Intellectual Property Rights: The West, India and China

John W. Sutherlin
PhD, Professor of political science
Co-Director, Social Science Research Laboratory
University of Louisiana, Monroe, USA
www.ulm.edu/ssrl

Abstract
Intellectual property rights (IPR) have increasingly been an issue as increased globalization has caused trading states to reconsider their efforts to protect inventions and then license those inventions to other states through their respective multinational corporations. Since China and India have been on the forefront of recent economic advances, states like the US, and international organizations, like the World Intellectual Property Organization (WIPO), have had to analyze their existing regulations on IPR. Here, the author looks at how the US and WIPO developed its present IPR regime and what the likely responses will be from China and India.

Keywords
intellectual property rights, globalization, China, India, World Intellectual Property Organization, World Trade Organization, patent, trademarks, intellectual piracy

Overview
Many assume that the United States, because it has been the most visible, has been at the forefront on developing and protecting intellectual property rights (IPR) due to such Lockean language being stated within the Constitution. In Article I, Section 8, clause 7, the Constitution articulates that Congress shall have the power to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. This charge was taken up by Thomas Jefferson as Secretary of State and ultimately evolved into the complex web of patent, copyright and trademark system we have in place today.

Today, the United States Patent and Trademark Office (USPTO) is a federal agency under the Department of Commerce. However, the modern period of protecting intellectual property really began with the institutionalization of a
process for stimulating and diffusing innovation by the authorities in 1474 in Venice. In many ways, these edicts “contained all the main features of contemporary patent law” (Ryan 1998). When such laws were extended to other states in Europe, they interpreted these Venetian regulations from different perspectives. Many felt that open and free trade was threatened by the monopolies generated by such privileges, often handed out by royal decree (Drahos and Braithwaite 2002).

But, the codification of laws is one thing, while actually inventing something is another. In an interview with the Economist (November 7, 2007), Simon Cox affirms that many developing states were innovation leaders a few centuries ago. “Clocking-making was clearly an endeavour lead by China and India.” In fact, many such common products and practices were developed long before a system of patent laws was promulgated. From paper to matches to toothbrushes, the West owes a great deal to ancient cultures.

So, if the West did not invent so many of the things modern society takes for granted, then how did it acquire such? Strangely enough, it stole, borrowed or improved upon inventions from other countries (Mokyr 1990). And, it even stole from one another. In the nineteenth century, the US ’imported’ steam engine technology from Britain, despite prohibitions on such (Sell 2003). Industrial espionage and literary theft was common throughout the 1900s.

With regard to the latter, the US was hardly an enthusiastic supporter of IPR. While much of Europe had a progressive copyright policy toward other states, the US flagrantly violated literary rights. Victor Hugo and Charles Dickens were among those appealing to the US to become a party to the Berne Convention for the Protection of Literary and Artistic Works of 1886.

The WIPO Regime

According to the World Intellectual Property Organization (WIPO), their origins spring from 1883, when Johannes Brahms was composing his third Symphony, Robert Louis Stevenson was writing Treasure Island, and John and Emily Roebling were completing construction of New York’s Brooklyn Bridge. The need for international protection of intellectual property became evident when foreign exhibitors refused to attend the International Exhibition of Inventions in Vienna in 1873 because they were afraid their ideas would be stolen and exploited commercially in other countries.

The year 1883 marked the birth of the Paris Convention for the Protection of Industrial Property, the first major international treaty designed to help the people of one country obtain protection in other countries for their intellec-