THE GLOBAL HARMONY OUROBOROS: WIPO'S MISSION STATEMENT AND ITS FUTILE ROLE IN AN ECONOMIC LEGAL SYSTEM

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> Our civilization is characterized by the word "progress." Progress is its form rather than . . . one of its features. Typically it constructs. It is occupied with building an ever more complicated structure. And even clarity is sought only as a means to this end, not as an end in itself.[1]
>
> - Ludwig Wittgenstein[2]

I. INTRODUCTION

Jurisprudence is reflective of the society it governs. There is a synergy between the law and the people it is intended to oversee, monitor, and protect. However, this connection cannot be described as an ordinary static line that bonds one to the other, nor is it a perfect steady circle where one acts as the constant driving force to the other. Instead, it materializes as an ouroboros: a symbol depicting a serpent eating its own tail.[3] This image has become emblematic in numerous fields of study, including, religion, mythology, and alchemy.[4] The relevance of the ouroborus appears unlimited, "it expresses the unity of all things . . . which never disappear but perpetually change form in an eternal cycle of destruction and re-creation."[5]

In its most generalized scheme, the development of the modern legal system can be illustrated as the versatile ouroboros. When a society experiences change, such as a technological innovation or scientific breakthrough, new issues inevitably emerge. Because these dilemmas have never previously been encountered—let alone known—no redress is available. Where there is no resolution, the problem permeates through the community. As the issue affects more and more people, its prevalence becomes recognized as a social concern. The populace then assumes their role as constituents and demands a resolution from their government.

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1. LUDWIG WITTGENSTEIN, CULTURE AND VALUE 7 (G.H. Von Wright & Heikki Nyman eds., Peter Winch trans., 1984).

2. Ludwig Wittgenstein is a twentieth-century philosopher whose works encompassed concepts such as, "logic and language, perception and intention, ethics and religion, [and] aesthetics and culture;" he greatly influenced the development of analytic philosophy. Anat Biletzki & Anat Matar, *Ludwig Wittgenstein*, *in* THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta ed., 2011), *available at* http://plato.stanford.edu/archives/sum2011/entries/wittgenstein.

3. *Ouroboros*, ENCYCLOPEDIA BRITANNICA, http://www.britannica.com/EBchecked/topic/435492/Ouroboros (last visited Mar. 7 2015).

4. *See* Marinus Anthony van der Sluijs & Anthony L. Peratt, *The* Ourobóros *as an Auroral Phenomenon*, 46 J. OF FOLKLORE RES. 1, 3 (2009), *available at* http://muse.jhu.edu/journals/journal_of_folklore_research/v046/46.1.van-der-sluijs.pdf.

5. *Ouroboros*, *supra* note 3.

However, even when ignited by urgency, legislative pursuits are not strictly a forward moving process. Instead, there are hindrances at every step: mandatory studies, reports, hearings, debates, etc. As legislators fight and attempt to find solutions to these tangential obstacles, society carries on without pause. The catalyst issue persists, changes, or often worsens; other, newer issues emerge; and the initial call for change takes on a different voice.

Where the state of being is in a constant state of flux, achieving an accurate resolution at the right time becomes impossible. Accordingly, the original answer sought may only exacerbate the "current" state of the problem, and "[l]ike the [o]uroboros swallowing its tail, [the solution] . . . ingest[s] its own original justification."[6]

In the parallel relationship between social and legal progress, laws are often incompatible with the actual needs and wants of the people at the time it is put into force.[7] This inconsistency becomes more prevalent and detrimental when numerous nations—and thus, numerous societies—are involved. This Note will focus on international intellectual property rights ("IPR") and trademarks in particular, as administered by the World Intellectual Property Organization ("WIPO"). WIPO's mission statement and its general purpose to achieve global harmonization will be broken down to analyze the faults in its continued subsistence.[8]

The relationship between the United States and China will be explored to illustrate the futility of WIPO's explicit objective of achieving "global harmonization." The partnership between these two powerful and vastly different nations serve as a prime example of economic integration through globalization, and the legal inconsistencies that arise due to disparities between developed and developing countries.[9] Moreover, trademarks (as opposed to other forms of intellectual property, such as, copyright and patent) provide a medium in which a country's cultural as well as economic differences affect the implications of regulatory regimes.[10] Thus, by focusing on this category of intellectual property ("IP"), a more comprehensive analysis can be achieved, by examining a country's, history, culture, norms, and long-term social interests.

Part II of this Note will provide a historical overview of globalization, the development of international trademark rights, and the formation of WIPO. As part of this discussion, a background of

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6. Youngblood v. West Virginia, 547 U.S. 867, 874 (2006) (Scalia, J., dissenting).

7. *See infra* Part III.B.1.

8. *See* WIPO INTELLECTUAL PROPERTY HANDBOOK: POLICY, LAW AND USE, WORLD INTELLECTUAL PROP. ORG. 5-7 (2nd ed. 2004), *available at* http://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf [hereinafter WIPO HANDBOOK].

9. *See infra* Part II.B.

10. *See infra* Part II.A.

China's economic growth and the development of its IPR system will also be explored. Part III will delve into the current issues associated with trademark protection in China following its accession[11] to numerous WIPO treaties and the overhaul of its own legal system. In addition, this Part will evaluate the disparities of China's divergent economy, culture, and society in order to illustrate the impossibility of attaining global harmonization. In Part IV, the futility of WIPO's undertaking will be assessed and an approach based solely on an economic legal system will be proposed. Finally, in Part V, this Note will conclude that removing WIPO as an administrator of international IPR will allow for better cooperation among foreign nations in the globalized community.

II. INTELLECTUAL PROPERTY RIGHTS IN THE AGE OF GLOBALIZATION

The recognition of international IPR has largely been based on economic concerns arising from globalization and the integration of isolated markets.[12] During the latter half of the nineteenth-century, unprecedented advancements in technology dismantled previously insurmountable barriers to trade.[13] However, as nation's industries merged to become a "global marketplace," endeavors overlapped, laws conflicted, and concerns naturally arose.[14] Nations soon refocused their initial optimistic outlooks, and the fiscal benefits of a global marketplace soon became overshadowed by the fear of infiltration of external agents.[15] Thus, in concurrence with these vast economic changes, legal systems were modified to address the emergent concerns.[16]

A. "Life, Liberty, and Intellectual Property"

In Western political philosophy, there is an established

11. In regards to international law, accession is defined as the "method by which a nation that is not among a treaty's original signatories becomes a party to it." BLACK'S LAW DICTIONARY 15 (9th ed., 2009).

12. *See infra* Part II.A.1; *see also Define Global Economy*, ECONOMYWATCH (June 29, 2010), http://www.economywatch.com/world_economy/world-economic-indicators/global-economy/define-global-economy.html ("A global economy is characterized as a world economy with an unified market for all goods produced across the world.").

13. *See*, WORLD TRADE ORG., WORLD TRADE REPORT 2008: TRADE IN A GLOBALIZING WORLD 15 (July 9, 2008), *available at* http://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report08_e.pdf [hereinafter WORLD TRADE REPORT]; *see also* Barry Buzan & George Lawson, *The Global Transformation: The Nineteenth Century and the Making of Modern International Relations*, 57 INT'L STUDIES Q. 620, 627-29 (2013), *available at* http://onlinelibrary.wiley.com/doi/10.1111/isqu.12011/pdf.

14. *See Define Global Economy*, *supra* note 12 ("The concept of a global economy cannot be understood in isolation.").

15. *See infra* Part II.A.

16. *See infra* Part II.B.1.b.

foundation for the protection of IPR.[17] Laws are viewed essentially as a means to preserve what each individual is naturally entitled to have protected: their unalienable rights.[18] Moreover, the insulation of an individual's "life, liberty, and *property*" is widely accepted as the justification for the existence of modern governmental bodies.[19]

Although "property" is typically identified as and associated with *tangible* goods,[20] the word's etymology is rooted from the Latin word "proprius," which means "one's own."[21] Today, "property rights" have acquired a broad connotation and has extended to include IP.

> [T]he crux of natural rights thinking is that creators' or inventors' entitlement to their work is akin to an inherent natural right which the state is under an obligation to protect and enforce. In its loose elaboration, the theory builds upon the primacy of personhood which promotes the notion of the inseparability of the creator from her creation. It is suggestive of a fusion of the individual with her creation as an aspect of self-expression, self-realization, identity, or possessive individualism.[22]

Thus, IPR has been "anchored in the logic of natural rights,"[23] and it has been understood as necessitating protection from governmental bodies.[24]

Trademarks have come to garner a vital "role in global business."[25] Accordingly, the rights associated with trademarks acquired significant importance as well. A trademark is "[a] word, phrase, logo, or other graphic symbol used by a manufacturer or seller to distinguish its product or products from those of others."[26] Moreover, "[t]he trademark right . . . is not a right to own or to control all uses, but a

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17. *See infra* Part II.A.

18. *See generally* JOHN LOCKE, SECOND TREATISE OF GOVERNMENT (C.B. Mcpherson ed., Hackett Pub. Co. 1980) (1689).

19. *See* Donald L. Doernberg, *"We the People": John Locke, Collective Constitutional Rights, and Standing to Challenge Government Action*, 73 CAL. L. REV. 52 (1985); *see generally* LOCKE, *supra* note 18.

20. *See, e.g.*, James Wilson, *Ontology and the Regulation of Intellectual Property*, 93 THE MONIST 450 (2010), *available at* http://discovery.ucl.ac.uk/1325670/1/Ontology%20and%20the%20Reulation%20of%20Intellectual%20Property.pdf.

