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Manufacturing "Culture": The Promotion of Intellectual Property Rights in China

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This research examines China's persistent effort to promote intellectual property rights (IPR) since the 1980s. Laws of intellectual property were among the first batch of legislations in China's market reform. Since the mid-1980s, the state propaganda apparatus launched nationwide campaigns in five-year cycles to "educate" Chinese people on the Party's new market-oriented law and policy, including laws of IPR. When intellectual property became core state policy in the 2000s, new initiatives emerged under law promotion campaigns to "raise awareness" of intellectual property. Starting the late 2000s, the promotion of IPR became stand-alone endeavors devoted to an innovation-friendly "culture" of intellectual property that facilitated compliance with the law and promoted industrial growth in cultural and media sectors.

The notion of "IPR culture" played a key role in governmental promotion endeavors after China developed its national IPR strategy in the mid-2000s. In official discourse, "IPR culture" is instrumental and serves to shape mind-sets and regulate behaviors. It seeks to extensively use the Leninist media system to impose top-down pre-packaged understanding of intellectual property. China's intellectual property propaganda campaigns are part of the state's efforts to legitimate and facilitate the market-oriented reform. Since the late 1970s, the market reform proceeded side-by-side with ruthless repression of bottom-up resistance. IPR stood out in the state's reform scheme at a time when China's (re)insertion into global capitalist political economy took place concurrently with communication industries playing a key role to propel growth and IPR systems serving as the cornerstone for the market. The state-led campaign to engineer a pro-market IPR culture manifests China's adoption of the logic of the global IPR regime, which will only subject China to the hegemonic power of Western IPR discourse and distance the state's cultural project from grassroots dynamics of meaning making.

Keywords: China, intellectual property, propaganda, culture, legal education

Manufacturing “Culture”: The Promotion of Intellectual Property Rights in China

Introduction

Intellectual property rights (IPR) have caused significant tensions between the West and China over the past few decades. Researchers have attributed the problems of IPR in China to a number of reasons, notably the Confucian tradition, Chinese culture, and socialist ideology.¹ This research seeks to contribute to an understanding of those tensions by documenting and examining massive and persistent media and propaganda campaigns to promote IPR in China. I argue that China’s IPR propaganda rose rapidly in influence and status when China embraced intellectual property as a core developmental policy. The ultimate goal is to manufacture an “IPR culture (*zhishi chanquan wenhua*)” that shapes mindsets and affects behaviors through top-down media campaigns that disseminate pro-market ideas. By internalizing the logic of the global IPR regime, the promotion of IPR in China serves to sustain rather than challenge the dominant political economic order in global cultural and informational sectors.

The promotion of IPR in China is noteworthy in many regards. It is part of China’s persistent media and propaganda endeavor to promote state policy and reform agenda. Born out of *pufa* (mass legal education) campaigns, IPR promotional projects are cultural attempts to achieve political economic goals. Meanwhile, IPR as proprietarized control is a cornerstone system that facilitates commodification in cultural and information sectors. Thus, IPR promotional campaigns entail two different interpretations of “culture” simultaneously: they seek to intervene into “culture” as dynamic processes of meaning-making in order to feed “culture” as raw materials to cycles of capital reproduction. In addition, extensive IPR propaganda demonstrates how Leninist propagandist media are

¹ William Alford, *To Steal a Book is an Elegant Offense: Intellectual Property Law in Chinese Civilization* (Stanford: Stanford University Press, 1995); Michel Oksenberg, Pitman B. Potter, and William B. Abnett, “Advancing Intellectual Property Rights: Information Technologies and the Course of Economic Development in China,” *NBR Analysis* 7, no. 4 (1996): 1-35.

employed to promote pro-market ideas. The counterintuitive combination of media structures born out of China's anti-capitalist past and current media messages used to promote an IPR system that recognizes only "knowledge to be used and applied in an endless chain of commodification"² gives rise to tensions and conflicts in IPR propaganda. Last but not the least, IPR in China, as well as in major Western countries, is not just about cultural and information sectors, but is at the core of national development and economic growth. The implications of the cultural work of IPR reach wide and deep into the contemporary global political economy.

This article first provides a brief account of China's persistent efforts to educate its population on the legal system by means of *pufa* campaigns. It then discusses the Chinese state's adoption of IPR as a core developmental policy and the intensified promotion and propaganda activities that resulted. The next sections analyze the content and context of "IPR culture" and the conflicts in the cultural work of intellectual property. The conclusion argues that China's IPR cultural project may in effect run against the developmental goal that the state envisions.

Mass legal education in contemporary China

The late 1970s witnessed profound changes in Chinese society, politics, and economy. New party and state leadership under Deng Xiaoping launched a series of market-oriented policies that significantly differed from previous decades. The notion of "rule of law" became prominent during the reform era, and a new legal system was built up as part of the new governance structure. The party propaganda apparatus became the propagator of reform initiatives and launched massive campaigns to educate the Chinese population on the new legal order.

In contrast to the successive mass movements that had taken place in previous decades, the new leadership in China sought to maintain a stable political and social order. The Market Reform was prefaced by the repression of grassroots political challenges in the late 1970s, notably the "Xidan Democracy Wall (*Xidan minzhu qiang*)" in Beijing. The notion of "socialist democracy" in the

² Laikwan Pang, *Creativity and Its Discontents: China's Creative Industries and Intellectual Property Rights Offenses* (Durham: Duke University Press, 2012), 225.

reform era emphasized not bottom-up political participation, but stabilization of the state bureaucracy.³ Lawmaking in the late 1970s catered to political agendas by crafting the Criminal Law and the Criminal Procedural Law in the first batch of legislation in the reform era. Promulgated together in 1978, they served to protect the political and social orders by reinstating the sole authority of state organs in the political and public sphere.

Another aspect of legal development was the creation of laws to serve market and economic activities. Under the centrally-planned economy in the Maoist era, issues of private proprietorship, economic contracts, industrial investment, and intellectual property had been insignificant or were handled as political and public matters through governmental channels. The development of legal instruments to regulate the market was an urgent and important item on the reformers' agenda. To be sure, this was not an easy task. In the face of political and social resistance, as well as conflicts between bureaucratic agencies and interests, some key statutes including the Property Law had to wait until the late 2000s. Nevertheless, reformers managed to enact a number of market-serving statutes in the late 1970s and early 1980s. These include the China-Foreign Joint Venture Enterprise Law in 1979, the Economic Contract Law in 1981, and the Trademark Law in 1982, all of which predated the 1982 Constitution that set the politico-legal framework for contemporary China.

