the United States, as well as other WTO members, can feel comfortable increasing trade, relocating factories, or expanding their electronic commerce initiatives in mainland China will have to show some progress in reforming their political infrastructure and conforming with their promises under the WTO and TRIPS.

II. HONG KONG AND TAIWAN’S ATTEMPTS TO CURB AFFRONTS TO INTELLECTUAL PROPERTY RIGHTS AND DIGITAL PIRACY IN ANTICIPATION OF WTO ACCESSION

Both Hong Kong and Taiwan, like China, have had difficulty in attempting to conform to international intellectual property rights standards and treaties. This has been due to both cultural traditions and difficulty in enforcing standards and regulations domestically.

The root of political reform problems, and consequently, the intellectual property rights enforcement difficulty in China, Taiwan, Hong Kong, and other developing nations, stems from two entrenched traditions: a cultural tradition of not protecting rights or enforcing the regulations that exist, such as for IPR, and no real self-interest to make substantive and lasting changes.4 Guanxi,5 or using connections to gain advantages, is the ancient traditional way Chinese conduct most business or political deals. It is not an entirely foreign concept to the West, under the term ‘networking’, because guanxi is essentially embodied in the saying, ‘it’s not what you know, it’s who you know’ that gets you what you want. However, the Chinese seem to have taken guanxi to the extreme, using it to not only make important business deals, but also to cover up embarrassing ones or even crimes.

Similar to the concept of guanxi and its problem of corruption, the Chinese are not used to the concept of protecting a right in intangibles, such as intellectual property,

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through regulations, which inevitably leads to piracy.\textsuperscript{6} What the majority of Chinese see as an individual right to do what they please with their purchased digital property, including making copies for friends, has led to businesses capitalizing on this cultural tradition and reselling extremely cheap pirated copies. Of course, these pirates are also successful due to the problem of extreme poverty in the majority of the consumer population not able to afford the comparatively higher costs of foreign-made CDs and software. This old tradition of not caring about copying music or software or purchasing pirated products has constantly butted heads with the government's modern push to comply with international pressure, such as from the USTR and the WTO, and now with treaties such as TRIPS.

\textbf{A. Hong Kong's Relative Success Story and Continued Struggle with Piracy}

Hong Kong was admitted to the WTO on January 1, 1995, a full two years before China regained control of the country in 1997.\textsuperscript{7} Yet for quite some time before that, Hong Kong has had the dubious distinction of being known as a pirates' paradise. Both consumers and piraters know that they can buy or sell the cheapest knockoffs of the latest CDs, software, clothes, toys, and movies in Hong Kong's back alley markets, largely without repercussions. For example, "Harry Potter and the Sorcerer's Stone", one of the biggest grossing movies of the year 2001, was not scheduled to hit the movie theaters in Hong Kong until December 20, 2001.\textsuperscript{8} However, pirated versions of the blockbuster movie magically appeared in Hong Kong's back street stalls on Sunday, November 25, 2001, weeks before the film about the British boy wizard is due to open in Chinese territory.\textsuperscript{9} Street peddlers were offering counterfeit copies of the movie for around HK$20 (US$2.56 as of December 2001) each, a mere fraction of what legitimate moviegoers will pay in the theater.\textsuperscript{10}

Despite a crackdown on copyright piracy by Hong Kong authorities in recent years, the counterfeiting problem has still persisted.\textsuperscript{11} Illegal back alley vendors have managed to find ways to carry on business as usual, often offering sneak previews of Hollywood blockbusters before their public release, usually videotaped by hand in theaters in Taiwan or abroad and smuggled back to Hong Kong.\textsuperscript{12} Because of the government's new vigilance, Video Compact Disc (VCD) stalls in some shopping

\textsuperscript{9} See id.
\textsuperscript{10} See id.
\textsuperscript{11} See id.
\textsuperscript{12} See id.
arcades are left unmanned, with just a shoe box at the door containing small change and a sign that says "take your own change."\textsuperscript{13} Most customers are honest, in comparison to the illegal vendors, and normally pay after helping themselves to the movies of their choice.\textsuperscript{14}