21. UNIV. OF MICH., LATIN WORKSHOP EXPERIMENTAL MATERIALS 276 (Waldo E. Sweet ed., 1956).

22. Chidi Oguamanam, *Beyond Theories: Intellectual Property Dynamics in the Global Knowledge Economy*, 9 WAKE FOREST INTELL. PROP. L.J. 104, 108-09 (2009) (citation omitted).

23. *Id.* at 108.

24. Wilson, *supra* note 20, at 453.

25. Kitsuron Sanguvsan, *Trademark Squatting*, 31 WIS. INT'L L.J., 252, 253-54 (2013) (citation omitted).

26. BLACK'S LAW DICTIONARY 1630 (9th ed., 2009); *see* Sanguvsan, *supra* note 25, at 254 ("Basically, a trademark is a distinctive sign used to differentiate between identical or similar goods and services offered by different producers or services providers.").

right to exclude others from certain uses."[27]

In comparison to patent, copyright, and other IPR, trademarks are a more recent facet of IP, and its protection has been met with criticism.[28] There have been arguments that, "legislatures and judges have expanded the rights of trademark owners too far, at the expense of the needs or interests of other traders and the public interest."[29] Thus, the juxtaposition between globalization and IP is especially pertinent in the context of the protection of international trademark rights.

In the global market, brand recognition has become a vital tool as a growing number of companies infiltrate foreign markets.[30] And "[s]ince trademarks attach to virtually every good and service traded, the globalization of trade [has led] to the globalization of trademarks."[31] Thus, in "protect[ing] global brands, international firms must be particularly concerned about the protection that trademarks . . . receive in various national markets."[32] In nations with inadequate or nonexistent protective regulations "the firm's advantage can be lost because of brand preemption, imitation, or counterfeiting."[33]

1. The Paris Convention

The basis for international protection for IPR extends back to the late nineteenth-century. During the earliest stages of globalization—even before the existence of "global brands"—the value of IP was quickly recognized. As the financial interests of formerly independent nations aligned, their distinct and arguably self-serving laws inevitably clashed.[34] Included in these traversing interests was a newfound fear that intellectual creations would not receive the same protection in other countries as it had already acquired in the country of its origination.[35] As a result, the interchange of goods across borders

27. GRAEME B. DINWOODIE & MARK D. JANIS, TRADEMARK LAW AND THEORY: A HANDBOOK OF CONTEMPORARY RESEARCH 435 (2008).

28. *Id.* at 3.

29. *Id.*

30. Sanguvsan, *supra* note 25, at 253.

31. *Id.* at 254.

32. Kate Gillespie, Kishore Krishna & Susan Jarvis, *Protecting Global Brands: Toward a Global Norm*, 10 J. OF INT'L MKTG. 99, 99 (2001).

33. *Id.* ("Brand preemptors legally register a foreign brand name in a country in an attempt to exploit its brand equity in the domestic market or to sell the domestic use of the trademark back to its foreign owner. Brand imitators manufacture a product using a trademark that is different but barely distinguishable from a famous foreign one. Counterfeiters illegally copy the trademarks of others.").

34. *See, e.g.*, Chen Su, *The Establishment and Development of the Chinese Economic Legal System in the Past Sixty Years*, 23 COLUM. J. ASIAN L. 109 (Xie Zengyi trans., 2009).

35. *WIPO-A Brief History*, WORLD INTELLECTUAL PROP. ORG.,

became impeded by regulatory hindrances and apprehensive fear.[36]

In an attempt to achieve "global harmonization," in 1883, eleven countries collectively adopted "the first significant multilateral international treaty" protecting IP rights: The Paris Convention for the Protection of Industrial Property ("Paris Convention").[37] The signatory nations embarked on an urgent mission to "harmonize" IP laws on a global scale to facilitate trade and protect the works of its own nationals.[38] Foremost, the Convention—as the document itself is called—formed a Union amongst its member countries.[39] In addition, it created three categorical provisions for the member nations to abide by: "national treatment, right of priority, [and] common rules."[40]

In brief, "national treatment" ensured fairness: nationals of all member countries were afforded the same protections as the nationals within each respective country.[41] "Right of priority"[42] provided reassurance: by filing an application "for an industrial property right . . . in one of the member countries," subsequent applications filed in other member states would acquire the same registration date as the original filing date.[43] Lastly, "common rules" demarcated

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http://www.wipo.int/about-wipo/en/history.html (last visited Mar. 7 2015) ("The need for international protection of intellectual property (IP) became evident when foreign exhibitors refused to attend the International Exhibition of Inventions in Vienna, Austria in 1873 because they were afraid their ideas would be stolen and exploited commercially in other countries.") [hereinafter *WIPO History*].

36. *See* WIPO HANDBOOK, *supra* note 8, at 241 ("[I]t was difficult to obtain protection for industrial property rights in the various countries of the world because of the diversity of their laws.").

37. The Convention was signed on March 20, 1883, by: Belgium, Brazil, France, Guatemala, Italy, the Netherlands, Portugal, El Salvador, Serbia, Spain and Switzerland. Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, 21 U.S.T. 1583, 828 U.N.T.S. 305 (as last revised July 14, 1967 and as amended Sept. 28, 1979), *available at* http://www.wipo.int/edocs/lexdocs/treaties/en/paris/trt_paris_001en.pdf [hereinafter Paris Convention]. The "industrial property" addressed by the Paris Convention encompassed a broad range of IP, including: trademarks, patents, industrial designs, utility models, trade names, geographical indications, and unfair competition. *Id.*

38. *See id.*

39. *See id.*

40. Summary of the Convention for the Protection of Industrial Property (1883), WORLD INTELLECTUAL PROP. ORG., http://www.wipo.int/treaties/en/ip/paris/summary_paris.html; *see* Paris Convention, *supra* note 37.

41. *See* WIPO HANDBOOK, *supra* note 8, at 242-43; *see also* Paris Convention, *supra* note 37.

42. The right of priority is applicable "in the case of patents (and utility models, where they exist), [trademarks] and industrial designs." Summary of the Convention for the Protection of Industrial Property, *supra* note 40; *see* Paris Convention, *supra* note 37.

43. WIPO HANDBOOK, *supra* note 8, at 243. Patents and utility models had to be filed within twelve months of the initial registration; and "industrial designs and trademarks" within six months. *Id.* at 245. ("[W]hen an applicant desires protection in

limitations: rules were constructed that "either . . . establish[ed] rights and obligations of natural persons and legal entities, or . . . require[ed] or permit[ed] . . . member countries to enact legislation following those rules."[44]

The Paris Convention remains in force today and currently consists of 175 contracting parties.[45] In its present form, the Paris Convention "is designed to provide *domestic* treatment to . . . trademark applications filed in other countries."[46] Specifically, the "rights of priority" remain a key feature.[47] To further elaborate, this entails that "once an application for protection is filed in one member country, the applicant has twelve months to file in any other signatory countr[y];" and if filed during the allotted time period, the subsequent filing will be considered to have been "filed on the same date as the original application."[48] However, the Paris Convention does not encompass trademark regulations; this duty is left to the national laws of the individual member countries.[49]

2. The World Intellectual Property Organization

Following the Paris Convention in 1883, cooperative efforts intensified as much as the advancements of globalization itself. Soon after, in 1886, copyright gained international protection pursuant to the Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention").[50] The Berne Convention was intended to "help nationals of its member States obtain international protection of their right to control, and receive payment for" copyrightable works (e.g., novels, plays, songs, paintings, and other creative works).[51] Subsequently, in 1893, the two International Bureaus of the Paris and Berne Conventions merged to form the United International Bureaux

several countries, he is not required to present all his applications at the same time but has six or [twelve] months at his disposal to decide in which countries he wishes protection and to organize with due care the steps he must take to secure protection."); *see* Paris Convention, *supra* note 37.

44. WIPO HANDBOOK, *supra* note 8, at 242.

45. *WIPO-Administered Treaties, Contracting Parties: Paris Convention*, WORLD INTELLECTUAL PROP. ORG., http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=2 (last visited Mar. 18, 2015).

46. Masaaki Kotabe, *Evolving Intellectual Property Protection in the World: Promises and Limitations*, 1 U. PUERTO RICO BUS. L.J. 1, 12 (2010).

47. *Id.*

48. *Id.* ("It also means that if an applicant does not file for protection in other signatory countries within a grace period of twelve months of original filing in one country, legal protection could not be provided.").

49. *See* Paris Convention, *supra* note 37, at 1322, 1324.

50. WIPO Treaties – General Information, WORLD INTELLECTUAL PROP. ORG., http://www.wipo.int/treaties/en/general/ (last visited Mar. 18, 2015) [hereinafter WIPO Treaties].

51. *Id.*

for the Protection of Intellectual Property ("BIRPI").[52]

As the value and significance of all IP gained recognition throughout the world, BIRPI underwent structural changes. In 1970, BIRPI became WIPO after the Convention Establishing the World Intellectual Property Organization was entered into force.[53] Soon after, in 1974, WIPO became a specialized agency of the United Nations.[54] Today, WIPO is mandated as the administrative agency behind international IP regulations recognized by the member States of the United Nations.[55]

WIPO's mission statement is: "to promote through international cooperation the creation, dissemination, use and protection of works of the human spirit for the economic, cultural and social progress of all mankind."[56] In pursuit of this mission, WIPO has acquired four main duties: (1) making treaties; (2) acting as a "global protection service;" (3) providing a "technical assistance program; and (4) offering its "domain name dispute resolution service."[57]

Essentially, WIPO's purpose "is to spread the concept and benefits of a strong [IP] system to the entire world" by providing "educat[ion] and creat[ing] the conditions for acceptance of [IP]."[58] Currently WIPO administers twenty-six treaties, which are subdivided into three areas: (1) IP Protection Treaties, (2) Global Protection System Treaties, and (3) Classification treaties.[59]

B. China: Opening the Door

Today, China is recognized as an economic powerhouse in the global marketplace.[60] However, it entered the international IPR

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52. *Id.*

53. *Id.*; *see* Convention Establishing the World Intellectual Property Organization, July 14, 1967, 21 U.S.T. 1770, 828 U.N.T.S. 3, *available at* http://www.wipo.int/treaties/en/text.jsp?file_id=283854 [hereinafter WIPO Convention].