With a number of new laws and regulations in place, propagation for a new “socialist legal system” gradually gained momentum. As Deng Xiaoping once put it: “What is important to the strengthening of the legal system is education. The fundamental issue is about educating people.”⁴ Routine legal education started in the late 1970s,⁵ and became institutionalized and coordinated nation-wide during the mid-1980s.⁶ In 1986, the first five-year *pufa* program was set in motion.

³ Maurice Meisner, *Mao's China and After: A History of the People's Republic* (New York: Free Press, 1999).

⁴ Deng Xiaoping, quoted in “China's Top Legislator Calls for ‘Upsurge in Propaganda’ on Legal System,” *BBC Monitoring Asia Pacific - Political Supplied by BBC Worldwide Monitoring*, April 24, 2011.

⁵ Ronald J. Troyer, “Publicizing the New Laws: The Public Legal Education Campaign,” in *Social Control in the People's Republic of China*, eds. Ronald J. Troyer, John P. Clark, and Dean G. Rojek (New York: Praeger, 1995), 70-83.

⁶ Lina Xia, “Wunian Pufa de Youlai [The Origin of Five Year Pufa Programs],”

Literally meaning to “popularize law,” *pufa* programs were run by the Propaganda Department of the Party and the Ministry of Justice in an effort to educate every Chinese citizen on the legal system. This was a massive endeavor that involved a number of governmental agencies and judicial organs including the court, the procuratorate, as well as the police. *Pufa* campaigns reached widely into state-owned enterprises, schools, the military, as well as the countryside.⁷ According to the Ministry of Justice, more than three hundred million people received legal education during the first year of *pufa* (1986).⁸ During the five-year cycle from 1986 to 1990, about seven hundred million people took part in *pufa* activities.⁹

In the following decades, *pufa* was integrated into China’s five-year plans of national development and was conducted also in five-year cycles. It always involved high-profile propaganda campaigns, in which state-controlled media outlets, including newspapers, television, radio, and later the Internet all devoted spaces to disseminate legal knowledge. Governmental organs and state-owned corporations organized study sessions for their employees, and public activities were held, including public lectures and seminars as well as propaganda booths and tables in the streets. In the 2000s and after, *pufa* continued to play an important role in China’s political and social sphere. In 2001, a notice by the Communist Party’s Central Committee and the State Council called mass legal education “an important legal guarantee for the implementation of the 10th Five-Year Plan.”¹⁰ At the onset of the sixth five-year *pufa* program in 2011, China’s top legislator called for “a new upsurge in propaganda and education on

NPC.gov.cn, 2016, http://www.npc.gov.cn/npc/zgrdzz/2016-05/30/content_1990639.htm.

⁷ Troyer, “Publicizing the New Laws”; Xia, “The Origin.”

⁸ Yu Zou, “Guanyu 1986 Nian Guanche Shishi Quanguo Renda Changweihui Zai Gongmin zhong Jiben Puji Falv Changshi de Jueyi de Qingkuang de Baogao [Report on the Implementation of the NPC Standing Committee's Decision to Popularize Basic Legal Knowledge among Citizens],” *NPC.gov.cn*, 1987, http://www.npc.gov.cn/wxzl/gongbao/2000-12/14/content_5001905.htm.

⁹ Xia, “The Origin.”

¹⁰ “China Issues Notice on Launching Propaganda, Education on Legal System,” *BBC Monitoring Asia Pacific - Political Supplied by BBC Worldwide Monitoring*, May 27, 2001.

legal system.”¹¹

The emphases of *pufa* programs always change alongside party and state policy shifts. The first five-year program starting in 1986 focused on the so-called “ten laws and one regulation (*shi fa yi tiaoli*),” including the Constitution, Criminal Law, Criminal Procedural Law, the General Principles of Civil Law, and the Economic Contract law, all of which are key legal instruments that constituted the policy turn in the reform era.¹² When market reform deepened in the 1990s, the second five-year *pufa* program “centered on economic development (*weirao jingji jianshe zhege zhongxin*)” and focused on legal issues pertaining to “the establishment of the market economy system (*shichang jingji tizhi jianli*).”¹³ After China’s accession to the World Trade Organization (WTO) in 2001, WTO rules and regulations became new priorities in *pufa*.¹⁴ Laws of intellectual property, while part of the first five-year program 1986-1990,¹⁵ stood out only after China’s accession to the WTO and significantly rose in prominence in *pufa* campaigns after China formally adopted IPR as a key developmental strategy.

China’s embrace of intellectual property

Contrary to general assumptions, the Chinese government has paid significant attention to intellectual property since the early 1980s. Key IPR statutes, including the Patent Law, Copyright Law, and Trademark Law, were early on the agenda of Chinese reformers. The Trademark Law and the Patent Law was made in 1982 and 1984, respectively, before the U.S. first expressed IPR concerns to

¹¹ “China’s Top Legislator.”

¹² Troyer, “Publicizing the New Laws”; Xia, “The Origin.”

¹³ Yang Xiao, “Guanyu Dierge Wunian Pufa Guihua Shishi Qingkuang de Baogao [Report on the Implementation of the Second Five-Year Pufa Program],” *NPC.gov.cn*, 1993, http://www.npc.gov.cn/wxzl/gongbao/2000-12/28/content_5003013.htm.

¹⁴ Yishun Xiao, “Jiangqiang Zhishi Chanquan Xuanchuan Nuli Wei Zhishi Chanquan de Chuangzao yu Baohu Fuwu [Strengthen IPR Legal Propaganda to Serve the Creation and Protection of IPR],” in *Zhishi Chanquan yu Gaige Kaifang 30 Nian [IPR and 30 Years of Reform and Opening Up]*, ed. Editorial Board (Beijing: Zhishi Chanquan Chubanshe, 2008), 199-208.

¹⁵ Ibid.

