CHAPTER FIVE
STATE SPONSORED INITIATIVES IN CHINA

This chapter argues that the evolution of the country’s intellectual property (IP) regulations is now characterised by a noticeable move towards a more sophisticated regime whose maturity runs in concert with the nation’s economic, technological and social development. This progress is part of a wider transition of China’s legal system from one that accepted the traditional hierarchical values of “rule of man” to one that exhibits key principles of the “rule of law” that are more typically found in the western legal tradition.¹ A legal system based on the “rule of law” certainly provides access to a more reliable due process, offers a greater level of judicial independence and sustains a normative acceptance of statutory superiority by all agents of the domestic elite.

This evolution captures four main principles (Alford, 1995:1): first, that the long-held premise that “[i]ntellectual property law, and in particular copyright, has never taken hold in China”² needs a timely re-evaluation in the context of contemporary Chinese society. Second, that this evolution in attitudes and actions in respect of IP law stems not just from external and international influences but also from internal factors that have emerged in the last decade, including the changing domestic dynamics of growing knowledge industry sectors such as software development, outsourcing and research and the importance of export markets to high technology hardware and electronics sectors. Third, that in China, actors within the national state machine have

¹ The changing nature of China’s legal system from one based on renzhi (rule of man) to fazhi (rule of law) has long interested international scholars. See especially (Peerenboom, 2002). But see also an earlier discourse on legal corporatism within China in contrast to Rule of Law principles in a research article by (Dowdle, 1999).
² This book is one of the seminal works on intellectual property law’s historical development in China and takes a culturally sympathetic but broadly pessimistic stance on IPR assimilation in the People’s Republic. However, the final chapter, entitled ‘As Pirates Become Proprietors’, lends a hint to a potential change based on increases in future technological ownership in contrast to just technological consumption and uses Taiwan as a then timely illustrator of this trend.
taken the lead role in promoting and embedding the assimilation of new thinking within the country, in concert with leading academic thinkers, returning diaspora and western educated elites. Fourth that the recent improvements in enforcement of IP laws across all regions of the country, whilst still exhibiting ongoing difficulties and therefore remaining a cause for concern internationally, illustrate a resurgence of central power over the provinces as key political figures in Beijing see IP system development as part of the national policy for further economic growth and international respectability.

5.1 Examining Historical Contingencies of the Chinese IP Regime

Analyses of China’s contemporary adoption of a modern legal system cannot be made in isolation from the past and must include the events and social premises that have helped to shape present policies and give character to past principles. It is a widely held perception that an understanding of yesterday’s China is pivotal in coming to terms with today’s China (Alford, 1995) and it can be argued that this is particularly appropriate when addressing the characteristics of intellectual property law. In maintaining that modern China is changing in its attitudes and its behaviour, especially in respect to intellectual property, an explanation needs to be provided as to why the many previous attempts over the last 100 years to create a protective climate for knowledge goods have failed to take hold and why no such indigenous protection existed at all in earlier imperial times.

A number of explanations have been presented by scholars for these conditions that are still important to current debates. First, it has been argued that the instrumentalist and paternalist nature of the traditional Chinese socio-legal system did not sit well with an overtly adjudicative western approach to creating concrete legal texts and formal