54. WIPO Treaties, *supra* note 50.

55. *See id.*

56. WIPO HANDBOOK, *supra* note 8, at 5.

57. Paul Salmon, *Cooperation Between the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO)*, 17 ST. JOHN'S J.R. & ECON. 429, 431-32 (2003) ("In addition to treaties, WIPO has developed international norms through model laws, guidelines, non-binding resolutions and the like.").

58. *See* Debora J. Halbert, *The World Intellectual Property Organization: Past, Present and Future*, 54 J. COPYRIGHT SOC'Y U.S.A. 253, 253 (2007) ("Since [IP] is primarily a western and industrial concept, an important goal in support of WIPO's mission has been to educate and create the conditions for acceptance of intellectual property throughout the global south. WIPO considers [IP] laws to be the foundation of innovation and progress and thus a public good that all nations should share.").

59. *See WIPO-Administered Treaties*, WORLD INTELLECTUAL PROP. ORG., http://www.wipo.int/treaties/en/ (last visited Mar. 18, 2015).

60. *See, e.g.*, Keith Bradsher, *China's Route Forward: Building Boom*, N.Y. TIMES, Jan. 23, 2009, at B1; Keith Bradsher, *China Reports Economic Growth of 9.1% in 2003*, N.Y. TIMES, Jan. 21, 2004, at W1; Jane Perlez, *China Emerges As Rival to U.S. In Asian*

regime at its own pace, and its international IPR system developed on a separate timeline than that of WIPO. China cannot be grouped with the U.S. and other developed countries (i.e., Western nations), that propelled globalization efforts with their shared ideals, and pioneered the implementation of multilateral IP treaties through the Paris and Berne Conventions. Instead, China's current IP laws—national and international—are a product of its distinct economic history.[61] Moreover, it exemplifies the incongruity of post-globalization nations under WIPO's regulatory scheme.[62]

China only became an active participant of and contributor to globalization in 1979.[63] That year, it implemented a "Reform and Opening Up policy."[64] During this reformation period, China moved away from "a highly centralized planned economic system" and gradually moved towards an economy based on "free market principles and . . . open[ed] up trade and investment with the West."[65]

Much of its reform was focused on "decentraliz[ing] economic policymaking," and liberalizing trade to attract foreign investors.[66] Amongst its numerous efforts, China established "special economic zones along the coast" to facilitate exports and imports; designated "coastal regions and cities . . . as open cities and development zones, which allowed them to experiment with free market reforms and . . . offer tax and trade incentives;" and gradually eliminated the state's control on pricing various goods.[67]

China was unmistakably successful in its endeavors. From 1979 to 2014, China "double[d] the size of its economy . . . every eight years."[68] A major component of this unprecedented growth was due to its transformation "into a major trading power."[69] In 2009,

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Trade: China Races to Replace U.S. in Asia's Economies, N.Y. TIMES, June 28, 2002, at A1.

61. *See infra* Part II.B.

62. *See infra* Part III.B.

63. WAYNE M. MORRISON, CONG. RESEARCH SERV., RL33534, CHINA'S ECONOMIC RISE: HISTORY, TRENDS, CHALLENGES, AND IMPLICATIONS FOR THE UNITED STATES 1 (2014).

64. Su, *supra* note 34, at 110; *see* MORRISON, *supra* note 63, at 1 n.1 ("China's economic reform process began in December 1978 . . . . Implementation of the reforms began in 1979.").

65. MORRISON, *supra* note 63, at 2.

66. *Id.* at 3.

67. *Id.* at 2-3.

68. *Id.* at 3 ("Economists generally attribute much of China's rapid economic growth to two main factors: large-scale capital investment (financed by large domestic savings and foreign investment) and rapid productivity growth. These two factors appear to have gone together hand in hand. Economic reforms led to higher efficiency in the economy, which boosted output and increased resources for additional investment in the economy.").

69. *See id.* at 19.

China became the "world's largest merchandise exporter and the second-largest merchandise importer (after the United States)."[70] Barely three years later, China became the world's largest merchandise trading economy, a title previously held by the U.S.[71]

These impressive numbers provide a positive, albeit intimidating, reflection of China's economy; however, these figures and other statistics do not illustrate the legal reforms that have coincided with the well-known and much-discussed economic changes. China's legal system is a manifestation of its adjusting economy, and it has been developing prior to 1979.

> Since the establishment of the People's Republic of China (PRC) in 1949, the Chinese economic legal system has gone through multiple transformative stages, exhibiting different characteristics at each stage as a result of the interaction between the changing economic system and legal ideology of the time. Due to the differences between the prevailing economic systems and legal ideologies at different stages, the structural concepts, content, governing systems, implementation mechanisms and effects of the economic legal system vary significantly at each stage.[72]

China's legal system has underwent numerous transformations, but its "decision to enter the world marketplace became the catalyst for its development of an [IPR] protection system consisting of international treaties and domestic legislation."[73]

1. Western Coercion and Legal Reconstruction

In accordance with its explosive growth, China acquired a critical responsibility: addressing the United States' (and other foreign nations') concerns about the protection of its IPRs within its nation.[74] The U.S. was largely interested in obtaining IPR protection in China because of "the commercial importance of IPRs in international trade."[75] By the 1970s, the value of a U.S. good or service was not limited to its market price.[76] Instead, these goods and services

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70. *Id.* at 20.

71. *Id.* ("China's share of global merchandise exports more than tripled from 2000 to 2012, rising from 3.9% to 11.5%;" and this figure is projected to "increase to 20% by 2030.").

72. Su, *supra* note 34, at 110; *see* Paul B. Birden, Jr.*, Trademark Protection in China: Trends and Directions*, 18 LOY. L.A. INT'L & COMP. L.J. 431, 431 (1996) ("A county hungry for technology learns quickly that the engine that drives technological advance is protection of intellectual property rights.").

73. Angela Mia Beam, *Piracy of American Intellectual Property in China*, 4 J. INT'L L. & PRAC. 335, 341-42 (1995).

74. MORRISON, *supra* note 63, at 1 ("China's rapid economic growth has led to a substantial increase in bilateral commercial ties with the United States.").

75. Hong Xue, *Between the Hammer and the Block: China's Intellectual Property Rights in the Network Age*, 2 U. OTTAWA L. & TECH. J. 291, 294 (2005).

76. *Id.*

possessed an intangible "added-value" derived from its "reputation and distinctiveness" (i.e., protectable trademark rights).[77]

It was only in 1979, at the realization of its economic potential, when "China *for the first time* . . . committed [itself] to protect foreign investors'" IPRs through bilateral trade agreements.[78] But as recently as the 1960s, China's property law was considered to be "underdeveloped."[79] Moreover, until 1979, there had been "no formal IPR system in place;"[80] some IP-related regulations did exist, but they were basic and uncomprehensive.[81] This may seem alarming at first, but considering that IP was almost non-existent prior to China's economic reform, the absence of IP law is wholly plausible.[82]

Consequently, in response to its swift economic growth and pressure from the U.S., there was "an unprecedented transformation" of trademark protection rights.[83] Specifically, China took "three notable steps": first, it embraced western "market-based principles;" second, it "implemented a body of law for the creation of a market economy;" and third, it "began major initiatives to improve its overall system of higher education, with greater emphasis on science, technology, and law."[84]

In this manner, China "overhauled its national legal system" and "openly acknowledged the need to protect [trademark rights] as a means to attract foreign investments."[85] China utilized two different avenues in its undertaking: memberships with WIPO treaties, and trade agreements under the World Trade Organization ("WTO").[86] In making these efforts, China's own legal infrastructure was drastically modified.

a. Memberships to International Organizations

Following its "Reform and Opening Up Policy, the integration of the Chinese [IP] system into the global system proceeded at an unprecedented pace."[87] Although trademarks, and IPRs generally, are fairly new to China, it has since entrenched itself in numerous WIPO treaties and other international agreements, and developed a complex

77. *Id.*

78. *Id.* (emphasis added).

79. *See* Su, *supra* note 34, at 114.

80. Xue, *supra* note 75.

81. Su, *supra* note 34, at 113.

82. *Id.*

83. Dalila Hoover, *Coercion Will Not Protect Trademark Owners in China, but an Understanding of China's Culture Will: A Lesson the United States Has to Learn*, 15 MARQ. INTELL. PROP. L. REV. 325, 331 (2011).

84. *Id.*

85. *Id.* at 331.

86. *Id.* at 336-37.

87. Su, *supra* note 34, at 123 (citation omitted).

relationship with the U.S. and other Western nations.[88]

In rapid sequence, China applied for and was granted WIPO membership in 1980.[89] In 1985, China acceded to the Paris Convention and acquired "its first international guidelines for the protection of well-known trademarks."[90] Consequently, "China was required to protect well-known marks, even those not registered in China."[91] In 1989, China applied to and was accepted by WIPO to join the Madrid Agreement Concerning the International Registration of Marks.[92] Then, in July 1992, China submitted applications to "WIPO and the United Nations Educational, Scientific and Cultural Organization to join the [Berne Convention], respectively. . . . [and] that year, [it] was accepted as a member of those two conventions."[93] Subsequently, China also acceded to the WIPO-administered Nice Agreement[94] and Madrid Protocol.[95] Furthermore, it became a signatory to two additional WIPO-administered treaties: the Trademark Law Treaty[96] and the Singapore Treaty.[97]

Another dimension to China's IPR system was added after its accession to the WTO in 2001.[98] Since the emergence of the WTO in

88. *See infra* Part II.B.