China in 1985.¹⁶ The making of the Copyright Law was also driven by domestic agendas until the late 1980s. The law was on the verge of passage in 1987, but was stalled because of inter-agency disagreements on its impact on educational and research sectors.¹⁷ Upon reentering the legislative pipeline, it collided with intense American pressure that resulted in a Memorandum of Understanding (MOU) between the two countries in May 1989. The Copyright Law was finally promulgated in 1990. It incorporated China's concessions in the 1989 MOU and bore distinct marks of U.S. pressure.¹⁸

Through the 1990s, the U.S. forced China into three IPR agreements through intense trade threats. The U.S. Trade Representative claimed to have had 18 meetings in 11 months with the Chinese government in the mid-1990s, "clearly the most intense set of meetings we have ever had with any country on any trade agreement in American history."¹⁹ U.S. trade threats weakened after China's accession to the WTO in 2001 due to WTO rules, as well as to the fact that China had already established an up-to-date intellectual property system.²⁰ Domestic

¹⁶ Regarding early U.S. communication with China on matters of IPR, See Warren H. Maruyama, "U.S.-China IPR Negotiations: Trade, Intellectual Property and Rule of Law in a Global Economy," in *Chinese Intellectual Property Law and Practice*, eds. Mark A. Cohen, A. Elizabeth Bang, and Stephanie J. Mitchell (Hague: Kluwer Law International, 1999), 165-212; Peter K. Yu, *The Second Coming of Intellectual Property Rights in China* (New York: Benjamin N. Cardozo School of Law, Yeshiva University, 2002).

¹⁷ Dong Han, "How the Copyright Law Was (Not) Made: Intellectual Property and China's Contested Integration with Global Capitalism," *International Journal of Communication* 8, (2014), 1516-1535.

¹⁸ Han, "How the Copyright Law Was (Not) Made"; Mingde Li, *Tebie 301 Tiaokuan yu Zhongmei Zhishi Chanquan Zhengduan [Special 301 and Sino-US Intellectual Property Disputes]* (Beijing: Shehui Kexue Wenxian Chubanshe, 2000).

¹⁹ *The U.S.-China intellectual property rights agreement and related trade issues: Joint hearing before the Subcommittees on International Economic Policy and Trade and Asia and the Pacific of the Committee on International Relations, House of Representatives, and the Subcommittee of East Asian and Pacific Affairs of the Committee on foreign Relations Senate, One Hundred Fourth Congress, second session, March 7, 1996* (Washington D.C.: USGPO, 1997), 7.

²⁰ Peter K. Yu, "TRIPS Enforcement and Developing Countries," *American University International Law Review* 26, (2011), 727-782.

initiatives started to regain control on IPR development. The idea of a national IPR strategy (*guojia zhishi chanquan zhanlue*) began to circulate among Chinese political leaders since the turn of the century. In 2005, formal efforts to draft the strategy kicked off with the establishment of the Leadership Group (*lingdao xiaozu*) for the Making of National IPR Strategy, a high-rank inter-agency organization that enlisted the heads of 28 governmental organs ranging from intellectual property and trade regulators to strategic planners like the Development and Reform Commission.²¹ In 2008, the State Council passed the National IPR Strategy Outline (*guojia zhishi chanquan zhanlue gangyao*) and circulated it all over the country.

The National IPR Strategy Outline (hereinafter “Strategy Outline”) sees intellectual property not as sectorial regulation but as a key component of China’s development and transformation. It argues that “knowledge resources (*zhishi ziyuan*)” are of strategic importance, and that IPR is the “foundational system (*jiben zhidu*).” It further points out that IPR is becoming the “core element (*hexin yaosu*)” of international competition and the key to build a “creative nation (*chuangxinxing guojia*).” Its recognition of IPR’s central role in the national developmental strategy set the tone for policymaking in the following decade. In 2015, two policy documents further elaborated on the importance of IPR. The Several Opinions on Deepening System Reform and Accelerating the Implementation of Creativity-Driven Developmental Strategy, issued by the Communist Party’s Central Committee and the State Council, argued that the creativity-driven strategy is to let the market determine the allocation of resources and provide strict protection of intellectual property. The Several Opinions on Accelerating the Construction of an IPR-Strong Nation, issued by the State Council, aims to create China’s “new IPR advantages (*zhishi chanquan xin youshi*)” in international competition and to build a world-class, IPR-strong nation (*zhishi chanquan qiangguo*).

China’s embrace of IPR has its roots in China’s legal reform, media marketization, and reshuffling of social classes over the past few decades.²² In the context of accelerated economic restructuring in the late 2000s and 2010s, IPR

²¹ Office for the Leadership Group for the Making of National IPR Strategy, “On the Making of National IPR Strategy,” in *IPR Yearbook 2005* ed. IPR Yearbook Editorial Board (Beijing: Zhishi Chanquan Chubanshe, 2007), 35-36.

²² Han, “How the Copyright Law Was (Not) Made.”

policy rose further in prominence by closely aligning with the state's developmental goal. On the one hand, the Strategy Outline coincided with the global crisis in 2008, an important catalyst for accelerated economic restructuring in present-day China.²³ After years of preparation, it was formally published and circulated in June, right before the financial meltdown hit global news headlines in fall 2008. On the other hand, decades of market-oriented reform and ideological shifts have paved the way for intellectual property to assume a central role in China's cultural and information industries, which have come to the core of the economic restructuring scheme. In 2017, the State Council promulgated the National IPR Protection and Utilization Plan for the Thirteenth Five-Year Plan, formally recognizing IPR as a key developmental project and a top policy priority.²⁴

The Propaganda Week and intensified IPR promotion

IPR has been an important part of *pufa* as early as 1986, when the Patent Law and the Trademark Law were both included in mass legal education.²⁵ At the turn of the century, IPR propaganda became a stand-alone project. After the Strategy Outline of 2008, the promotion of intellectual property increased significantly in scale and intensity and placed significant emphasis on the creation of "IPR culture (*zhishi chaquan wenhua*)."

Under the larger framework of *pufa*, China started to launch annual IPR promotional campaigns in the early 2000s on the World Intellectual Property Day (April 26). Starting from 2004, the one-day event was expanded into week-long activities known as the IPR Propaganda Week (*zhishi chanquan xuanchuanzhou*). It often involves large-scale public activities in big cities across the country, including exhibitions, open-house events, public lectures, seminars, information

²³ Yu Hong, *Networking China: The Digital Transformation of the Chinese Economy* (Urbana: University of Illinois Press, 2017); Dan Schiller, *Digital Depression: Information Technology and Economic Crisis* (Urbana: University of Illinois Press, 2014).

