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## Intellectual Property, Copyright, and Piracy: A Cultural View

### Description, Abstract, or Artist's Statement

Religion plays a major role in determining culture, and has an important effect on how laws are both written and enforced. The concept of intellectual property varies in different cultural traditions, and the dominant religion of a culture plays a major role in the how copyright is viewed and if it is respected or enforced. This paper briefly evaluates the cultures of three major religious and intellectual traditions to determine what, if any, effect their beliefs and values have on the respect for and enforcement of laws defending intellectual property and copyright.

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# **INTELLECTUAL PROPERTY, COPYRIGHT, AND PIRACY: A CULTURAL VIEW**

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## **Abstract**

Religion plays a major role in determining culture, and has an important effect on how laws are both written and enforced. The concept of intellectual property varies in different cultural traditions, and the dominant religion of a culture plays a major role in the how copyright is viewed and if it is respected or enforced. This paper briefly evaluates the cultures of three major religious and intellectual traditions to determine what, if any, effect their beliefs and values have on the respect for and enforcement of laws defending intellectual property and copyright.

## **Introduction**

International copyright and other laws protecting intellectual property have developed sporadically. International recognition and enforcement of copyright has varied widely according to the cultural traditions and legal systems that have developed out of the cultures of various regions of the world. (Richards, 2004) Delener has observed that “Religion, being an aspect of culture, has considerable influence on people’s values, habits and attitudes, and greatly influences lifestyle, which in turn affects consumer decision behavior.” (Delener ,1994) The development of and respect for intellectual property rights have a profound cultural element in that the creation, enforcement, and recognition of copyright laws are largely a function of the society that developed them. International efforts to harmonize copyright laws have thus met with decidedly mixed success.

Several researchers, notably Hofstede, have published research showing that international business – of which copyright agreements are a part - is profoundly influenced by the interdependence of culture and management. Hofstede has developed five categories with which one might analyze the differences between countries and their business practices:

1. The degree of integration of the individual in groups
2. The differences of social roles between men and women
3. Ways to deal with inequality
4. Tolerance of the unknown
5. Long-term versus short-term satisfaction of needs

Hofstede notes that religion is one of the determining entities that define a culture. It is clear that international commerce is influenced by cultural differences, which are themselves influenced by religion. (Hofstede, 1994)

While well-established in the Anglo-American socio-economic milieu, recognition of intellectual property rights are uneven at best in the economically developing world. In 1994, in an attempt to harmonize the rules involving copyright and intellectual property and to improve international trade, the World Trade Organization (WTO) passed the Agreement on Trade-Related Aspects of Intellectual Property Rights, commonly known as TRIPS. (TRIPS, 1994) There are currently 153 members in the WTO, and all are bound to the various agreements reached by member countries. (World Trade...) Agreements by the WTO are one thing, but enforcement and recognition by member countries (not to mention non-member countries) is quite another. This

paper will evaluate the role of culture on copyright recognition and compliance, particularly as it is shaped and influenced by religion. I will evaluate international agreements on copyright and their enforcement and compliance through the lens of three major cultural and religious traditions: Judeo-Christian, prevalent in the developed world; Islam, which is a powerful cultural influencer in the middle-east and Africa; and Confucianism/Buddhism, the primary religious and philosophical basis of the cultures and countries of East Asia.

### **Judeo-Christian Cultures**

Legal copyright, the concept that ideas can and should be protected under law, was legally established in England with the Statute of Anne in April 1710. (Deazly 2006) The Statute encouraged “learned Men to compose and write useful Books” to -among other things - further the causes of learning and commerce. (An Act..., 1709) The notion of exclusivity, i.e., that physical property could be appropriated for one’s exclusive use, was well-established by the teachings of the Bible and other religious texts. The idea that property could be intellectual instead of physical was relatively new at the time the Statute of Anne was signed. John Locke, in his *Second Treatise* (1698) detailed his theory of property, positing that property was a “natural right”, and that someone could indeed own an idea that did not physically exist. (Locke 1963 [reprint]) Intellectual property posed a new challenge to the philosophical and legal understandings of early 18th century Europe. The inherent non-exclusivity of intellectual property, i.e., the fact that it could be easily copied and shared (unlike, e.g. a house or a horse) was a problem that the Statute of Anne began to resolve. (Richards, 2004)

