

Chinese Government and Software Copyright: Manipulating the Boundaries between Public and Private

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Introduction

China's entry into the global networked society has raised considerable debate over what benefits are derived from the development and expansion of information and communication technologies (ICTs) locally and globally. From a global perspective, such connectivity has created the capacity for China to communicate and share information through new developments in ICTs, particularly those related to the Internet. However, such developments raise two sets of hotly debated issues critical to the credibility and stability of China's membership to the global networked society: access and civil liberties. According to Nicol (2003), access deals with making it possible for everyone to use the Internet and other media. Meanwhile, civil liberties include "human rights such as freedom of expression, the right to privacy, the right to communicate, and intellectual property rights" (p. 11).

Without diminishing the critical issues over human rights, the major concern of the international business community has been China's failure to deal adequately with intellectual property violations. Since the mid-1990s, western countries, led by the United States, have directed criticism at China's infringement of intellectual property rights. Even under the World Trade Organization (WTO) Agreement, which provides more transparency through laws, regulations, administrative rules and judicial decisions on intellectual property protection (Panitchpakdi & Clifford, 2002), countries have criticized China's inability to adequately meet the standards set by international laws on intellectual property despite efforts by the Beijing government. To address the issue, China was listed in 2005 as a priority country under the "Special 301" provision of the United States Trade Act of 1974. This provision identifies foreign countries that deny adequate and effective protection of intellectual property or fair an equitable market access for United States' business or individuals that rely on intellectual property protection (United States Trade Representative, 2005).

Responding to international pressure, China has attempted to make dramatic and substantive changes in legislative, regulations and policymaking processes relating to intellectual property rights (IPR). However, Mertha (2005) argues that the Chinese government faces internal pressures that constrain IPR protection. For example, China, as a developing country, wants to increase the diffusion of

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new technologies, innovation and information to close the widening gap between China and the developed world (Mertha, 2005; Stein & Sinha, 2002). Meanwhile, patriotism and traditional Confucian values add to normative responses to uncontrolled private ownership, including the limited-term monopoly conferred by IPR (Mertha, 2005; Yu, 2001).

This article explores the Chinese government's strategies to deal with external and internal challenges surrounding software copyright. We focus our analysis specifically on how the government addresses public-private dimensions of software copyright in economics and politics to support these multiple and often competing objectives. To do this, we employ a triadic framework of public-private distinction to analyze the state's strategies to manage external and internal challenges emerging from global software enforcement.

Duality of Copyright: Public and Private Dimensions

According to Mertha (2005), the concept of "intellectual property rights" is created to induce and reward innovation and creativity while at the same time allowing the public to enjoy the benefits of this innovative and creative behavior. These two conflicting goals, which are embedded in intellectual property rights, reveal the tensions between public and private dimensions (Mertha, 2005; Stein & Sinha, 2002; Spinello & Tavani, 2005; Kimppa, 2005; Stahl, 2005; Lessig, 2004). According to Stein and Sinha (2002), the private dimension of copyright regards it as a commodity, which encourages creativity by allowing copyright holders to benefit financially from their labor. On the other hand, the public dimension of copyright is considered a collective good requiring free, universal access and fair use of information, knowledge and creative expression for all.

Stein and Sinha (2002) observe that developed countries and developing countries place different emphases on the competing dimensions of copyright. Typically, developed countries, in which most of the copyright holders reside, hold the view of copyright as a commodity and advocate strong enforcement of the owners' rights on a global scale. Meanwhile, many developing countries, hosting the most number of copyright users, typically see copyright as a collective good because of their concern that strict protection would result in more costly access to information which would impede technology transfer and increase the monopolistic power of multinational corporations. Moreover, Stein and Sinha (2002) indicate that developed countries have exerted political and economic pressures, often in the form of international treaties and organizations, on countries that fail to enforce copyright. Wang (2003) argues that the rise of international copyright regimes such as the World Intellectual Property Organization (WIPO) and World Trade Organization (WTO) have increased trade-oriented global governance of copyright and furthered the subjugation of the domestic to global trade regimes.