Hong Kong customs officials insist, however, that the problem has vastly improved from days when the former British colony, now officially called the Special Administrative Region (SAR), was on a special watch list issued by the U.S. government for the worst piracy violators.\textsuperscript{15} However, there is still rampant and unfettered intellectual property theft in developing countries, with the trade losses due to piracy estimated at US$10 billion in 1998 with 25 percent, or US$250 million, stemming from China and Hong Kong alone.\textsuperscript{16} Even though Hong Kong rejoined mainland China in 1997, the U.S. government still considered it a separate entity, at least for intellectual property rights purposes. The U.S. took Hong Kong off the watch list in 1999, when U.S. officials were satisfied that Hong Kong had toughened enforcement and punishment measures to stop, or at least reduce, the problem.\textsuperscript{17} Selling counterfeit goods now leads to a maximum penalty of four years in jail and a HK$50,000 (US$6,411 as of December 2001) fine per fake item sold.\textsuperscript{18} Approximately 880,000 pirated VCDs were confiscated by customs during the first six months of 2001 and a total of 1.53 million discs were seized in the year 2000.\textsuperscript{19} Most of the police raids focused on illegal manufacturing plants where copies of smash hit titles can be churned out en masse at extremely low production costs.\textsuperscript{20} The relatively strong enforcement efforts by Taiwan and China, as discussed below, still look meek in comparison to the progress made by the Hong Kong in reducing digital piracy.

\textbf{B. Taiwan's Progress With Enforcing Intellectual Property Rights}

Even though other countries may view Taiwan as a \textit{de facto} independent country because of its economy and large foreign reserves, it is still considered a renegade province by China. Despite state sovereignty not being a requirement for WTO membership, Taiwan's membership will enhance its efforts for diplomacy and presence abroad. Also, we can expect to see some changes to Taiwan's banking and financial systems to be more global and transparent, which is good for investors, both in Taiwan and China, due to WTO membership.

\begin{itemize}
  \item \textsuperscript{13} See id.
  \item \textsuperscript{14} See id.
  \item \textsuperscript{15} See id.
  \item \textsuperscript{16} See id.
  \item \textsuperscript{17} See Corbett, \textit{supra} note 4, at 1084.
  \item \textsuperscript{18} See id.
  \item \textsuperscript{19} See id.
  \item \textsuperscript{20} See id.
\end{itemize}
The Taiwanese government has made some recent changes to their trademark and patent laws. These changes could enable it to escape the U.S. government’s list of intellectual property rights (IPR) violators in the near future. The U.S. Trade Representative (USTR) welcomed a recent law passed by Taiwan’s legislature on pharmaceutical patents, and it appears that a proposed optical media law was the most important remaining concern.

IPR issues have generally been a sore point in U.S.-Taiwan trade. The continued production of pirated media in Taiwan is surprising, given the country’s recent IPR advances, and is "something that ... the Taiwan government could wrap its hands around, and resolve." Taiwan is currently on the U.S. government’s Special 301 Priority Watch List, which, pursuant to a 1988 amendment to the 1974 Trade Act, lists the most egregious violators of U.S. intellectual property rights laws and imposes sanctions against those countries that do not eventually come into compliance. In 2002, the International Intellectual Property Alliance has recommended that Taiwan remain on the Special 301 Priority Watch List because “piracy rates continue to hover at levels not seen since the 1980s when Taiwan was singled out as the world’s worst piracy haven.” U.S. trade losses due to Taiwanese piracy for the year 2001 estimated US$331 million. Furthermore, on November 16, 2001, ironically just a few days after Taiwan passed the Optical Media Management Statute (2001) to fight optical media piracy, U.S. law enforcement officers in Los Angeles announced the largest seizure of counterfeit software in history, valued at US$100 million, coming from a Taiwanese syndicate acting almost like a drug cartel. The Taiwanese legislature’s recent passage of this law is at least a positive sign that the government recognizes the urgent problem their country faces, and the IIPA, the intellectual property enforcement group, hopes it will be vigorously enforced. The sanctions element of the Special 301 Priority Watch List now applies primarily to non-WTO countries. Though Taiwan is a part of the WTO now, they will remain on the Special 301 list until the IIPA decides that Taiwan has made significant strides towards combating piracy.

