

The United States has elevated software piracy from a misdemeanor to a felony (for 10 or more illegal copies made within a six-month period with a worth more than US\$2,500) and boosted enforcement efforts by threatening to sanction notorious pirates with records of “onerous and egregious” IPR violations (including countries such as China, Russia, Argentina, India, Thailand, Turkey, and Ukraine). Likewise, its Federal Drug Administration has opened offices in China, India, South Africa, and Mexico, among others, in effect taking the fight to the frontier. On other fronts, rhetoric escalates. The U.S. Trade Representative, for instance, declared, “We must defend ideas, inventions, and creativity from rip-off artists and thieves.”¹⁷⁷

MNEs, officials, and trade associations lobby transnational institutions to devise stronger weapons. Industry associations, like the International Anti-Counterfeiting Coalition, spearhead efforts to toughen laws. Governments worldwide provide global services in public policy, business development, and consumer education. WIPO fortifies IP treaties and spurs members to bolster antipiracy efforts. Likewise, the WTO applies TRIPS to regulate enforcement, which requires all member nations of the WTO to protect and enforce IPRs according to global, not local, standards.

This fusillade of legal assaults, novel technologies, smarter investigations, diplomatic efforts, industry initiatives, consumer education, stronger IP policies, aggressive law enforcement, and concerted political, commercial, and institutional action, one would think, should prove more than sufficient. Then, to make things a bit more interesting, add in the firepower of the global reach of vigilant MNEs, high-profile legal proceedings, increased government cooperation, criminalization of piracy, and tougher trade agreements. Such a shock-and-awe campaign should devastate the pirates, right? Surprise, surprise: Piracy continues to grow at an increasing rate. For instance, in January 2009, Pfizer found counterfeit versions of 20 of its medicines in 81 countries. In July 2012, it found 60 such fakes in 106 countries.¹⁷⁸

“The Bandits Are Everywhere”

The global cat-and-mouse game between MNEs and pirates, far from winding down, escalates. Booming piracy in big, fast-growing emerging markets like China and India spells big, fast-growing trouble. As more people enter the global market, many of them are eager to consume Western brands despite income constraints. Experts warn that the resulting quest for low prices turbocharges piracy.

In addition, crafty pirates quickly overcome IP defenses. They crack licensing codes, duplicate holograms, falsify email headers, set up anonymous post office boxes, and devise cryptocurrencies like bitcoins. Staying one step ahead of the IP police is a widespread competency. “Like drug trafficking, the counterfeiting problem is so massive [that] you don’t know how to get a handle on it. The bandits are everywhere.”¹⁷⁹ Worrisomely, successful pirates evolve into sophisticated entrepreneurs. “When you are dealing with high-end counterfeits, you are talking about organizations that have a full supply chain, a full distribution chain, a full set of manufacturing tools all in place and it is all based on profits.”¹⁸⁰ Lamented one analyst, “Counterfeiting is like a balloon filled with water. You push it on one side but when you remove your hand, it bounces back even stronger.”¹⁸¹

Piracy gets a huge boost from the increasing availability of counterfeit goods through Internet channels, such as P2P file-sharing sites, mail order sites, or auction sites. Outgunned and outfoxed, some companies surrender. Foley & Corinna, a high-end handbag maker, explained that as it noticed more and more Internet fakes, it stopped looking altogether. “It’s just too frustrating. You can try to do something, but it’s so big and so fast.”¹⁸² Then again, there are those who treat IPR as the price of doing business. Despite everyday piracy of his products in the Chinese market, an executive reasoned that the profitability of his legal sales more than offset the losses due to counterfeits.¹⁸³

Is Piracy Inevitable?

The pervasiveness of piracy, in the face of aggressive lawyering, sophisticated tracking and tagging technologies, database software, and security controls, poses profound questions

for protecting IPRs. Some worry that different legal legacies and political ideologies among countries complicate basic issues. TRIPS, by standardizing codes and norms, should have settled such troublesome issues. Legal and operational boundaries have limited its impact.

Others fear that the antipiracy war may already be lost. Evidently, a not-too-small number of consumers and businesses around the world have few ethical qualms about using counterfeits. Take software, for instance. Global software piracy is rampant. In 2011, the worldwide PC software piracy rate hit 42 percent. Put differently, of all the packaged software installed on PCs worldwide, 42 percent was obtained illegally, at a cost of US\$63.4 billion in lost revenue (up from losses of \$29 billion in 2003). For many nations, such as Armenia, Libya, Ukraine, Bolivia, China, and Zambia, software piracy rates top 80 percent. Even the best-behaved nations, like the United States and Japan, report software piracy rates north of 20 percent.¹⁸⁴ Consequently, Microsoft’s biggest rival is not another software company—it is counterfeiters.

The global financial crisis has pushed more people to seek counterfeits. Similarly, some in collectivist cultures reason that IP holders should honor society by abandoning their profit-maximizing business models. Sharing knowledge, not protection, is the moral imperative. But, counter others, without protection, ultimately there will be no IP to share or, for that matter, steal.

QUESTIONS

- ★ 3-3. Collectivism and individualism, democracy and totalitarianism, rule of law and rule of man: What do these concepts say about IPRs and the legitimacy of protection?
- 3-4. What is the relationship among governments, transnational institutions, and MNEs fighting piracy? Do they share similar or different motivations?
- 3-5. Can MNEs stop piracy without government help? Why would they prefer greater government assistance? Why would they oppose it?
- ★ 3-6. Do you think consumers in wealthier countries versus those in poorer countries justify piracy with similar rationalizations? Why?
- 3-7. Can you envision a scenario where developers and consumers of IP develop a relationship that eliminates the profitability of piracy?
- 3-8. Put yourself in the place of a poor individual in a poor country struggling to improve the quality of your life. What thoughts might shape how you interpret the legality of IPRs?

SUMMARY

- Political and legal systems converge and vary across countries in terms of guiding principles and practical routines.
- Two standards anchor the assessment of a political system: the degree to which it emphasizes individualism vs. collectivism and the degree to which it is democratic vs. totalitarian.
- Individualism endorses the primacy of personal freedoms in the political, economic, and cultural realms. It champions the interests of the individual over those of society.
- Collectivism holds that the needs of society take precedence over the needs of the individual. It encourages state intervention to improve the welfare of the group at the expense of the individual.
- Political officials and agencies play an extensive to all-encompassing role in a collectivist society. They play a comparatively limited role in an individualistic society.
- Political freedom measures the degree to which fair and competitive elections occur, the extent to which individual and group freedoms are guaranteed, the legitimacy ascribed to the rule of law, and the existence of freedom of the press.
- Democracy champions the authority of the many over the few. A democratic government protects personal and political rights, civil liberties, fair and free elections, and independent courts of law.
- Totalitarianism champions the authority of the few over the many. The government exercises control over many to all aspects of life, the individual is subordinated to the state, and opposing political and cultural expression is suppressed.
- Recent data on the spread of democracy indicate it is in retreat. Democracy’s retreat coupled with growing stagnation of freedom signals resurgent authoritarian governance.
- Political risk is the likelihood that political decisions, events, or conditions will affect a country’s business environment in ways that (1) cost investors some or all of the value of their