²⁴ Xinhua News Agency, "State Council Promulgated the National IPR Protection and Utilization Plan for the Thirteenth Five-Year Plan [Guowuyuan Yinfa Shisanwu Zhishi Chanquan Yunyong he Baohu Guihua]," *Gov.cn*, 2017, http://www.gov.cn/xinwen/2017-01/13/content_5159586.htm.

²⁵ Xiao, "Strengthen IPR Legal Propaganda."

booths in the streets, on-site intellectual property consultations, and so on. The IPR Propaganda Week in 2005 hosted over 900 seminars, put up 600,000 posters, distributed 1.2 million propaganda materials, and conducted 350,000 consultations nationwide.²⁶ In 2008, the Propaganda Week staged more than 810 events across the country, and more than 1.3 million people were directly involved.²⁷ After the Strategy Outline of 2008, the IPR Propaganda Week received a major upgrade. In 2009, 24 governmental agencies took part in the Propaganda Week, almost twice as much as before. According to the *China Intellectual Property News* (*zhishi chanquan bao*), published by the State Intellectual Property Office (SIPO), such wide participation by governmental organs helped to “infuse the concept of IPR into almost all economic sectors.”²⁸ In terms of scale, content, and format, activities in the 2009 Propaganda Week were “unprecedented (*qiansuo weiyou*)” and “created a very good public opinion environment (*lianghao de yulun fenwei*) for the implementation of the National IPR Strategy.”²⁹

Various media outlets play active roles during and outside of the annual IPR Propaganda Week. Even before the IPR strategy was officially promulgated, head of the SIPO had argued that the very first step to implement the strategy was to “further strengthen IPR propaganda and education” by “making full use of television, newspapers, and other media.”³⁰ The Propaganda Week always involves the release of IPR information through press conferences and the publication of governmental reports. In addition to intense coverage of various promotional and educational activities, media involvement can take many forms. In 2017, a provincial IPR administration produced a four-episode documentary on the development of intellectual property in China. Entitled “The Nation's Ultimate Weapon (*guo zhi liqi*),” it was premiered on TV on April 26, the World

²⁶ Ibid.

²⁷ Qishan Wang, “No More Chinese Knock-offs,” *Wall Street Journal (Eastern Edition)*, June 17, 2008.

²⁸ Yu Wang and Qun Li, “Linian Quanguo Zhishi Chanquan Xuanchuanzhou Huodong Saomiao [A Scan of the IPR Propaganda Week in Each Year],” *SIPO.gov.cn*, 2013, http://www.sipo.gov.cn/sipo2013/mtjj/2013/201304/t20130418_792192.html.

²⁹ Ibid.

³⁰ Jingchuan Wang, “Working Report to the National Patent Conference,” in *IPR Yearbook 2005* ed. IPR Yearbook Editorial Board (Beijing: Zhishi Chanquan Chubanshe, 2005), 19.

Intellectual Property Day and the last day of the Propaganda Week.

With the promulgation of the national IPR strategy, the notion of “IPR culture (*zhishi chanquan wenhua*)” emerged in official discourse. The Strategy Outline of 2008 listed IPR culture as one of its four short-term goals, expecting to see “the general increase of IPR awareness (*zhishi chanquan yishi*) and the preliminary formation of IPR cultural environment (*zhishi chanquan wenhua fenwei*)” in five years. For that purpose, China’s strategic focus (*zhanlue zhongdian*) needs to be on “the nurturing of IPR culture (*peiyu zhishi chanquan wenhua*).” Five years later, several agencies governing IPR, cultural industry, education, and commerce jointly issued the Several Opinions on the Strengthening of IPR Cultural Construction in 2013 (hereinafter “Several Opinions”), which claimed that the goal of “preliminary formation of IPR cultural environment” had been achieved. Nevertheless, the Several Opinions called for “massive efforts to construct (*dali jianshe*) IPR culture” because it still could not meet the requirement of the national IPR strategy.

Engineering an instrumental IPR culture

In official accounts, the IPR culture that the national strategy seeks to promote and nurture is explicitly instrumental and serves to regulate behaviors and promote compliance with the law. Before formally being made into the Strategy Outline of 2008, the notion of IPR culture had appeared in a number of semi-governmental and scholarly occasions. Its discussion reached a high water mark in 2007, when the SIPO hosted the China IPR Culture Forum. The forum attracted attendees from governmental agencies, universities, research institutions, state-owned companies, and private businesses from all over China. Presentations in the forum were later edited into a book, which remains a leading publication on IPR culture in China today. The SIPO’s Associate Director (also the editor of the book) penned the first chapter “IPR Culture and the National IPR Strategy.” It defines culture as “a powerful, invisible force...that influences the formation of social norms and ethics rules...results in self-discipline of ideas and behaviors...and guides the direction of social development.”³¹ Another SIPO

³¹ Binghui Lin, “Zhishi Chanquan Wenhua yu Guojia Zhishi Chanquan Zhanlue [IPR Culture and National IPR Strategy],” in *2007 Zhongguo Zhishi Chanquan Wenhua Luntan Lunwenji [Collection of Articles from 2007 China IPR Culture Forum]*, ed.

official and a leading advocate of IPR culture argued that IPR culture is about values and “plays an indispensable role in the making and implementation of the law.”³² To reinforce the inner-agency consensus, a third SIPO official argued that IPR culture is “soft power” that “impacts or determines a social group’s opinions and activities.”³³ The Several Opinions of 2013 officially recognized the instrumental role of IPR culture by stating: “IPR culture...is an important thoughts-and-awareness guarantee (*sixiang yishi baozhang*) of the implementation of the national IPR strategy and the construction of a creative nation.”

The construction of IPR culture is a governmental project. The Strategy Outline specifically states that IPR culture is “guided by the government, supported by (state-owned) news media, and with extensive participation by the public (*zhengfu zhudao, xinwen meiti zhicheng, shehui gongzhong guangfan canyu*).” The Several Opinions of 2013 stipulates that the Communist Party’s Central Propaganda Department (*zhongxuanbu*) and the SIPO are to take the lead in IPR cultural construction, and are responsible for incorporating IPR into cultural and propaganda work at various levels of local governments. It needs to be noted that there is nothing strange in Chinese politics and media to carry out massive propaganda campaigns to promote certain causes. The Communist Party’s press philosophy emphasizes the “mass line,” i.e. “from the masses, to the masses.” It is paternalistic and does not tolerate independent voices, and in practice “the two-way mass line model has been severely lopsided in favor of top-down communication.”³⁴ The Leninist propagandist employment of the media, with some transformations, remains a defining feature of Chinese media

Binghui Lin (Beijing: Zhishi Chanquan Chubanshe, 2007), 2.