89. Su, *supra* note 34, at 123 (citation omitted).

90. Paul Kossof, *Chinese National Well-Known Trademarks and Local Famous Trademarks in Light of the 2013 Trademark Law: Status, Effect, and Adequacy*, 13 J. MARSHALL REV. INTELL. PROP. L. 225, 229 (2013).

91. Stephanie M. Greene, *Protecting Well-Known Marks in China: Challenges for Foreign Mark Holders*, 45 AM. BUS. L.J. 371, 375 (2008).

92. *Id.*; *see* Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, June 27, 1989, 8 World Intellectual Property Organization, Industrial Property Law and Treaties Text 3-007, at 1, *available at* http://www.wipo.int/edocs/lexdocs/treaties/en/madridp-gp/trt_madridp_gp_001en.pdf [hereinafter Madrid Protocol].

93. *Greene*, *supra* note 91, at 375.

94. *See* Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, June 15, 1957, 23 U.S.T. 1336, 550 U.N.T.S. 46 (as last revised at Geneva on Oct. 2, 1979), *available at* http://www.wipo.int/edocs/lexdocs/treaties/en/nice/trt_nice_001en.pdf [hereinafter Nice Agreement].

95. *See* Madrid Protocol, *supra* note 92.

96. Trademark Law Treaty, Oct. 27, 1994, in WIPO, Industrial Property and Copyright, Industrial Property Laws and Treaties, Multilateral Treaties 1 (Jan. 1995), *available at* http://www.wipo.int/edocs/lexdocs/treaties/en/tlt/trt_tlt_001en.pdf [hereinafter Trademark Law Treaty].

97. Singapore Treaty on the Law of Trademarks, Mar. 27, 2006, S. Treaty Doc. No. 110-2, *available at* http://www.wipo.int/edocs/lexdocs/treaties/en/singapore/trt_singapore_001en.pdf [hereinafter Singapore Treaty].

98. *China and the WTO*, WORLD TRADE ORG., http://www.wto.org/english/thewto_e/countries_e/china_e.htm (last visited Mar. 11, 2014).

1995,[99]

> most countries of the world agreed not only to adopt minimum standards of trademark protection but also to bring their trademark regimes—national laws, approval processes, and enforcement procedures—into line with new global norms. They also agreed to do this relatively quickly and to face monitoring of their compliance.[100]

Thus, international corporations have become increasingly reliant on the WTO to protect against trademark infringement.[101]

In addition, by becoming a member of the WTO, China became subject to the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS").[102] "The TRIPS agreement establishes standards for the minimum national protection of trademarks."[103] Specifically, it "expands protection of famous trademarks by prohibiting junior uses of famous trademarks in connection with both similar and dissimilar goods and services."[104] Thus, a famous trademark owned by an American company and registered in "the United States may also receive protection for the famous mark under the laws of all member states, regardless of the products or services connected with the famous mark."[105]

b. Modernizing National Laws

The formation of China's IPR system began in the 1970s and continued to develop during its reformation period.[106] During that time, "Chinese leaders recognized that the attraction of foreign investment was dependent on the institution of intellectual property rights and protection."[107] Following its 1979 economic reform, China "draft[ed] major [IP] laws and subsequently established [its] IPR

99. Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, *available at* http://www.wto.org/english/docs_e/legal_e/04-wto.pdf [hereinafter WTO] (establishing the functions of the WTO in governing the principles and rules of GATT).

100. Gillespie et al, *supra* note 32, at 100.

101. *Id.*

102. Kimberly Shane, *Culture, Poverty, and Trademarks: An Overview of the Creation and Persistence of Chinese Counterfeiting and How to Combat It*, 16 INTELL. PROP. L. BULL. 137, 144 (2012); *see* Agreement on Trade-Related Aspects of Intellectual Property Rights, Dec. 15, 1993, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, Legal Instruments--Results of the Uruguay Round vol. 31, 33 I.L.M. 81 (1994), *available at* http://www.wipo.int/treaties/en/text.jsp?file_id=305907 [hereinafter TRIPS].

103. Gillespie et al, *supra* note 32, at 100.

104. Breann M. Hill, *Achieving Protection of the Well-Known Mark in China: Is There a Lasting Solution*, 34 DAYTON L. REV. 281, 286 (2009).

105. *Id.* at 286-87.

106. Su, *supra* note 34, at 122.

107. Hill, *supra* note 104, at 288.

system in less than a decade (1982-1990)."[108] This large-scale legal reform was primarily related to China's affiliations with WIPO and the WTO.

In its first attempt at protecting trademarks, the Chinese legislature enacted The Trademark Law of the People's Republic of China ("PRC") in 1982.[109] In addition, the Implementing Regulations of the Trademark Law ("Implementing Regulations") were also adopted that year.[110] The Trademark Law and the Implementing Regulations provided a trademark owner with the exclusive right to its use and allowed for a private right of action for infringement.[111]

Furthermore, a patent law came into effect in 1985,[112] and a copyright law soon followed in 1991.[113] Then in 1993, the Intellectual Property Division in the People's Intermediate Courts was established, which allowed IP claims to be heard. Subsequently, numerous additional changes were made to China's IP laws in anticipation of its membership to the WTO "and in response to changes in its economy and market structure."[114] After gaining membership in 2001, "China adopted its current trademark law . . . which superseded and reformed its original 1983 version."[115]

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108. Xue, *supra* note 75, at 297.

109. Hill, *supra* note 104, at 288; *see* Trademark Law of the People's Republic of China (as amended by Decision of February 22, 1993, of the Standing Committee of the National People's Congress, on Revising the Trademark Law of the People's Republic of China), *available at* http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn007en.pdf [hereinafter Trademark Law PRC 1983].

110. *Id.*; *see* Rules for Foreigners or Foreign Enterprises Applying for Trademark Registration in China (as entered into force Sept. 1, 1983 by the Standing Committee of the National People's Congress), *available at* http://english.mofcom.gov.cn/article/lawsdata/chineselaw/200211/20021100050683.shtml.

111. Hill, *supra* note 104, at 288.

112. Patent Law of the People's Republic of China (as amended up to the Decision of Dec. 27, 2008, regarding the Revision of the Patent Law of the People's Republic of China), *available at* http://www.wipo.int/wipolex/en/text.jsp?file_id=178664 [hereinafter Patent Law PRC]; *see* Louis S. Sorell, *A Comparative Analysis of Selected Aspects of Patent Law in China and the United States*, 11 PAC. RIM L. & POL'Y J. 319 (2002).

113. Copyright Law of the People's Republic of China (as amended by the Decision of Oct. 27, 2001, of the Standing Committee of the National People's Congress on the Amendment of the Copyright Law of the People's Republic of China), *available at* http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn019en.pdf [hereinafter Copyright Law PRC]; *see also* Copyright Law of the People's Republic of China (as amended up to the Decision of Feb. 26, 2010, of the Standing Committee of the National People's Congress on Amending the Copyright Law of the People's Republic of China), *available at* http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn031en.pdf.

114. Greene, *supra* note 91, at 376.

115. Shane, *supra* note 102, at 144; *see* Trademark Law of the People's Republic of China (as amended up to Decision of Oct. 27, 2001, of the Standing Committee of the National People's Congress, Revising the Trademark Law of the People's Republic of

2. Current Affiliations

In addition to agreements under WIPO and the WTO, the U.S. and China exclusively agreed to two "Memorandums of Understanding" ("MOU"), the first in 1992[116] and again in 1995.[117] The 1992 MOU "specifies the provisions that must be made to protect U.S. [IP] within China."[118] The 1995 MOU, was made to extend provisions from the previous MOU, and was an added "attempt[] to remedy Chinese infractions of [IPR] that were not ended by the previous agreement."[119]

The following table elucidates China's rapid pace of membership to the aforementioned treaties and agreements. The applicable bodies of law are listed in chronological order of membership by China. As illustrated, China quickly closed the gap between its trailing memberships. Notably, China acceded to the Paris Convention nearly a hundred years after the U.S., but in all recent developments, China's accession closely follows the U.S. or both countries were signatories.

BODY OF LAW	**CHINA**	**U.S.**
Economic Reform (PRC)[120]	1979	—
WIPO Convention (1967)[121]	1980*	1967**
Trademark Law (PRC)[122]	1982	—

China), *available at* http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn026en.pdf [hereinafter Trademark Law PRC 2001].

116. *See* Memorandum of Understanding on the Protection of Intellectual Property, Jan. 17, 1992. P.R.C.-U.S., 34 I.L.M. 676 [hereinafter MOU 1992]. China agreed to extend copyright protection to foreign owners of software, books, firms, sound recordings, and other media previously unprotected under this agreement.

117. *See* Agreement Regarding Intellectual Property Rights, Feb. 26, 1995, U.S.-P.R.C., 34 I.L.M. 881 [hereinafter MOU 1995]. In this agreement China agreed to reduce piracy; improve enforcement at its national borders; and open its markets for US computer software, sound recordings, and movies. *Id.*; *see also* Frank V. Prohaska, *The 1995 Agreement Regarding Intellectual Property Rights Between China and the United States: Promises for International Law or Continuing Problems with Chinese Piracy?*, 4 TULSA J. COMP. & INT'L L. 169 (1996).

118. Prohaska, *supra* note 116, at 171.

119. *Id.* at 175. ("Most of the burden of the agreement is centered on the Chinese government . . . .").

120. *See supra* Part II.B.

121. *See* WIPO Convention, *supra* note 53.