The concept of the importance of copyright was brought to the American colonies. Article 1, section 8, clause 8 of the Constitution of the United States of America promises “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.” (Constitution..., 1787.) The authors of the Constitution believed that the possession of intellectual property was a natural right, and that it must have legal protections. The Statue of Anne and the U.S. Constitution form the legal basis for copyright and intellectual property law in Judeo-Christian cultures, but what of countries with differing religious and cultural traditions?

### **Islamic Cultures**

In his book *Impact of Religion on Business Ethics in Europe and the Muslim World*, Ingmar Wielen notes that in Islam, there are two accepted “forms of enrichment of the individual: labour and natural resources on one hand, and exchange, remittance of rights, outright grants and inheritance on the other.” (Wielen, 1997) Islam has a long tradition of recognizing intellectual property, as “Islamic Sharia theory established the right of humans to exploit creations for their benefit and for the benefit of society.” (Obeidat, 2008) In many ways, Islamic protections for intellectual property exceed those of the Judeo-Christian tradition. It has been reported that the protection of intellectual property rights is “secured by equating intellectual property infringement to theft “the punishment for which is quite harsh in Islamic Sharia law.” (ibid) The tradition of protecting intellectual property rights in Islamic cultures is robust, but does not always have the desired result. Although *Billboard* magazine has reported that Islamic organizations in Indonesia have declared that buying pirated music recordings is *haram* (forbidden) music industry executives in Indonesia estimate that the piracy rate is 80%. (Patrick, 2005) Declarations by religious authorities have had little effect on copyright violation

because there is no enforced disincentive to comply, and real financial incentives to pirate intellectual property.

### **Confucian/Buddhist Cultures**

Piracy has long been an issue in China and other developing countries in East Asia. A cultural attitude has developed that largely ignores intellectual property rights. This has been recognized as a problem for many years not just by international corporations, but by Chinese producers of intellectual property as well. In 1996, the *Far Eastern Economic Review* reported in an article titled “Now We Get It” that “finding a successful Chinese firm that hasn’t had its trademark, copyright, or patent ripped off is harder than finding one that has.” (Forney, 1996) To add to the problem, it is reported that “many local governments would rather protect a pirate factory than drive its workers out of their jobs.” (ibid). China’s struggles with piracy and product counterfeiting have been widely reported for many years, but only recently have steps been taken to address this problem and bring China more in line with international standards. In 2009, China revised its patent law which “contains a curious mix of practical fine-tuning and political alignment with other developing countries.” (Moga, 2009) Although praised as a step in the right direction, it is acknowledged that China and other developing countries in East Asia still have a great need to focus not just legal, but also enforcement actions to harmonize their laws and regulations with developed countries. This challenge is exacerbated by the cultural acceptance of piracy, and the lack of disincentives to practice it.

### **Observations & Conclusions**

The challenge for effective international enforcement of copyright and intellectual property laws is to address the benefit that piracy has for developing societies. Johnson has shown that copying material “reduces the price, consumption, and revenue of originals, and increased both consumer and social welfare.” (Johnson, 1985) That is, copies reduce the price of the originals, benefitting consumers that purchase either a copy or an original. This is a difficult economic model to overcome, particularly when the culture has demonstrated limited respect for intellectual property.

Much research has been done on the effect of cultural linkages on international trade. Guo reports that economic behavior is “affected by cultural similarities, as it is easier and more efficient for people with the same cultural identity (language, religion, or any other cultural element) to trust ...” (Guo, 2007) This appears to be particularly true of developing countries, who are often isolated not just by geography and linguistics, but also by their unfamiliarity with the legal and cultural practices of international commerce. In developing countries with Islamic or East Asian religious and cultural traditions, intellectual property is recognized but in practice is not enforced. In countries where religious authority is paramount and the punishments for theft are severe, general disregard for intellectual property rights is indicative of a cultural dismissal of the importance of intellectual property by both the authorities and the general public.