³² Weiye Ma, “Lun Wenhua he Zhishi Chanquan Wenhua [On Culture and IPR Culture],” in *2007 Zhongguo Zhishi Chanquan Wenhua Luntan Lunwenji [Collection of Articles from 2007 China IPR Culture Forum]*, ed. Binghui Lin (Beijing: Zhishi Chanquan Chubanshe, 2007), 24.

³³ Xiucheng Han, “Zhishi Chanquan Wenhua yu Wenhua Ruanshili [IPR Culture and Cultural Soft Power],” in *2007 Zhongguo Zhishi Chanquan Wenhua Luntan Lunwenji [Collection of Articles from 2007 China IPR Culture Forum]*, ed. Binghui Lin (Beijing: Zhishi Chanquan Chubanshe, 2007), 28.

³⁴ Yuezhi Zhao, *Media, Market, and Democracy in China: Between the Party Line and the Bottom Line* (Urbana: University of Illinois Press, 1998), 30.

today.³⁵ Inheriting the mass propaganda toolkit from *pufa* campaigns, IPR propaganda is carried out in a top-down manner with prefixed definitions on what IPR is and what it does, expecting to indoctrinate them so as to promote compliance with the law.

Meanwhile, IPR propaganda has unique features compared with *pufa* campaigns. National *pufa* programs were launched in the mid-1980s, early in the Market Reform when a large number of laws and regulations were promulgated in a short time span. They were not upgrades of older codes but part of a new governance structure that relied on a stable bureaucracy and market-oriented rules (in contrast to mass movements and politics during the Cultural Revolution). Public legal education was thus an essential move to bring the Chinese population on board of social and political changes in the reform era, and it was in this sense that even semi-illiterate peasants could find *pufa* relevant and accessible.³⁶ Dedicated IPR propaganda campaigns, however, developed alongside the deepening of market reform and China's integration with capitalist global political economy. Major IPR statutes were all promulgated in the 1980s and were by no means new law in the 2000s (as in contrast to the first *pufa* program in 1986). They were cloaked under prior and broader reform measures instead of making groundbreaking statements of political U-turns. Compared with *pufa* campaigns that always place the Constitution at the core, China's IPR propaganda often appears apolitical and frames IPR as universally beneficial.

The notion of IPR culture, by affirming the legitimacy of cultural commodification and the cornerstone role of intellectual property, shows a dramatic breakaway from the pre-reform concept of culture as political and revolutionary. For example, the Strategy Outline's opening gambit is to claim intellectual property to be "the foundational system to cultivate and utilize knowledge resources (*kaifa he liyong zhishi ziyuan de jiben zhidu*)."

Framing knowledge as a resource to be "cultivated" and "utilized," the Strategy Outline set the tone of China's intellectual property policy by casting culture and information out of the political and social sphere. It goes on to state that IPR defines people's

³⁵ Yuezhi Zhao, "Sustaining and Contesting Revolutionary Legacies in Media and Ideology," in *Mao's Invisible Hand: The Political Foundations of Adaptive Governance in China*, eds. Sebastian Heilmann and Elizabeth J. Perry (Cambridge: Harvard University Asian Center, 2011).

³⁶ Xia, "The Origin."

“rights” and regulates “relations of (economic) interest (*liyi guanxi*)” in the “creation and utilization of knowledge and other information,” thus affirming the legitimacy of private control and the market mechanism in the cultural and information sector. Likewise, official accounts of IPR culture often adopt commodified definitions of culture and information in a matter-of-fact manner. According to the Several Opinions of 2013, in the ideal IPR cultural environment, people “respect knowledge, advocate innovation, and abide by law honestly and in good faith (*zunzhong zhishi, chongshang chuangxin, chengxin shoufa*).” By equating IPR with social morals and norms, it conceals the private nature of intellectual property and precludes inquiries into the legitimacy of, and alternatives to, the market in the realm of culture and knowledge.

The conflict-ridden cultural work of intellectual property

China’s embrace of IPR is a developmental strategy formulated under specific historical circumstances. The Market Reform initiated at a time when large-scale privatization swept through major Western countries, and when informational and cultural sectors became the propellant of global economy.³⁷ Meanwhile, after centuries of growth and transformation, laws of intellectual property became the major form of market regulation in commercial media and technology sectors.³⁸ China’s reform step-by-step opened Chinese market and reinserted China into the global capitalist political economy. With the inflow of Western goods and investment, as well as the growth of an export-oriented economy reliant on Western markets, China became susceptible to Western influence and threats. When the U.S. started to pressure other countries on IPR matters through trade threats in the mid-1980s and after,³⁹ China was forced to make concessions and to fast-track to adopt global IPR rules. China’s national IPR strategy, taking shape

³⁷ David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press, 2005); Dan Schiller, *How to Think About Information?* (Urbana, IL: University of Illinois Press, 2007); Yuezhi Zhao, “After Mobile Phones, What? Re-embedding the Social in China’s ‘Digital Revolution’,” *International Journal of Communication* 1, (2007), 92-120.

³⁸ Christopher May and Susan K. Sell, *Intellectual Property Rights: A Critical History* (Boulder: Lynne Rienner Publishers, 2006).

³⁹ Susan K. Sell, *Private Power, Public Law: The Globalization of Intellectual Property Rights* (Cambridge: Cambridge University Press, 2003).

in the 2000s, came after China's turn to follow the informationized growth model headed by the U.S.⁴⁰ and the recognition of culture as a strategic industrial sector.⁴¹ The ascendance of IPR in China's economic and developmental policy is China's choice (albeit among limited options) to follow the mainstream growth path in the capitalist West. Against this historical context, China's promotion of IPR manifests the cultural work of the Chinese state trying to keep pace with the global IPR regime. It is a conflict-ridden project entangled in the frictions and collaborations between the Chinese state, transnational capital, domestic media and technology corporations, and various forms of social resistance to intellectual property.

