



"Imperialism" in the New Millennium?

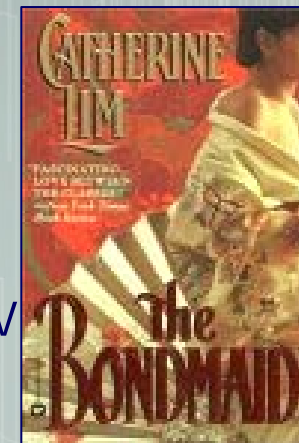
The U.S. and Copyright in Asia: An Asian Perspective

Wong Su Ling

sulingw@gmail.com

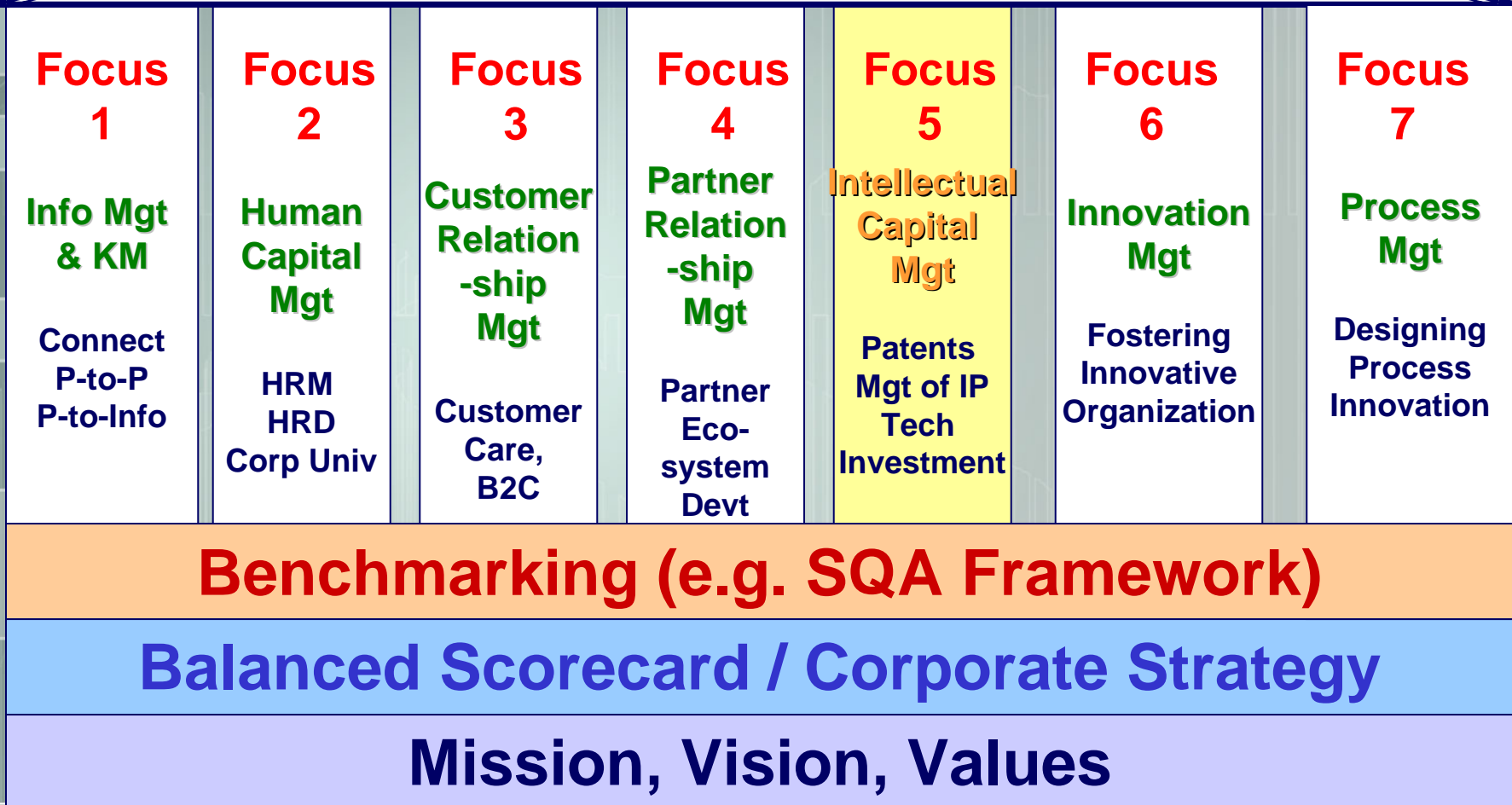
IPR & KM APPLICATION

- Singapore IP Owners
 - *SoundBlaster* (Creative Technologies)
 - *dragon-fly* (Hyflux)
 - Musicals (Dick Lee)
 - Novels (Catherine Lim)
 - Workforce Scheduling software (FriarTuck)
- Copyright protection of KM products
 - U.S. vs. Asia
- Part of KM Strategy



Building Blocks of Knowledge Strategy

Knowledge Strategy



The U.S. and Copyright in Asia:
An Asian Perspective

AGENDA



- Intro & Background
- Underlying Issues in Copyright Law
- Copyright Laws of U.S., China, & Singapore
- U.S. & Copyright in Asia:
 - The US-China Joint Commission for Commerce & Trade (JCCT)
 - US-Singapore Free Trade Agreement (USSFTA)
- Discussion: *Imperialism* or Necessity?
- Conclusion
 - Is continued U.S. intervention really necessary?