122. *See* Trademark Law PRC 1983, *supra* note 109.

Patent Law (PRC)[123]	1984	—
Paris Convention (1883)[124]	1985*	1887*
Madrid Agreement (1891)[125]	1989*	—
Copyright Law (PRC)[126]	1991	—
MOU 1992[127]	1992	1992
Berne Convention (1886)	1992*	1989*
Nice Agreement (1957)[128]	1994*	1972*
Trademark Law Treaty (1994)[129]	1994**	1994**
Madrid Protocol (1989)[130]	1995**	2003*
MOU 1995[131]	1995	1995
WIPO Convention (1995)[132]	2001*	1995**
Trademark Law (PRC) (revised) (2001)[133]	2001	—
WTO[134] & TRIPS Agreement (1995)[135]	2001*	1995**
Singapore Treaty (2006)[136]	2006**	2006**

*Accession

**Signatory

III. A LOSING BATTLE FOR HARMONY

As discussed, there has arguably been no greater emerging economy than China in recent years, and U.S. corporations and small businesses alike have come to covet a foothold in the Chinese market.[137] However, as China continues to become a dominant pecuniary force in the global economy, the market infiltration efforts

123. *See* Patent Law PRC, *supra* note 112.
124. *See* Paris Convention, *supra* note 37.
125. *See* Madrid Protocol, *supra* note 92.
126. *See* Copyright Law PRC, *supra* note 113.
127. *See* MOU 1992, *supra* note 116.
128. *See* Nice Agreement, *supra* note 94.
129. *See* Trademark Law Treaty, *supra* note 96.
130. *See* Madrid Protocol, *supra* note 92.
131. *See* MOU 1995, *supra* note 116.
132. *See* WIPO Convention, *supra* note 53.
133. *See* Trademark Law PRC 2001, *supra* note 115.
134. *See* WTO, *supra* note 99.
135. *See* TRIPS, *supra* note 102.
136. *See* Singapore Treaty, *supra* note 97.
137. *See supra* Part II.B.

of U.S. nationals have been delayed, restrained, or thwarted, regardless of China's legal reform efforts under WIPO's administration.[138]

By looking at the extent of China's involvement in international regulation systems, its commitment to protecting foreign trademark rights appears bold and unquestionable; yet "[t]he West, led by the United States, continues to assert that China has done poorly in protecting foreign trademarks."[139] In its dissatisfaction, and on more than one occasion, the U.S. "has led the U.S. Trade Representative ("USTR") to place China on the Priority Foreign Country Watch List for epidemic infringements of IPR."[140] In its defense, the Chinese government asserts "that it has made substantial strides . . . within a short period of time."[141] Although this statement is arguably accurate, its efforts have had no substantial impact on trademark infringement within its borders.[142]

China has indeed demonstrated a commitment to fighting trademark infringement and protecting the rights of trademark owners; and the U.S.'s concerns are valid and compelling considering China still has a worldwide reputation for rampant trademark infringement.[143] Today, the greatest area of concern for the international community does not appear to be China's adoption of additional laws, or further changes in its judicial system for the protection of foreign and domestic trademark owners.[144] The primary concern is the actual enforcement of the laws that have been enacted and adopted.[145]

China may continue to accede to every new treaty enacted by WIPO, but it is too difficult to enforce the international treaties already "in force."[146] Thus, instead of a back-and-forth battle and

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138. *See infra* Part III.A.

139. Hoover, *supra* note 83, at 327; *see also id*. at 326 ("China is viewed as the single largest producer of pirated and counterfeit goods in the world. This harsh critique of China's inability to protect trademark and [IPRs] in general is widely spread in the West.")

140. *Id.* at 327.

141. *Id.* at 328.

142. *Id.*

143. *See* Hoover, *supra* note 83, at 326.

144. *See* MORRISON, *supra* note 63, at 1 (discussing China's "failure to take effective action against widespread infringement of U.S. [IPR]" within its country).

145. Hoover, *supra* note 83, at 340.

146. Carrying out its own national laws is also a continuing struggle in China; and "widespread government corruption, financial speculation, and misallocation of investment funds" are persistent issues. MORRISON, *supra* note 63, at 33. In turn, these localized issues affect external matters.

> Many U.S. firms find it difficult to do business in China because rules and regulations are generally not consistent or transparent, contracts are not easily enforced, and intellectual property rights are not protected (due to the

trying to identify what *more* China can do, a pragmatic approach would be to look to *what* exactly are the current issues in order to determine *why* China's enforcement efforts have been unsuccessful in resolving them. In fact, international treaties have been described as the "least effective method for protecting [IPR]."[147]

A. Trademark Rights in China: Law v. Reality

Pursuant to China's memberships with the Paris Convention and TRIPS Agreement,[148] it "is obligated to recognize unregistered well-known marks, to allow at least five years from the date of registration for requesting cancellation of an infringing mark, and to have no time limit for challenging marks registered or used in bad faith."[149] In addition, Article 52 of China's Trademark Law delineates what acts constitute as trademark infringement within its country.[150] This article provides that, "[a]ny of the following acts shall constitute an infringement on the exclusive rights to the use of a registered trademark":

> (1) using a trademark that is identical with or similar to the registered trademark on the same or similar goods without permission of the owner of the registered trademark;
>
> (2) selling goods that infringe on the exclusive right to the use of a registered trademark;
>
> (3) counterfeiting, or making without authorization, representations of another person's registered trademark, or selling such representations;
>
> (4) altering a registered trademark without permission of its owner and selling goods bearing such an altered trademark on the market; and
>
> (5) impairing in other manners another person's exclusive right to the use of its registered trademark.[151]

In addition, Article 59 of this law imposes criminal liability for

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> lack of an independent judicial system). The relative lack of the rule of law and widespread government corruption in China limit competition and undermine the efficient allocation of goods and services in the economy.

Id.

147. Greg Creer, *The International Threat to Intellectual Property Rights Through Emerging Markets*, 22 WIS. INT'L L.J. 213, 241 (2004) (citation omitted).

148. *See WIPO Administered Treaties*, *supra* note 45; TRIPS *supra* note 102.

149. Greene, *supra* note 91, at 375. Under the Paris Convention, a country may also "refuse to register or prohibit the use of" a well-known mark. *Id.* at 374. The "[p]rotection of well-known marks . . . were limited to cases in which the infringing use involved identical or similar goods;" however, TRIPs broadened this protection "to include infringing uses involving dissimilar goods and services, if such use would harm the owner of the well-known mark." *Id.*

150. *See* Trademark Law PRC 2001, *supra* note 114.

151. *Id.* at 9-10.

trademark infringement.[152]

Along with its first Trademark Law of the PRC, in 1994, China adopted its Foreign Trade Law.[153] This law "require[d] foreign trade operators to maintain the quality of their commodities and to compete fairly, and prohibit[ed] them from infringing upon IPR protected in China."[154] Furthermore, the Contract Law of the People's Republic of China[155] and the Criminal Law of the People's Republic of China (Provisions of IP Crime)[156] can provide protection for owners of unregistered marks.[157]

Even with these multi-dimensional protective measures in place, trademark issues remain rampant. "China continues to be recognized as the top country in the manufacturing and exploiting of counterfeit goods . . . ."[158] In a 2011 report, the U.S. Customs and Border Protection provided that "China remains the primary source country for counterfeit and pirated goods, representing 62% of all IPR seizures by domestic value."[159]

In addition, China has become notorious for "gray market goods."[160] These goods, or "parallel imports," are "genuine branded goods that are imported into a market and sold there without the consent of the owner of the trademark."[161]

> The goods are "genuine" goods (as distinct from counterfeit goods) in that they have been manufactured by or for or under license from the brand owner. However, they may have been formulated or packaged for a particular jurisdiction, but then imported into a jurisdiction other than that intended by the brand owner.[162]

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152. *Id.* at 12.

153. Birden, *supra* note 72, at 450.

154. *Id.* at 450-51 ("It defines foreign trade operators as those legal persons or other organizations engaged in the import and export of goods and technology and trade in international services.").

155. Contract Law of the People's Republic of China (adopted by the National People's Congress on Mar. 15, 1999, and promulgated by the Presidential Order No. 15), *available at* http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn137en.pdf.

156. Criminal Law of the People's Republic of China (Provisions of Intellectual Property Crime) (adopted by the Second Session of the Fifth National People's Congress, July 1, 1979, amended by the Fifth Session of the Eighth National People's Congress on Mar. 14, 1997), *available at* http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn014en.pdf.

157. Hoover, *supra* note 83, at 331-32.

158. Shane, *supra* 102, at 137.

159. U.S. CUSTOMS AND BORDER PROT. & U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, INTELLECTUAL PROPERTY RIGHTS: FISCAL YEAR 2011 SEIZURE STATISTICS 13 (2011), *available at* http://www.ice.gov/doclib/iprcenter/pdf/ipr-fy-2011-seizure-report.pdf.

160. Creer, *supra* note 147, at 219.

161. *Parallel Imports (Gray Market Goods)*, INT'L TRADEMARK ASS'N, http://www.inta.org/TrademarkBasics/FactSheets/Pages/ParallelImportsFactSheet.aspx (last visited Mar. 18, 2015).

162. *Id.*; *see* Michael S. Knoll, *Gray-Market Imports: Causes,*

As the Chinese population became influenced by Western culture, they developed a growing desire to acquire foreign brands and goods. However, due to the unavailability of the desired goods in a lawful forum, the gray market developed to meet consumer demands and profit off the known trademarks.

