The Politics of Piracy: Intellectual Property in Contemporary China

By Andrew C. Mertha
Cornell University Press, 241 pages, $32.50

Reviewed by Anne Stevenson-Yang
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Reading Andrew Mertha's *The Politics of Piracy* is like being invited for an afternoon to some State Council reading room whose binders collect years of fascinating and obscure decrees written in the language of Communist campaign: Sweep out pornography! Strike down counterfeits! Ultimately, one is able to enter into the thinking of the Chinese bureaucrats within the intellectual property organs and, along the way, learn a great deal of bureaucratic trivia. The book falls short of its goal, however, of analyzing the effects of U.S. political pressure on Chinese intellectual property protection.

Andrew Mertha's strength is his research into and grasp of the Chinese administrative system. He offers keen insight into the nebulous political super-systems, or xitongs, that organize the line ministries, describing the ways in which particular bureaucracies charged with protecting patents, trademarks and copyrights have been punted around among the political superstructures. This creates a dissonance little understood outside of the Chinese government when, for example, the General Administration of Press and Publications, a "cultural system" bureaucracy, is charged with an issue like registering and enforcing copyrights, which should be essentially an economic issue; the result in that case is bright focus on content that is pornographic or politically undesirable rather than on any content that infringes copyright. This fascinating thread would have benefited from a broader, conceptual discussion of the "small leading group" system of super-ministerial organization.

Mr. Mertha is usefully descriptive, though not as analytical, in his descriptions of the sometimes clashing motivations of central and local-level bureaucracies, as in his anatomy of the Chongqing Patent Bureau's "embeddedness" in and dependence upon the provincial Science and Technology Commission (STC).

Descriptions of U.S. negotiating processes and the USTR are also strong, illustrating what makes USTR both the righteous fist and the cerebrum of U.S. trade policy by pointing out its small size, lack of long tenures, and resulting responsiveness to industry pressure groups and to Congress.

Less well-presented is the book's central argument, which is that U.S. trade pressure has affected Chinese IPR law and practice, although not necessarily in the ways intended. Mr. Mertha's core argument revolves around the notion that trademark enforcement is more effective than patent or copyright, because, due to a traditionally nonideological approach to trademark, these bureaucracies penetrate to the local level. That's where foreign companies' pressure and money can harness local capacity to bring about enforcement. Mr. Mertha suggests that individual companies may be able to create some protected zone around specific products, but he never makes a broader argument about trademark protection generally.

As to his point that external pressure from the U.S. has effected some change, he seems ambivalent. He opens the book with the infamous
"Beaniegate" incident in which USTR policy advisor Charlene Barshefsky was found to have purchased more than 40 counterfeit Beanie Babies in Beijing. The reader expects to learn that even U.S. negotiators feel that their activities are irrelevant to China's underlying economic realities, but the irony is simply dropped, as Mr. Mertha meanders into a description of the shrill tone that has sometimes entered U.S.-China trade relations. Another promising strand of argument concerns China's "natural" political thinking around intellectual property versus the "exogenous" system that the U.S. has tried to impose, but again the point is presented without any real analysis.

Behind the swirling fog of bureaucratic detail, the framework of China's IPR problems looms, emerging--tellingly--via Mr. Mertha's prodigious grasp of historical trivia:

... [T]he notion of intellectual property was in many ways inconsistent with both the basic assumptions of socialism and those embraced by developing states more generally....On November 3, 1963, the State Council ... issued the "Regulations to Encourage Inventions and the Regulations to Encourage Improvements in Technology." Individual achievement was deleted from the legislative intent, and patents were no longer issued; for that matter, the same was true for inventors' certificates. Article 23 of the 1963 "Regulations on Awards for Inventions and Regulations on Awards for Technical Improvements" asserted that "all inventions are the property of the State, and no person or unit may claim monopoly over them.... All units throughout the country (including collectively-owned units) may make use of the inventions essential to them."

In other words, property in China, especially intangible property, is viewed as a national asset to which individual companies may be granted limited franchise. This fundamentally different view might have set the stage for a broad discussion of the clash of civilizations that is represented by the IPR battles between China and the U.S. Intellectual property law in China provides one of the many case studies in which a Western scaffolding has been conveniently erected around policies and bureaucracies with fundamentally different goals, rather like the old practice of private business "putting on a red hat," or classifying itself as state-owned, in order to realize political benefits from the classification. This is not to say that China's IPR policies are useless or entirely cynical, but they have more to do with providing tools to use if desired, and, importantly, with adding burnish to China's new internationalist image, than with changing systemically the nature of intellectual property protection.

As a former employee of the United States Information Technology Office, I take issue with the description of USITO as a "unit" that "moved out of the government and became a private association representing the interests of U.S. and other information technology-related industries" USITO applied for and received a Commerce Department grant in the first year of its operation but was never part of the government or principally funded by the government. It has also never represented non-U.S. interests. I have another small quibble with somewhat erratic translations: when such an issue is made of the bureaucratic ranking of bureaus, administrations, ministries, and offices, it is incongruous to find inconsistent translations, like "office" instead of "bureau" for ju (p. 113) or "bureau" instead of "administration" for shu (p. 136).

The book is not for the faint-hearted; it is clotted with bureaucratic marginalia fascinating to those of us who analyze China professionally or avocationally, but likely to be heavy going for the casual reader. There is something of an oversupply of academese, whose lexicon seems to require that the author state what he is about to state at least twice before actually stating it. Mr. Mertha's grasp of the Chinese government's peculiar internal logic is very strong and makes a significant contribution. In the end, however, the book does not offer a guide to more useful tactics in the effort to protect intellectual property, and it seems that the U.S. righteous fist, however culturally jarring, may be the only tactic Mr. Mertha has to offer.

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By Angus McIntyre
Rowman and Littlefield, 312 pages, $34.95

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