It is important to note how Europe has been dealing with the problem of digital

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22 Id.
23 See id.
25 Id.
26 See id.
28 See id.
29 See id.
30 See id.
copyright piracy and how feasible their solution may be to the problems in China. In Europe, the five major record labels are quietly experimenting with new anti-piracy technology to limit duplication of Compact Discs (CDs).\textsuperscript{32} They aim to do something no CD manufacturers have ever been able to do: provide an impervious barrier against the Internet music free-for-all websites that Napster and its current brethren of online song exchange havens have provided.\textsuperscript{33} The new anti-copying technology will allow you to play the stealth CDs in your stereo or computer perfectly fine, but will not work if you try to copy them onto a blank disc or turn it into MP3 files, a popular audio format of recording songs onto blank CDs.\textsuperscript{34} Though this new technology is only being used in Europe and beta-tested in some U.S. markets, it could provoke a consumer backlash if it were more widely implemented.\textsuperscript{35} Of course, critics may argue that, as with the recent posting of the DVD-copying programs, it would just be a matter of time until hackers find out a way to defeat this new technology. However, if the music labels could get over the initial consumer backlash and survive the inevitable attempts by hackers to defeat the technology, this type of anti-piracy technology could provide a much improved protection of intellectual property rights for artists and music labels. Once armed with this added sense of security, U.S. artists and record labels would feel much more comfortable and expand the export of music overseas to China, Taiwan, and Hong Kong. Until then, however, most artists and record labels have to struggle and deal with rampant digital piracy in these countries.

III. THE CURRENT STATE OF THE COMMUNIST PARTY IN CHINA AND THEIR OPPOSITION TO OPENING UP FREE TRADE AND FOLLOWING INTELLECTUAL PROPERTY LAWS

Though the Chinese government has been trying to get farther away from the global public relations disaster in 1989 with the uprising at Tiananmen Square, the recent harsh crackdown of the Falun Gong, the allegedly dangerous religious cult, has not allowed them to escape more public human rights outcries. 2002 looks to be an incredibly important year for China to try to make some headway on both the political and economic reform fronts. It will undergo more change in just one year than most countries go through in ten years.\textsuperscript{36} In the fall of 2002, China’s Communist Party Congress will have a new leader.\textsuperscript{37} The new leader, Vice President Hu Jintao, will take over the Communist Party general secretary position from Jiang Zemin at the 16\textsuperscript{th}

\textsuperscript{32} See Harris, Ron, Putting Their Music Under Lock and Key, NEWSDAY, at C8 (September 5, 2001).
\textsuperscript{33} See id.
\textsuperscript{34} See id.
\textsuperscript{35} See id.
\textsuperscript{37} See id.
Congress this autumn.\textsuperscript{38} Though Zemin will still be in charge of the military, Hu will be in charge of the Communist Party and the government.\textsuperscript{39} In addition, Prime Minister Zhu Rongji is also expected to step down from the Politburo in the fall and as Prime Minister next year.\textsuperscript{40} Though Zhu will continue to form the country’s economic policy for another year at least, he will have a tough time keeping the growth rate over 6% or else face likely social unrest.\textsuperscript{41} Among other things, such as the big problem of corruption discussed below, the rising unemployment rate will undoubtedly cause most of this social concern, and the estimated US$18 billion the Chinese government plans to spend to add jobs and spur consumer spending will not be enough according to economists.\textsuperscript{42} Hu will face many obstacles, but none will be more difficult than handling China’s membership in the WTO and all that it entails.\textsuperscript{43} Some of these WTO-related challenges include foreign goods’ tariffs falling, about five million more citizens will face unemployment, Chinese banks incurring more debt, farmers and rural citizens becoming poorer, and, starting the country on the long, US$22 billion construction and clean-up route to 2008 when Beijing will host the Summer Olympics.\textsuperscript{44}

However, besides the formidable economic challenge and reform that will accompany WTO membership, one of the biggest hurdles Hu and China will face is how to deal with the political component.\textsuperscript{45} Chinese scholars are starting to suggest that their country is inflicted with the disease of “systemic corruption.”\textsuperscript{46} Corruption is surely not just a Chinese or Asian problem, as seen with the recent Enron scandal in the U.S. or the Montesinos bribery scandal in Peru a couple of years ago. But the extreme abuse of the concept of guanxi to the point of widespread corruption in China seems to be so entrenched a phenomenon as to almost be a way of life. Government officials claim the problem has not reached epidemic proportions yet and only involves “a very small number of corrupt officials,” but the sheer number and frequency of cases has demonstrated the infiltration of corruption at every level, including the highest levels of the financial system.\textsuperscript{47} In 1997, Chinese officials promised to reduce the problem in time for this fall’s Congress meeting but will likely not be able to convince anyone that they have succeeded in any material way.\textsuperscript{48}