Another major problem Western nations face is "trademark squatting."[163] This "occurs when an individual registers a trademark only to either sell the trademark registration to its true owner for an exorbitant price, or to utilize the trademark to confuse the customers as to the identity of the pirate's product or service."[164] Thus, the power to contest a trademark becomes vital to its original owners.[165]

Considering the extensive measures China has taken and the drastic changes made to its legal system, "it would seem that China has risen to match the Western [IP] standards of protection."[166] However, the laws in place appear merely as paper promises, as their actual enforcement is weak and in some cases, non-existent.[167] "Rampant infringement of [IPR] persist . . . because of [the lack of] legal redresses."[168] Although the desirable laws have been employed, "[t]he actual fulfillment of the written criminality of trademark infringement in China has yet to be fully implemented through enforcement measures."[169] The lack of protection of IP rights is still identified as a major challenge to conducting its business in China.[170] And such regulatory impediments fuels distrust between in a relationship that was intended to foster progress.[171]

In recent decades, "the Chinese government completed highly publicized raids on factories and shipments leaving the border."[172] However, these high-profile initiatives are not standard methods for combating IP infringement; they are merely operational as "publicity stunts to appease the international community for short periods of

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Consequences and Responses, 18 LAW & POL'Y IN INT'L BUS. 145, 146 (1986) ("Gray-market imports tend to be brands with reputations for high quality, and include a wide range of products . . . .").

163. Hill, *supra* note 104, at 287.

164. *Id.* at 287-88. Often, companies will disregard a trademark squatter's "request for large sums of money," however, then they acquire the risk of having their "goods seized" or being sued for infringement because the squatter's registrations gives them "the ability to use, stop others' use, sue for infringement, and ban the export of goods using the mark." *Id.* at 288.

165. *Id.* at 287.

166. Shane, *supra* note 102, at 146.

167. *See id.*

168. Creer, *supra* note 147, at 219.

169. *See* Shane, *supra* note 102, at 147.

170. Creer, *supra* note 147, at 221.

171. *See, e.g.*, *id.* ("In 1995, the United States Trade Representative (USTR) threatened China with sanctions . . . .").

172. Shane, *supra* note 102, at 147.

time."[173] The lack of enforcement has become evident. Although China continues to be a breeding ground for trademark infringement, between 2006 and 2007, criminal IP cases dropped by 35%.[174]

B. The Mission for Harmony and Divergent Values

The emergence of a global marketplace was acknowledged prior to the Paris Convention;[175] however, the converging commonalities of the world have only recently been characterized.[176] The word "globalization" is accredited to Theodore Levitt and his 1983 *Harvard Business Review* article, *The Globalization of Markets*.[177] Although Levitt's work is undeniably significant, his visions and predictions for the globalized world were made with wide-eyed naiveté.

The positions Levitt took and the propositions he made are comparable to WIPO's mission, and the current state of unworkable affairs. To Levitt, the global marketplace was there for the taking by the "global corporation."[178] He saw foreign consumers as being malleable to the corporations' views.[179] He asserted that foreign markets could be conquered with "efficiency in production, distribution, marketing, and management, and . . . price."[180]

Essentially, Levitt believed that the same strategies that garnered success at home could seamlessly be carried over to other countries, and the foreign consumers would readily mold themselves to fit the corporation's intended audience for the specific good.[181] He stated: "Ancient differences in national tastes or modes of doing business disappear," and "[t]he commonality of preferences leads inescapably to the standardization of products, manufacturing, and

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173. *Id.* ("Year after year, these raids and promises are usually only conducted when international pressures reach their boiling point and threaten stronger action.").

174. *Id.* at 148.

175. *See supra* Part II.A.

176. *See* Theodore Levitt, *The Globalization of Markets*, 61 HARV. BUS. REV. 92, 92 (1983); *see also* WORLD TRADE REPORT, *supra* note 13, at 15 ("[G]lobalization is not a new phenomenon . . . .")

177. Levitt uniformly affixed "globalization" to characterize the numerous aspects of past, present, and future worldwide integration and change. Levitt, *supra* note 174; *see* Barnaby Feder, *Theodore Levitt, 81; Coined the Term 'Globalization,'* N.Y. TIMES, July 6, 2006, at B7. ("[Technology] has proletarianized communication, transport, and travel."); *Corrections*, N.Y. TIMES, July 11, 2006, at A2 (stating that the term was used "as early as 1944.").

178. *See* Levitt, *supra* note 174, at 92-93.

179. *See id.* at 93.

180. *See id.* at 93-94.

181. *Id.* at 94 ("The most effective world competitors incorporate superior quality and reliability into their cost structures. They sell in all national markets the same kind of products sold at home or in their largest export market. They compete on the basis of appropriate value-the best combinations of price, quality, reliability, and delivery for products that are globally identical with respect to design, function, and even fashion.").

the institutions of trade and commerce."[182]

The world has indeed become a "global market," as Levitt anticipated, but contrary to his optimistic predictions, the relationships between nations today demonstrate that this message cannot be standardized.[183] Similarly, WIPO's treaties which may appear viable on paper to Western eyes, fail in execution in divergent nations like China. "The underlying assumption behind the creation of WIPO . . . generally was that [IP] should be universally protected."[184] But in its efforts to provide "universal protection," WIPO's solution was to enact universally applicable protective regimes. However, merely because countries agree to abide by its treaties does not entail that the objectives will come into fruition. In its efforts to achieve global harmony, WIPO's treaties have led to regulatory gluttony on an international scale.

The futility of WIPO's efforts is best assessed under its own mission statement: "to promote through international cooperation the creation, dissemination, use and protection of the human spirit for the economic, cultural and social progress of all mankind."[185] The reasons why China's enforcement efforts have been unsuccessful are exactly because its "economic, cultural, and social progress" do not allow for "international cooperation." This does not mean that China is explicitly resistant to WIPO treaties, rather, the Chinese people are almost incapable of accepting and allowing for these changes. Contrary to WIPO's administration, taking into account "China's historical development is invaluable to understanding the country's modern views of [IPR]."[186]

1. Economic, Cultural, and Social Considerations

China's delay in assuming legal responsibilities for the evident needs for protection is largely attributable to the severe "clash between [its] traditional culture and societal modernization."[187] This resistance to change and innovation is primarily a result of centuries of consistent cultural teachings, a patriarchal and hierarchal social order, an interdependent economy, and a disassociation with the rest of the world.[188] As a result of these multidimensional factors, there has been

182. *Id*. at 93.

183. *See* MARSHALL MCLUHAN, UNDERSTANDING MEDIA: THE EXTENSIONS OF MAN (McGraw-Hill Book Co. 1964).

184. Halbert, *supra* note 58, at 260.

185. WIPO HANDBOOK, *supra* note 8, at 5.

186. Shane, *supra* note 102, at 140.

187. Liwei Wang, *The Chinese Traditions Inimical to the Patent Law,* 14 N.W. J. INT'L L. & BUS. 15, 15 (1993); *see* Hoover, *supra* note 72, at 343 ("Indeed, cultural factors may explain the poor progress of trademark protection in China despite the implementation of new trademark and intellectual property laws.").

188. *See* Matthew A. Marcucci, *Navigating Unfamiliar Terrain: Reconciling*

a natural and common disregard for IPR in China throughout its history.[189] As such, China's ingrained traditional knowledge continues to pose numerous difficulties.[190]

The adoption of trademark laws to protect its owners were not enacted in response to the need of the Chinese people to have their rights protected. Instead, it was triggered by the constant pressure and frustration from the U.S. (and other Western nations) for the Chinese government to protect the IP interests of their nationals who were eager to bring their business to China.[191] Thus, the notion of trademark protection, and IP rights in general—are to some extent—foreign to the Chinese community, where individual rights and private property have been overpowered by economic interests. Accordingly, the concept of "owning" intangible property is incomprehensible to many Chinese people.[192]

The foundations of law and government in China originate from the period of imperial China, which existed from 221 B.C. until 1911.[193] During this vast time period, "neither a formal nor an informal . . . form[] of [IP] law" existed.[194] There are two fundamental differences between the legal traditions of China and the West. First, unlike the West, the social order in China was not governed by positive law which was man-made and obliged action.[195] Second, Chinese law was not envisioned as a system consisting of "civil and criminal categories."[196] Instead, "family and guild leaders and the heads of villages" were the enforcers of local customs.[197] Thus, matters that would have been resolved under the civil law in the West were instead handled by "these local authority figures, while the positive law that did exist assumed a secondary status to custom."[198]

The nature of China's legal culture was profoundly shaped by its

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Conflicting Impressions of China's Intellectual Property Regime in an Effort to Aid Foreign Right Holders, 23 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 1395, 1400-07 (2013).

189. *See id.*

190. WIPO defines "traditional knowledge" in broad terms; it includes: "traditional and tradition based literary, artistic, and scientific works; performances, inventions, scientific discoveries, deigns; marks, names, and symbols; undisclosed information, and all other innovations and creations resulting from intellectual activity in the industrial, scientific, literary, or artistic fields." DINWOODIE & JANIS, *supra* note 27, at 12.

191. *See supra* Part III.B.2.

192. *Id.* at 219 ("Intellectual property is something that the Chinese do not generally recognize.").