Under such a regime, the United States, European Union and international copyright organizations have criticized China's position on copyright protection. For example, in June 2006, European Union Trade Commissioner Peter Mandelson made a fresh call for China to do more to improve market access and cut down on piracy (BBC News, 2007, April 9). One year later, the United States filed a pair of cases against China at the WTO over widespread piracy of American movies, music, books and software.

For the Chinese government, the growing conflict is found in the external demand for private dimension of copyright and the internal demand for the public dimension. This aspect is expressed through the need for wide diffusion of science and technology into a broad range of social members to facilitate national development and improve the life of individual citizens (Mertha, 2005). To interpret the Chinese government's practice in managing competing demands relating to software copyright largely depends on a better understanding of its guiding philosophy on modernization — new authoritarianism — and philosophy that guides economic, social and political development — a socialist market economy and harmonious society.

Duality of New Authoritarianism: Public and Private Distinctions in a Socialist Market Economy and Harmonious Society

Underpinning China's near 30-year transformation has been the adoption of the Four Modernizations in 1979 which focused on strengthening agriculture, industry, technology, and defense (Volti, 1982). This modernization process was tied intrinsically to the gradual reform of the economic system under the rubric of a socialist market structure. Accordingly, considerable pressure has been placed on the primacy of the Chinese Communist Party (CCP) to remain relevant to an increasing number of financially independent citizens (Lu & Weber, 2008; Weber & Lu, 2008; Qiu, 2007).

Recognition of the difficulties China has faced in implementing this reform process is evident in the refining of the philosophy that supports subtler forms of control modality that guide the country's development. This new philosophical position, loosely described as "new authoritarianism" (Xiao, 1989; Wu, 1989), is based on the government's strong cultural leadership as a way of subtly maintaining a stable, peaceful social and political environment during critical transformational stages of modernization. Zhang (2005) categorizes perspectives of this philosophy into two major characteristics. First, in political terms, the state controls the public sphere, including political power and public opinion. On the other hand, the state allows for the opening of the private sphere to increase transparency of government to provide citizens with some opportunities for expanded freedoms relating to social and economic justice issues (Ding, 2002). Second, in economic terms, the state promotes the adoption of a market economy structure but maintains a high degree of control over the market through strategic intervention.

When this philosophy is played out within the volatility of a market economy, the government's emphasis on economic development is adjusted through policies and regulations to correct the deficiencies of the market and accelerate legislative processes relating to business laws. While a number of authors (Yang & He, 1994; Brook & Frolic, 1997; Zhao, 1998; Wang & Zheng, 2000; Kuhn, 2000; He, 2002; Hachigan, 2002; Xu, 2005) discuss the centrality of this philosophy in developing the socialist market economy, others (Sheff, 2002; Kalathil & Boas, 2003; Qiu, 2007; Lu & Weber, 2008 in press) provide examples of decision-making that exemplify this philosophical position in the telecommunications and information industry.

Even though this philosophical position has been widely applied in the economic field, its progress in political/social field has lagged far behind until the concept of "harmonious society" was introduced in

2006. This harmonious society structure is based on the reviewing of experiences and consequences in the process of establishing a socialist market economy and places more emphasis on political/social development over economic prosperity (CPCC, 2006). The government's emphasis on political/social development features five basic functions: 1) safeguard citizens' lawful rights; 2) make social development systematic; 3) make public goods and public services available for social development; 4) systematically and reasonably regulate and control of social development; and 5) effectively supervise society (Bo, 2005). The functions of the government in building a harmonious society reflect the concerns of new authoritarianism in political terms. When the government promises to open private space by safeguarding individual citizens' lawful rights to allow greater freedom on the individual level under the name of socialist democracy, then, more attention should be given to regulate, control and supervise the overall political/social life of contemporary Chinese society.