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INTRO & BACKGROUND

Advent of the Internet



Emergence of digital media format



Proliferation of mp3 media files
exchanged online



**A cascading *cause-and-effect*
conundrum**

for both © holders & law-makers

INTRO & BACKGROUND

- 2003: “Year of recording industry litigation” (*Yu, 2005*)
- Pressure mounts in Asia to tighten © laws
- Rise of bilateral trade agreements incorporating © provisions between developed & developing nations
- **More stringent** than those of **Trade Related Aspects of Intellectual Property Rights Agreement (TRIPs)** & **World Intellectual Property Organisation (WIPO)**



SCOPE



Q: Is mounting U.S. intervention on Asian copyright laws necessary or necessarily good for a rapidly developing Asia?

- Focus on China & Singapore



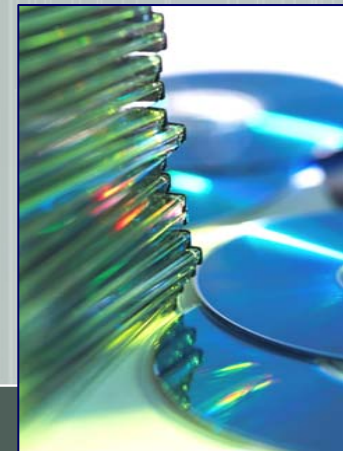
COPYRIGHT LAW: General Terms

- Copyright:

- A form of protection provided to authors of “original works of authorship” fixed in a tangible form of expression (*DiMatteo & Dhooge, 2006*)
- **Exclusive right** to reproduce, publish, perform + (with recent revisions) communicate & **distribute using online & electronic means**

- Copyright Infringement

- Piracy



COPYRIGHT LAW: Underlying Issues

- **Territorial Nature vs. “Internationalisation”**
 - © law is **inherently territorial**
(DiMatteo & Dhooge, 2006; Timofeeva, 2004)
 - “Internationalisation”: from Berne Convention to TRIPs to bilateral treaties, e.g. FTAs
(Okediji, 2003; DiMatteo & Dhooge, 2006)
- **Advent of Internet & Rapid Technological Changes**
 - Idea-expression dichotomy
 - Technology changing too fast for law-makers to respond



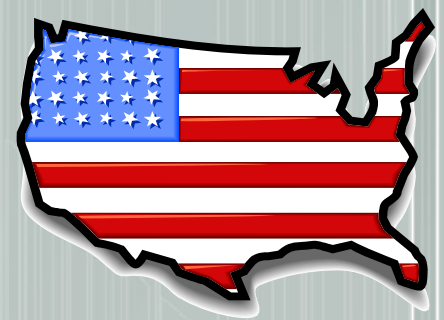
COMPARATIVE LAW: U.S. vs. China

- **U.S. Copyright Act**

- Exclusive but limited rights to reproduce, prepare derivative works based on original, distribute copies to public by transfer of ownership (*Chheda, 2005; DiMatteo & Dhooge, 2006*)
- **Focus on individual rights: primary distinguishing factor** btw. U.S. & Chinese © law

- **Exceptions**

- Fair use
- First sale
- Materials belonging to public domain



COMPARATIVE LAW: U.S. vs. China

- China's Copyright Law is framed by
 - Confucianism + Socialism
 - **Society above self**
 - Recent history: Cultural Revolution



COMPARATIVE LAW: U.S. vs. China

- First came into effect June 1, 1991
- Amended in 2001, in accordance with TRIPs
 - Reasons for revision: (1) **changes in international & domestic environments**, (2) **development of IT**, & (3) **China's entry into WTO**
- New laws to curb piracy of branded goods & software



COMPARATIVE LAW: U.S. vs. China

- **Legal Application Issues**

- **Ambiguities in legal remedy application**

- What constitutes © infringement?
 - 8 types of infringement in P.R.C vs. 3 in U.S.
 - 12 types of fair use exceptions
 - Lack of clarity in defining criminal behaviour
 - Ambiguity in determining value of infringed product
 - End-users not held liable

- **Penalties not high enough in P.R.C.**

- Max. damages of US\$60,000
 - US\$150,000 in U.S.