193. WILLIAM P. ALFORD, TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION 9 (1995).

194. *Id.*

195. Marcucci, *supra* note 188, at 1401.

196. *Id.*

197. *Id.*

198. *Id.*

Confucian heritage.[199] Under the Confucian philosophical framework, "morality and ritual" are looked to for guidance on human conduct, and it "holds that 'a formal legal system serves only to make people litigious and self-interested.'"[200] The traditional views that individual desires are inferior to the group's well-being and positive law is secondary to custom remains in Chinese culture today.[201] Moreover, "many . . . feel that the law should be employed 'only as a last resort.'"[202]

As previously discussed, China's economic reformation occurred very swiftly and recently in 1979.[203] In less than a decade following these extensive changes, China "draft[ed] major [IP] laws and subsequently established the [IPR system]."[204] During this short period of time, centuries old values and traditions became slighted, and "[d]espite China's efforts to strengthen its [IP] protection regime, [IP] infringement has risen to an all-time high."[205]

China's social state is arguably the greatest obstacle met by Western nations in its attempts to utilize its trademarks within this still developing country. Trapped between tradition and Western norms, Chinese consumers have become resistant to the IPR systems also because they view it as preventing them from enjoying cultural luxuries.[206] From their perspective, the regulations make most cultural products (e.g., movies, visual games, songs, etc.) unaffordable to them because of the high fees foreign owners are made to pay.[207] China does not necessarily endorse nor promote these societal hindrances; nevertheless, it is the state this country has come to be and it must be accepted by the U.S. (and all foreign nations) as what it has made it to be.[208]

2. Obligatory Laws and a Resistance to Change

Considering the vast differences between Chinese and U.S. perceptions of law and property, "Western countries' [initial] insistence on China's [IPR] protection was largely unexpected by the Chinese government."[209] In fact, the passage of China's IP laws have been viewed "as a mere reaction to external pressures, particularly

199. *Id.* at 1402. ("Confucianism itself became the official subject of study for those seeking careers in the imperial governmental bureaucracy . . . .").

200. *Id.* at 1406. (citation omitted).

201. *Id.*

202. *Id.* (citation omitted).

203. *See supra* Part II.B.

204. Xue, *supra* note 75, at 297.

205. Birden, *supra* note 72, at 486.

206. Xue, *supra* note 75, at 299.

207. Xue, *supra* note 75, at 299-300.

208. *Id.* at 301-02.

209. *Id.* at 294.

from the United States, demanding that China strengthen its [IP] regime to conform more closely to international practice as a pre-condition to full participation in international trade regimes."[210] Thus, China's IP laws have been more of an imposition on its people rather than a source of protection of their natural rights. [211]

> The continued pressures by developed nations on developing countries may be easily done on paper, but it leaves the latter scrabbling to meet Western standards imposed on completely different cultures and systems. The Western world expects developing nations to adopt a law, based literally on foreign concepts, and enforce it among millions of people who are grown from a completely different culture, all within a relatively short amount of time.[212]

Notably, the current Trademark Law of the PRC and its accompanying Implementing Regulations were a means to bring Chinese law into compliance with international standards.[213] In succumbing to external pressures that rest on WIPO's laurels, the needs of its own people are not being addressed and the pursuit of harmony has only resulted in dissonance.

C. Growing Criticisms

By removing WIPO's rose-colored glasses, it is alarming—and not harmonious—to see the mounting regulations since the Paris Convention. WIPO's predecessor, BIRPI, administered only four international treaties.[214] Today, WIPO administers twenty-six treaties. WIPO appears to boast these figures as notable achievements; however, the number of treaties it has come to enact is a matter for concern if the real life implications are actually acknowledged.

The futility of WIPO's existence has not gone unnoticed and there have been arguments for WIPO to reform the administration of its mission. In fact, it "has become the center of several debates whose trajectories could undermine the manner in which WIPO has traditionally pursued its mission."[215] In 2006, the Consumer Project on Technology produced the "Geneva Declaration on the Future of the World Intellectual Property Organization."[216] In this declaration, the organization requests "a substantive transformation in the way WIPO

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210. Michael N. Schlesinger, *A Sleeping Giant Awakens: The Development of Intellectual Property Law in China*, 9 J. CHINESE L. 93, 93 (1995).

211. Hoover, *supra* note 83, at 325.

212. Shane, *supra* note 102, at 146.

213. *Id.*

214. *WIPO History*, *supra* note 35.

215. Halbert, *supra* note 58, at 254.

216. *Id.* at 273-74.

proceeds regarding [IP] issues."[217] It states:

> We do not ask that WIPO abandon efforts to promote the appropriate protection of intellectual property, or abandon all efforts to harmonize or improve these laws. But we insist that WIPO work from the broader framework described in the 1974 agreement with the U.N., and take a more balanced and realistic view of the social benefits and costs of intellectual property rights as a tool, but not the only tool, for supporting creative intellectual activity.[218]

Developing countries, civil society groups, and indigenous communities are all urging WIPO to create a new pathway to understanding IPR into the future.[219] The existing "web of [IP] treaties has made it even more challenging for developing countries to reform their systems and meet the growing demands imposed by developed countries with already established IPR systems."[220]

V. THE OUROBOROS EFFECT

Globalization and the development of international economic relationships provide an unmistakable example of the capriciousness of the demands for legal IP protection. And WIPO's continuous enactment of new treaties and regulations are reflective of its efforts "to adapt to [the] considerably chang[ing] world."[221] The rise of digital technology, the establishment of the WTO, and a growing comprehension of the importance of managing IP issues have made WIPO's mission for global harmony all the more appealing.[222] Nonetheless, the same changes that have made its purpose more desirable have also made its goals impossible to achieve.

WIPO's perception of a feasible IPR system remains detached from the globalized world. Its foundational treaties, the Paris and Berne Conventions, have not been revised since 1967 and 1971, respectfully.[223] Thus, for nearly fifty-years, "no substantive improvement in the norms of [IP] in WIPO" has been made, even with obvious criticism "that technological developments warranted its revision."[224] In its inability to maintain a steady pace with

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217. *Id.* at 274-75 (stating that the document was "signed by hundreds of individuals and organizations.").

218. *Id.* at 274; *see Geneva Declaration on the Future of the World Intellectual Property Organization*, CONSUMER PROJECT ON TECHNOLOGY *available at* http://www.cptech.org/ip/wipo/futureofwipodeclaration.pdf (last visited Mar. 13, 2006).

219. Halbert, *supra* note 58, at 283 ("After over thirty years of existence, it cannot be said that intellectual property laws have made developing countries better off, and in fact, it can be argued that the plight of the developing work is as bad, if not worse, today than it was thirty years ago.").

220. Shane, *supra* note 102, at 142-43 (citation omitted).

221. Halbert, *supra* note 58, at 253.

222. *See id.*

223. Salmon, *supra* note 57, at 433.

224. *Id.*

globalization, WIPO's regime has become outdated. Other outlets for protection arose to address the actual needs of nations, and in turn WIPO's existence today has arguably become obsolete.

A. The Economic Legal System and Developing Nations

WIPO's endorsement and facilitation of global harmonization has been blindly made without regard to existing national laws; without consideration of a country's motives in becoming a member to a treaty; and without concern for individualized consequences incurred by a country by way of its treaty memberships.[225] Globalization at the brink of the Paris Convention pales in comparison to the magnitude of what globalization is today.

China is one amongst many nations whose legal progress has experienced drastic changes due to a growing economy. It is just one illustration of a "developing" country that was considered almost "third-world" in recent years that is now closing the gap between it and Western powers. However, a major cause of concern is that its legal systems cannot keep up with its monetary growth. To appease Western nations, it is forced to adopt laws that its country is not ready for, and thus, will naturally be resisted.

When developing nations gain membership to treaties like the Paris Convention, there is an underlying belief that this step will facilitate harmony; on the contrary, the differences between it and established Western members become all the more apparent. For example, the U.S. "has valued the rights of [IP] owners and their individual freedom for more than two-hundred years." Comparatively, "China only recognized IPR during the last twenty-years" and "China passed its [IP] laws before it developed a sense of [IP] rights among its nationals."[226]

As previously provided, WIPO's mission statement is: "to promote through international cooperation the creation, dissemination, use and protection of works of the human spirit for the economic, cultural and social progress of all mankind."[227] The explicit intention is to aid in the "progress" of a country's "economy, culture, and society." Nonetheless, "[t]raditional knowledge, much like development itself, has long been a concern of member states associated with WIPO."[228]

"Harmony" itself is "[t]he quality of forming a pleasing and

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225. *See* Harriet R. Freeman, *Reshaping Trademark Protection in Today's Global Village: Looking Beyond GATT's Uruguay Round Toward Global Trademark Harmonization and Centralization*, 1 ILSA J. INT'L & COMP. L. 67, 72 (1995) ("[T]his Article focuses only on global harmonization and centralization, and it does not discuss the enforcement of trademark laws or other problems of domestic and international trademark protection.").

226. Hoover, *supra* note 83, at 349.

227. WIPO Handbook, *supra* note 8.

228. Halbert, *supra* note 58, at 276.

consistent whole."[229] It is undeniable that through globalization, the world has become deeply interconnected to the extent that it can now signify a combined "whole." But it is the individualized complexity of the fragments of this "whole" that negates the possibility of its existence as being "pleasing" or "consistent."

China is the epitome of an "emerging market,"[230] and the mounting issues associated with this nation on the verge contradicts any chances of harmonization as an achievable feat. The meteoric rise of China's profitability has caused a wide range of issues within this country that make providing even adequate foreign protection further unattainable.

A key difference between 1883 (when the Paris Convention was enacted) and today, is the development of a legal system that is largely based on a growing economy. "At no other time in economic history have countries been more economically interdependent than they are today."[231] The principles of trademark protection under WIPO (i.e., the Paris Convention) that remain today were instituted during a time of national sovereignty, regardless of the intent of the signatory nations to facilitate global harmony. Since then, it has become "increasingly evident that utilitarianism fails as a comprehensive theory of [IP]."[232]

The appeal of an economic legal system is evident in the outcomes of the TRIPS Agreement, which is administered by the WTO. TRIPS "incorporated as its basis . . . the Paris and Berne Conventions."[233] Subsequently, "[t]he Berne Convention membership jumped from 84 in 1990 to 146 in 2000," and "the Paris Convention has gone from 100 to over" 160 today.[234]

B. The World Trade Organization: A Pragmatic Approach

Nations are looking for guidance and answers from different forums because of WIPO's ineptitude and failures, and it appears that its role as a guiding light for international IPR has long been burnt out. WIPO's idealism has been displaced by a more pragmatic economic legal system, and there does not appear to be a place for a moral custodian of IPR in a world where economics have come to control the development and implementation of laws.