Piracy, the copying and/or counterfeiting of branded products, is a response to the rise of the socio-economic importance of intellectual property. This phenomenon is not unique to the digital revolution. Indeed, the Statute of Anne (see above) was passed by a government three-

hundred years ago in an attempt to prevent publishers from making unauthorized copies of books.

Because the economic impact of piracy is so profound, developed countries have taken great pains to attempt to bring the developing world into harmony with international intellectual property agreements. The details of the World Trade Organization's (WTO) Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement were negotiated during the Uruguay Round of that General Agreements on Tariffs and Trade (GATT). (Gervais, 2007) Most of the TRIPS are a consensus reached by the European Union, the United States, Japan, Switzerland, and Australia, i.e., the developed countries. Developing countries who were members of the WTO were left to accept the Agreement "in most cases because of significant political concessions. (ibid) In his book *Development Dilemma: The Political Economy of Intellectual Property Rights in the International System*, Robert L. Ostergard notes that developing countries have "no domestic incentive to protect intellectual property rights, given their low levels of technological development." Ostergard concludes that as countries develop exposure to international trade and foreign investment, their incentive to accept and enforce agreements like TRIPS will increase. Indeed, Ostergard writes "Ultimately, the development of consumer markets will bring with it the domestic demand for intellectual property right protection." (Ostergard, 2003)

Incentives for developed countries to have strong copyright and intellectual property enforcement via treaties are clear. Protecting brands, trademarks, and manufacturing processes provide a clear advantage in the global marketplace. The Organization for Economic Co-operation and Development (OECD), in an attempt to track the impact of pirated and counterfeit goods, reports hundreds of billions of dollars annually lost to legitimate rights-holders. (OECD, 2009) For developing countries, anti-piracy and counterfeiting treaties are seen as a barrier to trade and economic development. Although they may agree to these treaties as a condition of conducting commerce, there are no consequences for either the developing countries officials or the citizens participating in the piracy and counterfeiting industry.

In international piracy, products are made that look like, or claim to be, major international brands. This practice has been referred to as "brandjacking". (Johns, 2009) Brandjacking is particularly prevalent in the electronics and pharmaceutical industries, as it is rather easy to reproduce these products with little drop-off in quality or appearance. (ibid.) International brands carry with them the promise of quality, as well as the cachet of possessing an item that is recognized for its value. Products with high brand equity and high cost-of-sale are susceptible to piracy and counterfeiting because the risk of consequences is small, while the potential for profit is high. Despite the best efforts of the OECD and other international commercial and regulatory bodies, piracy and counterfeiting are unlikely to be reduced. International brands have become more recognizable in developing countries through media exposure, and people in developing countries are beginning to earn disposable income with which to purchase consumer goods. The demand thus created, the incentives for piracy and copyright infringement have increased dramatically since 2000. (OECD, 2009)

Intellectual property and its legal manifestation, copyright, have long been a compromise between principle and practice. Domestic and international laws and treaties to recognize intellectual property and provide legal protection to copyright have been attempted for over three-hundred years, with decidedly mixed results. The influence of culture and impact of

religion on the concept of intellectual property must be taken into account when attempting to reconcile the chasm between principles as embodied in laws and treaties and the reality of cultural practices. Most developing countries political systems are essentially constitutional theocracies that recognize the primacy of a certain religion, social philosophy, or belief system. In his recent book *Constitutional Theocracy*, Ran Hirschl observes that the “designated state religion” is an “integral part, or even the metaphorical pillar, of the polity’s national metanarrative.” (Hirshl, 2010) As religion shapes culture and culture shapes legal standards, so to do the establishment of new constitutions in developing countries mold the practice and expression of religion. As developing countries increasingly become involved in international commerce, the importance of religion and culture in crafting and enforcing newly created commercial laws and regulations must not be overlooked.

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