The state's practices in a socialist market economy and harmonious society reflect Weinstraub's (1997) public-private distinction in economic and political terms. First, the notion of public-private, in economic terms, is based on a mainstream economic analysis model which sees the public-private distinction primarily in terms of the differentiation between state administration and the market economy. In a socialist market economy, new authoritarianism directs the establishment of the centrality of market economy in private space, while maintaining a certain degree of control through macro-regulation in public space. Second, Weinstraub (1997) argues that the public-private dimension in political terms is based on Aristotle's classification of political community and household in which "the 'public' realm is the realm of political community based on citizenship. At the heart of 'public' life is a process of active participation in collective decision-making, which is carried out within a framework of fundamental solidarity and equality" (p. 10). In a harmonious society structure, new authoritarianism advocates control over political power and public opinion in public spaces, while providing more openness in private spaces for individual citizens to express themselves in economic terms (i.e., entrepreneurialism).

Emerging from these multiple dimensions is a triple-layer model of public and private dichotomy that relates specifically to the Chinese government's strategies in regulating software copyright. First, the concept of software copyright has public-private dimensions, for example, copyright as a collective good and commodity. Second, a socialist market economy has public-private dimensions relating to state administration and market economy. Third, a harmonious society has public-private dimensions focusing on the dichotomy between the political community and the household. We draw on this framework to review and analyze Chinese government's practices in terms of economy and politics to deal with the public-private distinction on issues of software copyright.

Software Copyright in a Socialist Market Economy

The centrality of market economy in the structure of a socialist market economy inherently requires the dominant position of private dimension of software copyright in the country's economy. The Chinese government establishes the centrality of private dimension of software copyright through its frequent administrative campaigns against software piracy including its use in bureaucratic units and enterprises. For example, the Chinese government announced the commencement on July 15, 2006 of a "100 Days Campaign" directed primarily at retail piracy of video-audio products and computer software. In

the campaign, authorities destroyed nearly 13 million illegally copied CDs, DVDs, and computer software products. Police and copyright officials also investigated more than 537,000 publication markets, shops, street vendors and distribution companies, and further closed down 8,907 shops and street vendors, 481 publishing companies and 942 illegal websites (Sui, 2006).

Besides this nationwide campaign on software piracy, the Chinese government also engaged in promoting the use of copyrighted software in administrative agencies and enterprises. From 2001 to 2006, the State Council released several announcements to require all central and local government units and enterprises to replace all currently used pirated software with copyright protected software. Meanwhile, all domestically produced computers and imported foreign computers are now required to have pre-loaded, copyrighted operating systems before they are distributed. Accordingly, computer manufacturers and operating system providers must submit the sales figures of computers and operating systems to the Ministry of Information Industry before the end of February every year (MII, 2006).

In addition to administrative actions, the Chinese government also relies on a legal system to protect private dimension of software copyright under the structure of a socialist market economy. The Chinese government has enacted a complete legal system governing copyright protection including Copyright Law, Computer Software Protection Regulation, Supreme Court's interpretations and other supporting laws and regulations (see Table 1 below).

Table 1: Overview of Laws and Regulations to Protect Software Copyright

Types	Laws and Regulations to Protect Software Copyright
Civil law and administrative law	Copyright law
	Regulations on computer software protection
	Measures for administrative protection of internet copyright
Judicial interpretations	Interpretation by the Supreme People's Court relating to the application of law to trial of cases over disputes relating to copyright on computer networks
	Interpretation of the Supreme People's Court on issues relating to the application of law in civil copyright cases
Supporting laws and regulations	Regulations on copyright law
	Guide to copyright administrative complaints
	Criminal law
	Provisions for implementation of the international copyright treaties

Although formation of a copyright legal system has partially resulted from foreign pressure (Mertha, 2005; Shou, 2003), protection of private dimension of software copyright essentially accords with the general goal of the Chinese government in developing a socialist market economy. Completion of a legal system on copyright protection reflects the state's determination to legally establish the centrality of private dimension of software copyright under the current structure of a socialist market economy.