A notable and unique feature of IPR propaganda in China is its wide engagement with Western ideas and institutions, rarely (if ever) seen in China's other governmental media campaigns or *pufa* programs. A well-known researcher based in the U.S. argues that China's political culture, which emphasizes the control of ideas rather than the promotion of creation and communication, is a key reason for the lack of effective IPR protection.⁴² Some other researchers attribute enforcement issues to Chinese people's mindset, arguing that "respect for property must be a notion well-engraved not only in law but in the minds of political leaders and citizens alike."⁴³ This seems to be a widely held belief in the industry, and a number of U.S. companies consider "investment in IPR awareness, training, and education to be a major part of their companies' 'coping strategy'" for China's IPR situation.⁴⁴ Indeed, a few months after the Strategy Outline was promulgated in 2008, Microsoft launched an annual Global Anti-Piracy Day, "a simultaneous launch of education initiatives and enforcement actions" that "include intellectual property awareness campaigns, engagements with partner businesses, educational forums, local law enforcement training, and new legal actions against alleged software counterfeiters and pirates."⁴⁵ The press release

⁴⁰ Yuezhi Zhao and Dan Schiller, "Dances with Wolves? China's Integration into Digital Capitalism," *Info* 3, no. 2 (2001), 137-151.

⁴¹ Michael Keane, *Created in China: The Great New Leap Forward* (London: Routledge, 2007), 81.

⁴² Alford, *To Steal a Book*.

⁴³ Oksenberg, Potter, and Abnett, "Advancing Intellectual Property Rights," 9.

⁴⁴ *Ibid.*, 26-27.

⁴⁵ Microsoft, "Microsoft Announces Global Anti-Piracy Day to Highlight Collaborative

from Microsoft China disclosed a number of training and enforcement activities conducted “in cooperation with the Global Anti-Piracy Day,” including Microsoft providing training sessions to law enforcement officers and “active assistance (*jiji xiezhu*)” to enforcement raids and investigations.⁴⁶ In January 2012, Microsoft China launched a three-day activity to promote software copyright protection. In collaboration with a number of computer markets in large cities, Microsoft set up information booths, provided on-site consultations, hung anti-piracy banners in computer stores, and distributed pamphlets and other materials to consumers and sellers in the markets.⁴⁷

Meanwhile, China has been actively pursuing a pro-IPR national image on the international stage. Starting in 2013, every IPR Propaganda Week receives a pre-recorded video presentation by the World Intellectual Property Organization’s (WIPO) Director General Francis Gurry. In 2017, the Propaganda Week held a summit forum (*gaoceng luntan*) and enlisted a number of speakers from the WIPO, foreign governments, as well as major Western companies such as Qualcomm. As a matter of fact, the World Intellectual Property Day, on which China’s IPR Propaganda Week is based, was adopted by the WIPO at the suggestion of China and Algeria. In China’s 1999 proposal, the head of SIPO stated that the World Intellectual Property Day was to “further promote the awareness of intellectual property protection, expand the influence of intellectual property protection across the world, urge countries to publicize and popularize intellectual property protection laws and regulations, enhance the public legal awareness of intellectual property rights, encourage invention-innovation activities in various countries and strengthen international exchange in the

Efforts to Protect Customers and Partners Around the World From Software Piracy and Counterfeiting,” *Microsoft.com*, 2008, <https://news.microsoft.com/2008/10/20/microsoft-announces-global-anti-piracy-day-to-highlight-collaborative-efforts-to-protect-customers-and-partners-around-the-world-from-software-piracy-and-counterfeiting/#LSMevAUu1rIk0Sqm.97>.

⁴⁶ Microsoft, “Weiran Sheli Quanqu Daobanri [Microsoft Establishes Global Anti-piracy Day],” *Microsoft.com*, 2008, <http://news.microsoft.com/zh-cn/微软设立全球反盗版宣传日，保护全球各地的消费/#sm.0001nqy75or6hetoq2a1unkzsf2o>.

⁴⁷ “Weiruan Xinnian Zhengban Ruanjian Xuanchuang Hongdong Qidong [Microsoft Kicks Off New Year Publicity on Authentic Software],” CNET, 2012, <http://www.cnetnews.com.cn/2012/0109/2073839.shtml>.

intellectual property field.”⁴⁸ In 2008, China made another effort to promote a pro-IPR national image right after the promulgation of the Strategy Outline and shortly before the Beijing Olympics. During his trip to the U.S. for the fourth round of Strategic Economic Dialogue between the two countries, then Vice Premier Wang Qishan published an article on the *Wall Street Journal*. Entitled “No More Chinese Knock-offs,” Wang introduced China’s national IPR strategy to the readers of the newspaper. He informed them that China will “launch extensive educational programs among the public to further encourage innovation, promote such moral standards as honesty and credibility, and to condemn plagiarism, piracy and counterfeiting,” as well as to “raise people’s IPR awareness and foster an innovation-friendly IPR culture in which knowledge and integrity are respected and laws and regulations are complied with.”⁴⁹

China’s extensive engagement with Western ideas and corporations in IPR promotion takes place against the Chinese state’s complicated relations with both transnational capital and domestic market powers. First, China’s IPR development initialized as an elite-driven project which aims at “learning from the West,”⁵⁰ and “mainstream” Western ideological positions and industrial practices of IPR have had profound impact on policy and lawmaking in China. In spite of intense IPR frictions between China and major Western countries, China has seldom, if ever, launched serious challenges to the legitimacy of intellectual property. IPR problems have always been addressed on the basis of, rather than up against, Western frameworks of IPR. Wang’s article well illustrates this point by reassuring readers of the *Wall Street Journal* that China shares the same understanding of IPR.⁵¹ In another interesting case of China-West friction, the Chinese government put Qualcomm under an anti-trust investigation, which resulted in a staggering \$975 million fine in 2015. However, given the size and potential of China’s market, this was indeed a “lenient approach” that “left the company’s [Qualcomm’s] business model intact” and provided “a stepping-stone

⁴⁸ Ying Jiang, “Proposal By The State Intellectual Property Office, The People’s Republic Of China,” 1999, https://web.archive.org/web/20031222105639/http://www.wipo.int/documents/en/docum ent/govbody/wo_gb_ga/ga24_8.htm.

⁴⁹ Wang, “No More Chinese Knock-offs.”

⁵⁰ Han, “How the Copyright Law Was (Not) Made.”