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229. *Harmony*, OXFORD DICTIONARIES, http://www.oxforddictionaries.com/us/definition/american_english/harmony (last visited Mar. 21, 2015).

230. *See* Creer, *supra* note 147, at 218-222.

231. Kotabe, *supra* note 46, at 1.

232. Madhavi Sunder, *IP3*, 59 STAN. L. REV. 257, 283 (2006).

233. Salmon, *supra* note 57, at 434.

234. *Id*.

1.Reconciliation with the Global Marketplace

The dominance of the economic legal system in the twenty-first century is illustrated by China's affiliation with the WTO.

> [T]he economic legal system was built with a focus on globalization. In particular, emphasis was placed on making domestic laws conform with international rules in the period immediately preceding and following China's accession to the World Trade Organization (WTO). For example, in order to join the WTO, China adopted, revised and abolished a large number of laws, administrative regulations, rules and other legal documents that were not in accordance with WTO rules and various other international obligations that the country had undertaken.[235]

Also included in the WTO's protective provisions are systems to handle domestic procedures for the enforcement of trademark rights.[236] In this context, WIPO's flawed mission "is part of the reason why [IP] moved to the WTO."[237] Its means to promote the global protection of IPR was to be "through cooperation among states," yet it provides no formal enforcement method or dispute resolution system.[238] "It is only through *moral persuasion* in the General Assembly of WIPO that pressure is exerted on members to implement their treaty obligations."[239] As a result, this "led some developed countries to push for discussion on [IP] in the WTO," rather than addressing these issues with WIPO.[240] In comparison, the WTO offers a "dispute settlement process" which allows it to "address IP enforcement disputes on a broader, macroscopic level through government policy-makers."[241]

2.Cooperation Rather Than Submission

The TRIPS Agreement under the WTO is considered "the most comprehensive international [IP] treaty to date, introducing minimum standards for protection and enforcement of all forms of [IP] in developed and developing countries."[242] A key reason for its wide acceptance is that in "spelling out the protection and objectives aspects of trademark law in detail, [it] left each country's choice of enforcement measures open to member state interpretation and creation."[243] In

235. Su, *supra* note 34, at 125.

236. *Id.*

237. Salmon, *supra* note 57, at 432.

238. WIPO HANDBOOK, *supra* note 8, at 241; *see* Salmon, *supra* note 57, at 432.

239. Salmon, *supra* note 57, at 432 (emphasis added).

240. *Id.*

241. Vicki E. Allums, *Enforcing IP in the Age of Globalization: Issues, Challenges, and Trends for the International IP Community and the Practicing Attorney*, ASPATORE, 2009, at 8, *available at* 2009 WL 533086.

242. Shane, *supra* note 101, at 141.

243. *Id.* at 146.

implementing TRIPS, discretion was left to the member countries because of known, and understood, difficulties of gaining "a consensus among nations in adoption of a specific enforcement approach."[244] Under this realistic outlook adopted under TRIPS, only included were:

> general enforcement obligations, such as requiring members to ensure enforcement procedures are created and applied, in a fair and equitable manner, with judicial authority to review and impose injunctions or order payment of damages. Beyond this, each member established its own detailed enforcement mechanisms, suited for that country's particular government and social system.[245]

The strides China has made in a few short decades should not be met by mere acknowledgement and enjoyment of benefits by the West, as it has been under WIPO.

> [Western nations] should become versed in both Chinese law and culture, and able to identify, investigate, and evaluate evidence of infringement, identify responsible individuals, interview witnesses, liaise with the foreign lawyers . . . arbitrate with Chinese entrepreneurs, liaise more effectively with licensees, distributors . . . and other Chinese [IP] professionals to prepare and file effective complaints, and monitor infringement activity.[246]

Western nations should extend its own diplomacy to seam its interests in a co-dependent relationship of respect.[247] In conducting domestic business, "political and legal forces" are taken for granted; however, these "become central issues in international business and cannot be ignored."[248]

C. An Outlook on International Trademark Rights

In identifying a solution, the philosopher Ludwig Wittegenstein's concept of "language games" may provide guidance.[249] His theory focuses on the character of language, not a static meaning of combined words. In turn, Wittgenstein looks "to the conventional nature of . . . human activity," to find the implications of language, and rejects "strict and definite systems of rules."[250] By applying Wittgenstein's malleable, and society-specific conception, WIPO's cooperative ideals

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244. *Id.*

245. *Id.*

246. Birden, *supra* note 72, at 490-91.

247. "The U.S. government, while praising the continued progress China has made in improving IP protection, continues to list China on the Priority Watch List, a list which identifies countries that do not offer adequate levels of intellectual property . . . protection." Greene, *supra* note 91, at 372.

248. Kotabe, *supra* note 46, at 16.

249. LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS (G.E.M. Anscombe trans., 1953).

250. *Ludwig Wittgenstein*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Mar. 3, 2014), http://plato.stanford.edu/entries/wittgenstein/#Lan.

are clearly impossible to achieve. And "trends demonstrate the dismantling of administrative, procedural, and technical requirements that so complicate trademark practice for those who choose to embark on an international trademark launch in other countries."[251]

There is no doubt that dismantling WIPO would be an arduous task; and removing it from the global IPR regime would affect not just the U.S. and China, but the hundreds of other nations that are parties to its numerous treaties. The ramifications of the sweeping argument proposed in this Note have not gone unnoticed. However, this defense of WIPO appears trapped in a perpetual ouroboros effect. The rationale for WIPO's existence only subsists through the enactment of more and more treaties. In this endless process to justify harmonization, the real world only experiences conflict: with each new enacted treaty, there is a new group of countries with added regulatory obligations in addition to its numerous other responsibilities to a different assembly of nations under other WIPO administered treaties. In comparison, the options under the WTO, which was intended to be conducive to a global market and an economic legal system, provides more freedom for growth for developing nations and methods for cooperation for the developed countries.

VI. CONCLUSION

WIPO is rooted in the Paris Convention, which launched a movement to attain global harmonization of IPR by centralizing regulatory systems.[252] However, a concept as utopian as world-wide harmony is irreconcilable with this divergent world. Achieving this goal has proven to be impossible, and the efforts to maintain such an ideological goal have convoluted the international regulatory scheme.[253] These well-intended acts have generated discord amongst nations and prevented the original goal of the Convention: clear and dependable protection of IPR within foreign nations.[254]

In 1883, the efforts of the Paris Union were prudent and valid; however, the world the Convention was drafted for is vastly different from the world it has come to apply to and preside over. The depth of integration amongst the international network of nations could not have been predicted, nor anticipated. The same year the Convention was signed, the first telephone call between New York and Chicago was made,[255] the Brooklyn Bridge was opened,[256] and the U.S.

251. Marshall A. Leaffer, *The New World of International Trademark Law*, 2 MARQ. INTELL. PROP. L. REV. 1, 8 (1998).

252. *See supra* Part II.A.1.

253. See *supra* Part III.A.

254. See *supra* Part III.B.

255. *The New Postal Telegraph: The Company Nearly Ready to Open Its Line to Chicago*, N.Y. TIMES, Apr. 30, 1883, at 1.

256. *The Opening of the Bridge*, N.Y. TIMES, May 25, 1883, at 4.

connected with Brazil for the first time via telegraph.[257] Since these nineteenth-century "revolutions," personal cell phones have become the norm throughout the world regardless of social status[258] or location;[259] mobile messaging applications have enabled "hundreds of millions of users" to send up to "18 billion messages a day;"[260] and translation software has facilitated international trade by eliminated language barriers.[261]

The Convention's foundational principles remain today, even through multiple revisions and an amendment; all the while, its membership has expanded exponentially and includes 175 nations today.[262] Additional treaties have been enacted to keep up with the emerging needs, stemming from further innovations and integration.[263] Nonetheless, as the term "unprecedented" naturally entails, the recognition of pertinent issues and thus, the construction of necessary regulations have trailed far behind the actual needs for protection. By the time one problem is identified, and a solution is discussed, agreed upon, and enacted, other concerns have arisen that render that new solution futile. Trapped in an ouroboros effect, the only escape is to recoil.

257. *The Telegraph Line to Brazil: President Arthur Salutes the Emperor*, N.Y. TIMES Sept. 21, 1883, at 5.

258. *See* Radhika Marya, *Cellphones are now essentials for the poor* (Sept. 14, 2013, 9:19 AM), http://www.usatoday.com/story/money/personalfinance/2013/09/14/cellphones-for-poor-people/2805735/ ("Once considered a luxury, the cellphone has become one of the most popular communication technologies in the world.").

259. *See* Paul Salopek, *To Walk the World*, NAT'L GEOGRAPHIC, Dec. 2013, at 125, *available at* http://ngm.nationalgeographic.com/print/2013/12/out-of-eden/salopek-text.

260. Jessica Guynn, *The war for mobile messaging is on*, L.A. TIMES, May 11, 2013, http://articles.latimes.com/print/2013/may/11/business/la-fi-mobile-messaging-20130512.

261. *See* Bill Keller, Op-Ed, *It's the Golden Age of News*, N.Y. TIMES, Nov. 3, 2013, at A25, *available at* http://www.nytimes.com/2013/11/04/opinion/keller-its-the-golden-age-of-news.html?_r=0&pagewanted=print.

262. *See WIPO-Administered Treaties*, *supra* note 59.

263. *See id.*