

# China visits the Library of Congress

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Articles like this C—net article<sup>1</sup> take as given that China’s prevalent copying of works copyrighted in the U.S.A. is an evil that has to be stamped out; it’s just a question of how. I’m not particularly happy about rampant copying either, but it’s not as blatantly obvious an argument as such articles make it out to be.

**Ethics** First, the ethical argument: people deserve to not have their stuff copied. If I’m the author of a work, then I should have the right to control how that work is reproduced.

This ethical argument is supremely modern. First, it didn’t even make sense before the printing press—and not just Gutenberg’s 1450 movable-type invention, but the printing press that was so common that Earthly authors could have their works reproduced, around the 1600s. In the law, it’s at most 300 years old, and British authors have had the right to not be copied by US publishers for only 130 years.

By the way, when I say ‘author’, I mean publisher, because it is virtually impossible to get a nonfiction book published here in the U.S.A. without handing your copy rights to the author (which you can verify on the copyright page of the nonfiction titles on your desk now). As for a movie, it is the production studio, not the director or lead actors, that holds the copyright. That ethical right for Andre 3000 to not have his likeness used to shill Happy Meals? My right to not be quoted out of context? Signed away a long time ago. I’ve commented on this before, but once you put your work into the public sphere, your ability to control that work is limited, even with copyrights.

There are some weird laws here and there, like how visual artists have the right “to prevent any destruction of a work of recognized stature” (17 U.S.C. 106.3(b)), but the bulk of copyright law is not about artists controlling what is done with their work after it leaves the studio but about the accountants controlling profits derived therefrom. There’s a bit of a conflict here between artists and accountants, because a not-trivial number of artists care more about having their name spammed the world over than about profits. If there’s a press somewhere in China counterfeiting copies of my book and distributing it to everybody with fifty cents to spare, I will be absolutely tickled, while my publisher will be taking every available avenue to shut the thing down.

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<sup>1</sup>[http://news.com.com/The+copyright+challenge+in+China/2100-7348\\_3-5867480.html](http://news.com.com/The+copyright+challenge+in+China/2100-7348_3-5867480.html)

**Buying China's compliance** So why does the Chinese government want to send its police out to enforce a copyright on file with the U.S. Library of Congress? The short answer: it doesn't. China's governors realize that, as above, copyright is not an ethical issue, and that to enforce copyright is to work for accountants somewhere in L.A., Nashville, or Seattle.

Then the negotiations kick in. "We'll give you a favorable price on grain that saves you 200 billion dollars, and in exchange, you enforce your IP laws, thus sending 200 billion back to the U.S.A.," the trade negotiators explain. Do not presume that the negotiators for the Chinese government are so naïve as to think that TRIPs are in any way an ethical issue, or that they will allow more money to flow out of China than flows in. Bilateral negotiations will ensure that the present value of what is taken about equals what is given back. [That \$200 billion figure is from the C—net article above, citing the U.S. Trade Representative. The figure is almost certainly exaggerated.]

The key question, then, is whether these negotiations are really desirable for us in the U.S.A. They would be a \$200 billion dollar subsidy to the movie, music, and software industries, in the purest sense of the word: \$200 billion that would have been earned by other industries will no longer be collected, and the media people will collect that money instead. Spin generally focuses on the positive side: we all want our starving artists paid and better movies and music. But intellectual property laws don't produce value where there was none before, but merely reallocate, meaning that we will have less from whatever other unspecified industry loses in the negotiations.

Further, let us not forget that if TRIP negotiations like the above don't go through, then we will not suddenly be in an entertainmentless world, but will simply be at the status quo. Movies will be made, bands will record albums, and Microsoft will keep churning out software. These industries have managed to make a profit based entirely on those markets that already recognize U.S. copyrights. There is a sunny future where they are making still more films and albums, but it is not a for-free future. It is one where costs are borne by other U.S. industries that will dwindle as the entertainment industry profits.

Summary paragraph: the debate over enforcing U.S. copyrights in developing countries is not an ethical issue; if it were it would be about the rights of artists, not the rights of agents and money-minders as the actual debate is framed. Nor is it money that will be handed to the U.S.A. by grateful Chinese citizens. Instead, it will be in the form of a subsidy, as other U.S. industries lose to approximately the same extent that the media industries gain.