⁵¹ Wang, “No More Chinese Knock-offs.”

toward full participation in the Chinese market.”⁵² It manifests conflicts between China’s technonationalist agendas and transnational capital, but more importantly also highlights a consensus regarding the platform to resolve such conflicts: an IPR-based market and regulatory model. In the face of various resistances to the global IPR regime, it makes perfect sense for them to work together on the promotion of intellectual property.

In contrast, domestic media and technology companies have yet to play a high-profile role in IPR propaganda, which needs to be attributed to their uneasy situation with regard to intellectual property. On the one hand, many state-owned corporations as well as private businesses have been under fire in Western criticisms of IPR offenses. For example, China Central Television (CCTV), China’s flagship TV network and the Communist Party’s mouthpiece, has been singled out by the European Union Trade Commissioner for not paying royalties to European copyright holders.⁵³ The e-commerce giant Alibaba has always been criticized for not doing enough to curb the sale of counterfeit goods on its online shopping platform Taobao.⁵⁴ Considering that China’s IPR promotional campaigns aim at not only promoting awareness and compliance but also projecting a pro-IPR image of China for the Western audience, it is more important to craft a flawless, coherent narrative to showcase China’s achievements than to remind the audience of unresolved frictions. In the Summit Forum during the 2017 Propaganda Week, the only keynote speaker from the industry was from Qualcomm (in spite of the antitrust investigation of the company in 2015). Keynote speeches representing China’s voices (apart from governmental officials) were from scholars and writers, individuals with clean records of IPR offenses. Representatives of domestic businesses were present, but were seated with the audience.

Nevertheless, China’s state-owned and private businesses are rapidly

⁵² Yu Hong, “Pivot to Internet Plus: Molding China’s Digital Economy for Economic Restructuring?” *International Journal of Communication* 11, (2017), 1495.

⁵³ “China: EU’s Mandelson Says PRC Broadcasters Not Paying Royalties,” *BBC Monitoring World Media - Supplied by BBC Worldwide Monitoring*, November 8, 2006.

⁵⁴ Yue Wang and Paul Armstrong, “Is Alibaba Doing Enough to Fight Fakes,” *Forbes.com*, 2017, <https://www.forbes.com/sites/ywang/2017/03/10/is-alibaba-doing-enough-to-fight-fakes/#26ca96e25587>.

preparing themselves to benefit from IPR and to actively participate in IPR promotion. Having gone through multiple copyright challenges, CCTV has been forcefully reforming its production management to be copyright-compatible.⁵⁵ Given the enormous production and market resources it controls, a copyright-ready CCTV will have much to gain from IPR promotion and enforcement. Meanwhile, private Internet companies have made remarkable progress in IPR management⁵⁶ and have actively engaged in the promotion of intellectual property in a number of ways. In an interesting case in 2014, an IPR executive in a private technology company co-authored a novel with a staff worker at the SIPO's Propaganda Department. Based on the IPR executive's career experience, the novel told a story about how a Chinese IT company grew from being patent-less to aggressively employing IPR tools to compete with market rivals. Titled "Ferocious Patents (*zhuanli xiongmeng*)," the novel quickly became a bestseller after publication, topping the bestseller list and surpassing books by well-known popular writers. Nevertheless, it remains to be seen how and when Chinese domestic companies may play front-seat roles in China's endeavor to upgrade the "Made in China" brand to the "Created in China" imaginary and to put up a pro-IPR stance.⁵⁷

At the same time, IPR promotional projects often show an ambiguous attitude toward social resistance to intellectual property. Two cases highlight the point. In 2006, a parody video that mocked a blockbuster movie went viral on the Chinese Internet. Widely known as *Mantou*, the popular video used clips from the movie *Wuji* and retold the story in a derisive tone. When the movie director threatened to sue for copyright infringement, the widely recognized controversy triggered an intellectual property debate. On the one hand, research by legal and media professionals quickly found that the video would be deemed fair use in Western countries, including the U.S., but it was almost certainly an infringement under

⁵⁵ Dong Han, "Copyrighting Media Labor and Production: A Case of Chinese Television," *Television & New Media* 13, no. 4 (2012), 283-306.

⁵⁶ "World Intellectual Property Day: BAT's Patent Approval Rates Near 70%, with 360 Far in the Lead [Shijie Zhishi Chauquan Ri: BAT Zhuanli Shouquanlv Jin 70%; 360 Yaoyao Lingxian]," *Xinhuanet*, 2016, http://news.xinhuanet.com/tech/2016-04/26/c_128933713.htm.

⁵⁷ Fan Yang, *Faked in China: Nation Branding, Counterfeit Culture, and Globalization* (Bloomington: Indiana University Press, 2015).

the stringent Chinese law. On the other hand, Internet users sided overwhelmingly with the video since the copyright controversy had come to symbolize the conflict between the grassroots and the elite.⁵⁸ At one of those rare opportunities in which IPR comes to the center of media and public attention spontaneously, the government had no intention to disseminate legal knowledge, educate the people, or draw from the masses (as the mass line principle would require). When asked about the case in a press conference, an official from the National Copyright Administration refused to comment and only said that the court would rule on it.⁵⁹ During the IPR Propaganda Week of 2006, no efforts were made to utilize the popular case of *Mantou* to popularize the law.

In 2008, another copyright controversy swept through the Chinese Internet. A university teaching staff who produced a plug-in (*shanhuchong*, or coral worm) for a popular messaging application (QQ) was arrested under criminal charges. His arrest triggered a widespread revolt online for a number of reasons. First, plug-ins were popular on the Chinese Internet at the time. They did not change the original software codes but worked with them to provide different functions, thus had been thought to be free from copyright problems. Second, the company that owned QQ, Tencent, had previously worked with the defendant to use *shanhuchong*'s popularity to promote QQ. Third, the arrest and later trial of the defendant had many problems. Unverified stories online claimed that Tencent, a Chinese cyber giant, manipulated the case from behind the scene. Media coverage of the trial was minimal and controlled, and personal accounts published online implicated that the trial was unfair. In spite of online rallies in support of the defendant, as well as analyses from legal professionals that insisted on his innocence, the court handed down a guilty verdict with a three-year sentence.⁶⁰ Before the ruling, a local TV network produced and aired a documentary that framed the defendant as a criminal. Entitled "Coral Worm Into Flame (*puhuo de shanhuchong*)," it drew a parallel between the plug-in producer and a moth that

⁵⁸ Dake Zhu, "Yige Songruan de Huayu Mantou [A Soft, Discursive Mantou]," *China Newsweek*, no. 8 (2006), 28-29.