COMPARATIVE LAW: U.S. vs. China

- **Enforcement Issues**

- **Complicated enforcement structure in P.R.C.**
- Judge has “final say” in U.S.
- **2 alternate prosecution tracks in P.R.C.**
 - **Judicial**
 - **Administrative**
- This makes IPR enforcement in China a more challenging & “troublesome” affair
(Lau Marshall, 2005, pp. 205-207).



U.S. INTERVENTION & CHINA © LAW

- U.S.-China Joint Commission on Commerce & Trade (JCCT)
 - 2004: IPR action plan
- U.S. Trade Representative (USTR) Special Reports
 - 2005: China on top of Priority Watch List
 - 2006: U.S. to scrutinise IPR protection & enforcement through “**unprecedented special provincial review**” (USTR, 2006)
 - Focus on Guangdong, Beijing, Zhejiang, Fujian



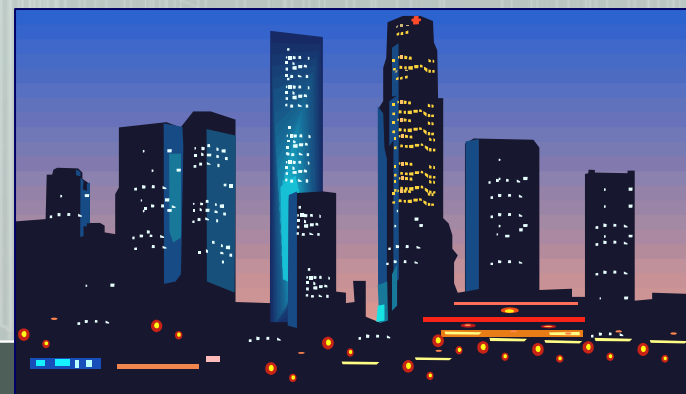
SINGAPORE COPYRIGHT ACT



- Modeled on Australian copyright laws, which is in turn based on the U.K. Copyright Act
- “Fair dealing” in S’pore vs. “Fair Use” in U.S.
 - *(Personal)* Research and study
 - Review and criticism
 - Reporting of current events
 - Judicial proceedings or professional advice (www.ipos.gov.sg)

SINGAPORE COPYRIGHT ACT

- First enacted 1987
- Amended in 1999 to “keep pace with developments in the digital medium and with new ways of exploiting works on the Internet” *(Ng-Loy, 2004)*
- Amended again in 2005 due to USSFTA



U.S. INTERVENTION & S'PORE © LAW

- U.S.-Singapore FTA

- 2001: Singapore removed from USTR's Special 301 "Black List" for first time
- "Most significant development in Singapore's IP scene in recent years" (Ng-Loy, 2004)
- TRIPs/WIPO-plus
- All WTO countries to enjoy same level of IPR protection in Singapore under the "Most-Favoured-Nations Treatment"
- Led to Copyright Amendment Bill 2005

WORLD TRADE
ORGANIZATION



U.S. & © IN ASIA: THE CASE *FOR*

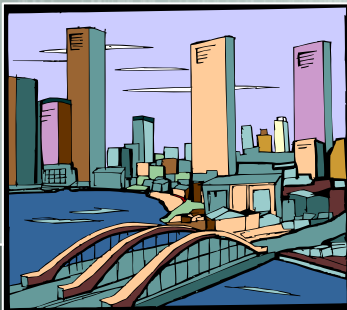
- U.S.: progress of IPR legal devt. in Asia too slow
- Asian businesses feeling the sting & fighting back in court
 - Jackie Chan's famous lament after seeing pirated DVDs of *The Myth* sold for 7 *yuan* each in China
 - Kingsoft
- **Virtues of USSFTA**
 - Lower tariffs, increased bilateral trade & foreign investments
 - Higher international profile: strongest IPR regime in Asia



U.S. & © IN ASIA: THE CASE AGAINST

- *Imperialism* in the new millennium?
- The “Welfare-Enhancing?” question
 - Manner of application is key issue
 - IPR protection vs. real needs of developing countries
 - Western-based IP principles vs. unique Asian historical & socio-political systems
 - “Political trade-offs masquerading as positivist obligations imposed by law” (*Okediji, 2005, p.339*)?

- **Benefits of USSFTA:**
 - Who really benefits & how much?



CONCLUSION: Is U.S. Intervention Really Necessary?



- **Rise of FTAs & trade forums**
 - Start of more U.S. intervention in Asian IPR environment?
- **Reasons for slow adoption of Western IP principles:**
 - Fundamental economic/socio-political/cultural differences
 - IT advancements too rapid to keep up

CONCLUSION: Is U.S. Intervention Really Necessary?

- Asian businesses fighting back actually forms case *against* U.S. incursion
- More robust IP laws needed but changes cannot be expected overnight
 - The territorial nature of IP laws suggests that **sovereign states be given right to cater their laws to own real needs & unique socio-political systems**
 - **More time & autonomy** needed for change to stick & benefit Asian states





THANK YOU

sulingw@gmail.com

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