\begin{thebibliography}{100}
\bibitem{38} Id. at 35.
\bibitem{39} See id.
\bibitem{40} Something Rotten in the State of China, The Economist, 37, Feb. 16, 2002.
\bibitem{41} See Kynge, at 35.
\bibitem{42} Id.
\bibitem{43} See id. at 34.
\bibitem{44} Id. at 34-35.
\bibitem{45} Id. at 35.
\bibitem{46} See Something Rotten, id note 40, at 37.
\bibitem{47} Id.
\bibitem{48} See id.
\end{thebibliography}
High profile cases, such as the one that emerged in China’s fifth-largest city, Shenyang, have shocked the Chinese populace.\textsuperscript{49} It emerged that ruthless mafia bosses “commanded the loyalty of the mayor, his office, the local tax bureau, the chief prosecutor and several other officials.”\textsuperscript{50} The government has tried to punish the corrupt officials hard, by regularly imprisoning or executing them in highly public fashion,\textsuperscript{51} but the Politburo still looks the other way from most of the corruption going on, covers up cases that would embarrass them, and, in 1995, ordered that any statistics or other evidence about ongoing corruption cases would be state secrets.\textsuperscript{52} The Chinese Academy of Social Sciences published an annual report that warned if the corruption problem is not acknowledged and handled as a systemic issue, “it could become the main cause of social turmoil.”\textsuperscript{53} The Academy also surveyed citizens and stated that 67.3\% of the respondents believed that China urgently needs political reform.\textsuperscript{54}

Nevertheless, it seems like all the Communist Party’s high profile crackdowns and harsh words are still just at a superficial level, because many officials continue to believe the potential gains from corruption far outweigh the risks.\textsuperscript{55} Beijing’s Qinghua University estimated that only 10-20\% of corruption cases are ever solved and only 6.6\% of party officials investigated for corruption actually receive any criminal punishment.\textsuperscript{56} While an ordinary citizen can be put in jail for stealing public property worth considerably less than US$240, that is the same amount party officials have to be accused of stealing before a corruption case is even prosecuted.\textsuperscript{57} An optimistic sign that people are starting to acknowledge the anti-corruption campaign is that more of the illegal capital that feeds corruption is leaving China as the government intensifies their crackdown.\textsuperscript{58}

IV. WHAT CHINA NEEDS TO DO TO BE ABLE TO CONFORM TO THE WTO AND TRIPS AGREEMENT

Just as political corruption has remained an epidemic in the Politburo and China’s Communist Party leadership, digital piracy remains at epidemic proportions. The problem seems to be getting worse, because the total losses were US$1.085 billion in

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\textsuperscript{49} See Kynge, at 35.  \\
\textsuperscript{50} Id.  \\
\textsuperscript{51} Id.  \\
\textsuperscript{52} See Something Rotten, id note 40, at 37.  \\
\textsuperscript{53} See id. at 38.  \\
\textsuperscript{54} See id.  \\
\textsuperscript{55} See id.  \\
\textsuperscript{56} See id.  \\
\textsuperscript{57} See id.  \\
\textsuperscript{58} See id.
\end{flushleft}


The Dispute Settlement Understanding (DSU) set up under the WTO is considered “vital for enforcing the rules and ensuring that trade flows smoothly.”\textsuperscript{67} Countries who believe their rights are being infringed are supposed to bring their disputes to the WTO where they are first encouraged to settle through mediation or consultation.\textsuperscript{68} Only if the parties are unable to settle does the WTO appoint a panel of independent experts to interpret the particular agreement and decide on the parties’ particular claims and allow for appeals.\textsuperscript{69} Almost 250 cases in the seven years of the WTO have been brought through the DSU, compared to 300 under 47 years of GATT, which demonstrates the relative increase in confidence in the effectiveness of the new dispute resolution system.\textsuperscript{70}

TRIPS sets forth some minimum domestic enforcement standards, including civil, administrative, and provisional procedures and remedies, as well as stricter border enforcement and criminal sanctions.\textsuperscript{71} These include requirements that domestic courts have the power to order injunctions, force pirates to pay damages, or to destroy counterfeit goods.\textsuperscript{72} Under TRIPS, criminal punishment must require jail time for pirates or fines high enough to provide a deterrent effect on commercial counterfeiters.\textsuperscript{73}