⁵⁹ Hongyi Bai, "Shui Dong le Shui de Mantou? [Who Moved Whose Mantou?]," *China Newsweek*, no. 8 (2006), 30-31.

⁶⁰ Sina Tech, "Shanhuchong QQ Zuozhe bei Pan Ruyu Sannian Fakuan 120 Wan Yuan [Creator of Shanhuchong Sentenced to Three Years in Jail and Fined 1.2 Million Yuan]," *SINA.com*, 2008, <http://tech.sina.com.cn/i/2008-03-20/14512090396.shtml>.

headed toward self-destruction. With very little coverage of the case by mainstream media, the TV documentary stood out as the major official account of the controversy.

In these two cases, the Chinese state reacted differently from the case of Shanzhai cell phones. While official media coverage of bandit cell phones shows the state striving to “reposition itself in relation to Shanzhai so as to re-emerge a legitimate leader for ‘the people’,”⁶¹ the cases of *Mantou* and coral worm suggest that the state’s repositioning may be inconsistent, incoherent, and conditioned by case-specific contexts. First, by competing with international brands, Shanzhai cell phones coincided with the state’s technonationalist agenda, which lent themselves to the state’s effort to “re-direct their [the people’s] energy toward ‘proper’ national ends.”⁶² In the cases of *Mantou* and coral worm, however, IPR holders were leading Chinese media and IT corporations (China Film Group Corporation and Tencent, respectively), both symbols of Chinese entrepreneurial prowess. As a matter of fact, China Film Group Corporation (CFGCC) had sought to create a nationalist aura for *Wuji*, target of *Mantou*’s critical remarks, by marketing it as a movie to “represent China (*daibiao zhongguo*)” to compete in the Academy Awards.⁶³ Therefore, it might be difficult for the state to steer the controversies toward a nationalist agenda in the same way as bandit cell phones.

In addition, the cases of *Mantou* and coral worm demonstrate aspects of IPR promotions which are not readily visible in well-orchestrated annual campaigns. In the case of *Mantou*, state-owned media outlets including digital media platforms hosted heated debates and served as key venues for popular criticisms on intellectual property, cultural industrial policy, and China’s social polarization. It posed a sharp contrast to not only the ambiguous stance of copyright officials, but also the unified voice found in annual propaganda campaigns. The absence of *Mantou* in formal governmental statements and propaganda campaigns suggests that state propagandist maneuvers tend to marginalize and downplay bottom-up challenges, rather than to tackle them head-on. It also shows that the Leninist propagandist media control is neither total nor round-the-clock. Engaging in full

⁶¹ Yang, *Faked in China*, 86.

⁶² Ibid.

⁶³ Wenbo Zhang, “Aosika xiang Wuji Changkai? Kekexili Jieshou Shibai [Oscar Opens Doors to Wuji? Hoh Xil Accepts Defeat],” *SINA.com*, 2005, <http://ent.sina.com.cn/m/c/2005-09-21/0046846225.html>.

gear only in critical moments and on critical subjects, e.g. during the annual IPR Propaganda Week, it manifests the power of the state apparatus as well as its limitations. The case of coral worm, on the other hand, shows a complicit collaboration between propaganda media and domestic private capital, as well as fissures between local and national propagandist agendas. Though Tencent denied its involvement in the case, it was no doubt the major beneficiary of the prosecution of coral worm. Active involvement of local governmental media points to a high-level correlation between IPR propaganda and private market interests. Meanwhile, however, Shenzhen TV station's aggressive stance is very different from national media and governmental organs, which often remain ambiguous and silent regarding bottom-up resistance to the IPR regime.

Conclusion

To popularize an officially sanctioned understanding of the legal system is critical for the Chinese Communist Party to legitimize its rule in post-socialist conditions.⁶⁴ Meanwhile, IPR promotion in China also strives to serve specific economic policy and regulatory goals. Born out of *pufa* campaigns, IPR propaganda inherits the Communist Party's long-term press philosophy that seeks to use media to shape worldviews and mobilize the masses for social and political causes. Thus, present-day promotional campaigns have important connections with the pre-reform era. On the other hand, however, messages crafted and disseminated in today's propaganda campaigns are very different from anti-capitalist, anti-imperialism messages of old times. As part of the ideological shifts in the reform era, how easy or difficult they fit with a media system and philosophy that took shape in China's revolutionary and socialist past can shed important light on the nature of Chinese media and social transformation both before and during the market reform.

China's IPR propaganda campaigns show little conscious effort to reconcile Chinese media's anti-capitalist past with the promotion of a property system that undergirds the contemporary capitalist political economy. While China's revolutionary past has in essence been in pursuit of an alternative, non-capitalist developmental path,⁶⁵ by internalizing the logic of the global IPR regime, China's

⁶⁴ Pang, *Creativity and Its Discontents*, 90.

⁶⁵ Lin Chun, *The Transformation of Chinese Socialism* (Durham: Duke University Press,

IPR propaganda has rendered China's development as a catch-up process on the same route as Western industrialized countries. Thus Vice Premier Qishan Wang's *Wall Street Journal* article serves as a case in point by arguing that: "On IPR, China has managed to accomplish in 30 years what took Western-developed countries more than 100 years," and that China "still has a long way to go before it can catch up with the U.S."⁶⁶ Absent from Wang's statement is the possibility of an "alternative account of China's rise" that may destabilize or challenge the power relations of the global capitalist political economy.⁶⁷ Ironically, the image of being a "catcher-up" will in the long run work against China by placing China at "an elementary stage on a universal developmental track."⁶⁸ Under the dominant discourse of the global IPR regime, it is "economic and political prowess" that defines and produces creativity.⁶⁹ As a follower, China will always be subject to the discursive power of the image of a copycat. China's IPR cultural project, if always on the heels of the West and distancing itself from grassroots dynamics of resistance and meaning-making, will only run against the developmental goal that policymakers envision.

2006).

⁶⁶ Wang, "No More Chinese Knock-offs."

⁶⁷ Yang, *Faked in China*, 25.

⁶⁸ Winnie Won Ying Wong, *Van Gogh On Demand: China and the Readymade* (Chicago: University of Chicago Press, 2013), 87.

⁶⁹ Ibid.

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