Compared to the centrality of private dimension of software copyright in a socialist market economy, public dimension of software copyright reflects a secondary position in the country's economy. It is mainly achieved through the government's macro-regulation over domestic software industry. Through this structure, the state attempts to facilitate the sharing and transferring of software technology among local enterprises and research institutes, thus lowering the price of copyrighted software for a large number of low-income users. As early as 2000, the State Council released a group of preferential policies to encourage the development of domestic software industry, including investment, taxation, technology, export, personnel, and purchasing. Two years later, the State Council developed a three-year specific action plan to develop the domestic software industry from 2002 to 2005. According to this plan, the central government is required to invest at least four billion RMB (US\$526 million) into the software industry, while newly established local software enterprises can enjoy a variety of tax exemptions and deductions. In addition, priority on all administrative purchase activities was given to domestic software products and services (MII, 2002).

Through a series of preferential policies and direct investment to local software industry, the state hopes to establish more control over China's software market. The government's extensive control on local software companies and research institutes would facilitate sharing and transferring of advanced software technologies within the structure of state's administration of the economy, and contribute to growth in the country's overall capacity in computer science and technology (Chinalabs.com, 2006). From the Chinese government's perspective, the growth of the domestic software industry not only benefits the country's development in science and technology but also millions of software end-users, who can access inexpensive software products and services. Given this price advantage over foreign products (Sohu.com, 2004), local software industry are provided with greater parity to challenge the dominant position of large foreign software companies operating within the Chinese market. To maintain market share in China, foreign companies have had to significantly lower the price of their products (Gao, 2005; Luo, 2004; Xu, 2003). Consequently, a large number of individual users benefit from this competition between domestic and foreign software suppliers.

Compared to stricter central government controls over software piracy, some, if not all, local administrations hold more lenient attitudes toward software piracy, which is often expressed in their loose enforcement of anti-piracy policies. For example, International Intellectual Property Alliance (IIPA) (2006), when commenting on the effect of the 2006 anti-piracy campaign, points out that as in many previous campaigns of this nature, pirated products continued to be available throughout the campaign in virtually the same quantities as before. In some cases, however, pirated software became less visible in retail establishments with suppliers making the products available through catalogues and stocks hidden at the rear of stores or in back alleys. The Chinese government does not deny these problems. Both Xinhua News Agency and *People's Daily*, official mouthpieces of the Chinese government, have openly admitted that the protectionism afforded by some local administrations prevents the progress of anti-piracy movements (Lai & Chen, 2004; Wei, 2006).

Such a disconnection between national policy and local enforcement allows a space, though limited, for pirated software producers at the local level. On the other hand, the legal tolerance for piracy use and distribution at the national level generates possibility for piracy consumption. The legal tolerance

is mainly expressed in the state's reluctance to extend legal liability to all end-users in civil enforcement, and lower the thresholds for criminal enforcement of software copyright violations. The Supreme Court's judicial interpretations in October 2002 indicate that civil legal liability can only be imposed on end-users with commercial purpose. Later, the Supreme Court's judicial interpretations in December 2004 set up the thresholds of criminal enforcement on software piracy. For example, people who manufacture or distribute more than 5,000 unauthorized copies face three-to-seven years in jail and/or imposed related fines. Those who manufacture or distribute more than 1,000 unauthorized copies would face a maximum of three years in jail and/or imposed related fines. In this way, small piracy peddlers could be exempt from criminal punishment because the number of pirated copies they distribute is usually below the 1,000 threshold. In practice, the Supreme Court's judicial interpretations allow millions of grassroots users to have limited access to pirated software products.