Developed countries were given until January 1, 1996 to comply with all TRIPS requirements while developing countries had until January 1, 2000.\textsuperscript{74} There was another category, least developed countries, that were given until January 1, 2005 to comply.\textsuperscript{75} Unlike other international treaties, TRIPS does not provide definitions for the terms ‘developing country’ and ‘least developed country.’\textsuperscript{76} To further add to the confusion, using the World Bank’s definition, China is classified as a Least-Developed Nation but not under the United Nation’s definition.\textsuperscript{77} Since China just joined the WTO at the end of 2001, most likely it would be given until January 1, 2005 to adopt and comply with TRIPS. However, there is strong economic pressure against enforcing China’s existing domestic copyright laws, not to mention TRIPS, because passing TRIPS would hurt domestic companies that had been able to steal copyrighted material in the past.\textsuperscript{78} The fact that this practice of protecting intellectual property is foreign to China, as discussed

\textsuperscript{68} See id.
\textsuperscript{69} See id.
\textsuperscript{70} See id.
\textsuperscript{71} See Overview, supra note 60.
\textsuperscript{72} See TRIPS, supra note 61, arts. 44-46.
\textsuperscript{73} See id. at art. 61.
\textsuperscript{74} See TRIPS, supra note 61, art. 65(1), 65(4).
\textsuperscript{75} See id. at art. 66.
\textsuperscript{77} See Julia Cheng, Note: China’s Copyright System: Rising to the Spirit of TRIPS Requires an Internal Focus and WTO Membership, 21 FORDHAM INT’L L.J. 1941, 1950 n.60.
\textsuperscript{78} See id. at 1979-80.
supra, it is not seen as a culturally fundamental right worth protecting. In ancient China, during the time of Confucius, copying another's work and orally repeating it verbatim was considered a form of reverence. This type of teaching, through a rote method of copying characters, sentences, and paragraphs of previous works, is still largely used today in China. Therefore, though modern China has changed considerably since Confucius, many of these cultural traditions die hard and the protection of intellectual property is still a foreign concept to the average Chinese citizen.

The global business world is about to experience in China what many Americans experienced in California during 1849 -- the Gold Rush. The world’s largest and most untapped global business market is going to fling open its gates to world trade for the first time since 1948. The Communist government of China has been forced to come to terms with the economic progress of the rest of the world by realizing that when put up against each other in battle, free-market capitalism will inevitably overtake Communism. China is now a “card-carrying member of the ultimate capitalist club, the World Trade Organization.” The WTO is the premier forum for international commerce. The need for such an organization dates back to 1947 when an international conference held in Geneva, Switzerland, brought 22 countries together to draft a charter for the International Trade Organization. The United States has understood the need for global trade agreements since the time of President Franklin D. Roosevelt, when it passed the US Reciprocal Trade Act of 1934. Today, 66 years later, the Communist nation of China is beginning to comprehend the truth, firsthand, that a free market system has officially become the uncontested global standard for business, and capitalism is the key to developing a strong economy.

China entering the WTO is an important move away from Communism and a step towards democracy and a free enterprise system. Every area of Communist China will have to begin a type of reformation once it enters the WTO. The world can expect to witness a time of hardships, drastic changes, and rapid economic growth and development throughout the mainland of the People’s Republic of China (PRC). Although China’s entry into the WTO will promote peace and stronger economic ties between member nations, the country is going to experience short-term growing pains similar to what most nations have undergone during times of major reform.

80 See id, at 747.
82 See id.
83 See id.
84 See id.
China will need to amend hundreds of national and local laws, particularly in the standardization of taxation, intellectual property, insurance, liability and bankruptcy rules and the elimination of laws that favor one company over another.\(^{85}\) China's legislature recently approved amendments to their trademark and copyright laws on October 27, 2001 to bring them more in line with international standards before being accepted to the WTO.\(^{86}\) Of course, these changes will not happen overnight. Many companies are wary that lengthy licensing procedures and a regulatory system based largely on the old way of doing things -- favoritism to those closely tied to the government -- will stifle American corporations' participation in China's economic progress under the WTO.\(^{87}\)

We can expect to see more free trade activities to expedite the globalization of China's economy, which should gradually change its oppressive political nature toward human rights and freedom of expression both offline and online.

V. CHINA'S ATTEMPTS TO REIN IN THE INTERNET

There is a growing tension in China to maintain its competitive edge in the global marketplace, while still having control over the distribution of information entering the country. The global business trend to advertise and distribute on the Internet is becoming common practice. Those that wish to compete in a global market must have their own website.

This section will address two issues:

1. China's inability to restrict the flow of ideas via the Internet without compromising their wish to excel economically in the global marketplace.
2. The effect of China's impending accession into the World Trade Organization if China increases the number of Internet users, thereby expanding the marketplace for international businesses to extend to a potential consumer population of over 1.6 billion people.

In 1995, China opened the Internet to the general public. The cost to obtain an account to go online was very expensive and therefore was only available to a minute portion of the population.\(^{88}\) China has realized the need to invest in the Internet


\(^{86}\) *WTO: China Tweaks Trademark, Copyright Laws for WTO Compliance; Sets Up IPR Institute*, International Trade Daily, 10/30/2001 BTD d5 (October 30, 2001).

\(^{87}\) See id.

infrastructure in order to compete in the international business community.\textsuperscript{89} Since 1995, the prices to acquire accounts in order to go on-line have become cheaper thereby increasing the availability of the Internet to the public. Some universities are able to provide Internet services to their students under restricted posed by the government. This fear of information and need for restrictions is in opposition to expanding business and economic growth. In order for businesses to compete in the global market, Chinese businesses must have access to information about the trends in other countries. Whether it is the designer clothing fashions, pop music hits, or even new innovative ways to advertise automobiles online through short films featuring the car for sale.\textsuperscript{90}

Sales products are developed and improved upon by companies researching the market, and expanding new ideas. For example, \textit{Atari}, a once high-tech home video game of the 1980's has been replaced by systems such as \textit{Nintendo} and then later on by \textit{Sega Genesis}. The rapid improvements over the past 20 years with regard to home video game systems has only occurred because of the improvement of technology, the demand in the global economy for such items, and free flow of ideas within the toy distribution economy. In order for these companies to determine and then develop the video games demanded by the consumer, trial and error research had to be performed in order to provide games that would sell.

Comparatively, China needs to allow businesses a free range to explore the Internet to discover the global trends and business ideas in order to improve and compete within the global marketplace. Furthermore, China has wasted valuable economic resources in creating restrictions on the Internet to prevent the flow of ideas. These resources would serve best if used to promote access to the Internet by supplementing the cost of the accounts, or by investing and improving upon the telecommunications infrastructure within China.

China has spent over 600 million Yuan or \$70 Million in trying to control the information available on the Internet through technological barriers.\textsuperscript{91} China has also established regulations within the country to limit the availability of pro-democracy material. These newly established regulations, entitled Chinese Interim Regulations Governing the Management of International Computer Networks, are designed to prevent information prohibited by the Chinese Government from entering the country via the Internet.\textsuperscript{92}

The attempts of the Chinese government have been in vain. The elaborate set of


\textsuperscript{90} See http://www.bmwfilms.com (August 2001) (noting that the BMW corporation is using short films online to advertise the high performance of the automobile along with its ability to handle high speed driving in action films, unlike typical car advertisements which are shown on television or radio commercials that only show the model car and the sales options agreements, etc. not an entertainment film).

\textsuperscript{91} See Martin Fackler, \textit{China Looks Abroad for Latest Technology to Police Internet}, AP, Nov. 8, 2000, \textit{available in WESTLAW, APWIRES}.

\textsuperscript{92} See Interim Regulations, art. 1.
rules used to electronically filter information deemed inappropriate by the Chinese Government has failed. Internet users are evading censorship by using programs that circumvent the restrictions by fooling the electronic filter into thinking the source is accepted and deemed appropriate by the Chinese Government.

Not only have these technological and regulatory restrictions failed, but countries like the United States have been trying to increase the information flow between China and the United States. Government agencies like the Voice of America have been utilizing the Internet as another medium besides radio broadcasting to promote ideas.

The effects seem political and social in nature, however the rippling effect on business is enormous. For example, assuming arguendo that a businessman in China is prohibited from sources of information available on the Internet. He is therefore at a competitive disadvantage with regards to the International Business Community if he is not able to expand on information available via the Internet. The ability to use other people’s ideas, and then develop new products based on these ideas is an essential aspect in a competitive business world. Businesses each year spend billions of dollars researching their competition.

The ability of China to succeed as a global competitor for consumers on the Internet is dependant upon their ability to research the current competition and then adapt to the demands of the market. Not only do entrepreneurs need to have a free flow of information on the Internet, but also Chinese consumers should be able to obtain products of their choice.

Understandably, the Chinese Government has good reason to be concerned. In order to maintain Communist values within China, the government must regulate the freedom of exchange of information. However, China’s competing interest to excel and lead China to economic prosperity is at odds with regulating information. The tension between the two is irreconcilable. The ability to limit information and succeed as a global competitor on the Internet is impossible. One must give in to the other. All efforts to regulate the information are being circumvented. China does not have enough resources to invest in efforts to electronically filter information deemed inappropriate by the Chinese Government when organizations and countries are competing to distribute ideas. These organizations are political, social, as well as economical in nature.

The U.S. Congress recently has made an attempt at demonstrating how important the Internet is to business and how to better take advantage of it. Senators Joe Lieberman (D-CT) and John McCain (R-AZ) proposed an Electronic Commerce Resolution which attempts to broaden endorsement of the Internet for electronic commerce in order to better take advantage of the freedom and lack of taxation of the Internet under U.S. and international laws. This resolution formally expresses Congress’ acknowledgement of

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94 See id.
the importance of the Internet in promoting electronic commerce.\textsuperscript{96} The resolution states that the Internet has "spurred additional growth and efficiency for the United States economy, given consumer greater power and choice, and created new opportunities for entrepreneurs."\textsuperscript{97} The resolution also states that economists have show that "the higher a nation's Internet usage, the faster cross-border trade increases, especially among developing nations."\textsuperscript{98} The resolution recognizes that even though the WTO trade rules and TRIPS apply to e-commerce, the growth of international trade via e-commerce could be stunted by domestic policies that reduce or eliminate competition.\textsuperscript{99} In no small terms, the U.S. Congress, through this resolution, is encouraging the use of e-commerce on a global scale, including such measures as:

(1) the Secretary of Commerce and the United States Trade Representative should make the promotion of cross-border trade via electronic commerce a high priority;
(2) the United States should work in good faith with our trading partners to develop a cross-border trade regime that promotes the continued growth of electronic commerce and advances the interests of Internet buyers and sellers in different countries; and
(3) the United States should encourage members of the World Trade Organization to--

(A) promote the development of infrastructures that are necessary to conduct e-commerce;
(B) promote the development of trade in goods and services via e-commerce;
(C) ensure that products delivered electronically receive the most beneficial treatment available under trade agreements relating to similar products that are delivered physically, including market access and nondiscriminatory treatment; and
(D) refrain from adopting measures that would constitute actual or potential trade barriers to electronic commerce, and ensure that all other measures are predictable and transparent.\textsuperscript{100}

China, as a developing nation that just recently joined the WTO and wants to make the transition as beneficial and painless as possible, should take serious note of this resolution. Instead of spending an incredible amount of money and time trying to censor

\textsuperscript{96} See id.
\textsuperscript{97} Id.
\textsuperscript{98} Id.
\textsuperscript{99} Id.
\textsuperscript{100} Id.
and prohibit Internet usage, learn to take advantage of it for the promotion and modernization of their economy and society. Both U.S. and global businesses have great incentives to invest money in Chinese marketplaces. With a population well exceeding one billion, all potential future consumers, dollar signs are in the eyes of international businessmen alike. But it is up to the Chinese government to make sure that U.S. and foreign businesses will be welcomed, rather than discouraged, to invest in China.

VI. CONCLUSION

The electronic invasion of the Internet is forcing China to let down its guard and allow information to pass their Iron Shield. Economic incentives to compete in a global economy are surpassing China’s ability to cut-off the population from the Internet entirely. Regulations and technological shields to prevent the seepage of inappropriate information are failing to serve their purpose despite large investments of Chinese resources. The need to allow Chinese business entrepreneurs to obtain information regarding the international marketplace is becoming more apparent.

New ideas regarding products, organization of businesses, and innovative ways to advertise products are being posted on the Internet daily. In order for Chinese Businesses to keep a competitive edge in the global market, close evaluation of the information and international trends available on the Internet must be viewed. Not only will this help China economically prosper, but also new opportunities lie ahead. It is possible that current WTO members will look favorably upon China’s potential sales to Internet users, and multinational corporations dealing with the exporting of digital media will feel optimistic enough about China’s progress that they will try to set up more factories and branch offices in the mainland.