Loose local enforcement creates a grey area for an underground software piracy economy to function. On one hand, loose local enforcement shields piracy manufacturers from being eradicated by national anti-piracy policy that becomes increasingly stricter. On the other hand, legal reluctance maintains a large demand of pirated software products from the side of consumption and retail distribution. Consequently, the whole economic chain, though facing great pressure, still has some vitality to live on and even grow up.

Such a situation raises the interesting situation that the existence of a grey area means an inability of the Chinese government to coordinate software copyright enforcement across different social authorities (i.e., legislature, legal enforcement and administration) and on the different levels (i.e., central and local). However, given the capability of the Chinese government to mobilize various social resources to collectively deal with exporting product quality and environmental pollution, authorities on different levels, though having conflicting interests, can still be controlled under the state's coordination (Xinhuanet.com; August 24, 2007; November 19, 2007). So the existence of an underground piracy economy can be better explained by the state's intentionality rather than its inability. As such, loose local enforcement and legal reluctance, if not intentionally or directly rendered by the government, creates an advantage for authorities to satisfy the grassroots demand for public dimension of software copyright in the country's economy. So the government sees no reason to stop the distribution of illegal software. At the same time, the government, in this way, succeeds in distracting foreign criticism directed on itself to local administration and legislation authority.

In addition to the existence of an underground software piracy economy, the wide diffusion of Internet technology also opens another door for pirated software to be disseminated under the country's market economy structure. IIPA (2006) reports that hundreds of websites emanating from China offer video streaming, downloads, links to unauthorized files of copyright materials, and access to a variety of "peer to peer" (P2P) software. Many Bit Torrent (BT) sites based in China provide new architecture that allows for faster file sharing because of the way users cooperate in simultaneously uploading and downloading of pirated materials. According to a survey by IPPA (2006), there exist at least four "eMule/eDonkey" servers and seven specialized "MP3 search engines" offering deep links to thousands of infringing music file sharing sites for instant downloads or streaming and at least eight China-based P2P services.

Meanwhile, the search engines that provide links to these piracy websites are exempt from legal liability by newly released "Measures for Administrative Protection of Internet Copyright" in July 2006. This "safe harbor" created under the legal system facilitates wide dissemination of software piracy on the Internet. Some search engines in China, such as Baidu, openly list download as one of important features of their search services. The term of "download," in Chinese context, except for downloading public free materials, always refers to downloading pirated materials. Consequently, Lu and Weber (2007) observe that more and more piracy end-users now convert to the Internet to download pirated software instead of purchasing them from offline underground market. Many users admit that offline purchase of piracy products has become more and more difficult because of the state's strict enforcement actions while online downloading becomes an easier and safer approach to acquire pirated software (Lu & Weber, 2007).

Software Copyright in a Harmonious Society

The state's practices in software copyright under the structure of a socialist market economy are supported and legitimized by its control of political power and public opinion in terms of a harmonious society. This structure is, in turn, supported by regulation, control and supervision of the overall political/social life while simultaneously promising to open private space by safeguarding individual citizens' lawful rights and allowing more freedom on the individual level. In terms of politics, the Chinese government addresses private dimension of software copyright mainly through publicity of copyright regimes and mass media. Copyright regimes often organize publicity programs to build copyright awareness among citizens. For example, the National Copyright Administration of China (NCAC), in collaboration with 17 other government agencies, recently announced another nationwide "Publicity Week of Copyright Protection," which has been held annually since 2004.

Besides the copyright regime's direct involvement in publicity, government-controlled mainstream mass media also engage in significant coverage on copyright protection. A search of the *People's Daily* archives shows 159 news reports on copyright in 2006. This focus means that there is one news story on copyright appearing in this official national propaganda mouthpiece almost every other day. In addition to mainstream mass media coverage, specialized mass media specifically cover news on intellectual property rights. These media are usually sponsored by related government branches. For example, "China Intellectual Property Rights News," the first nationwide official news service on IPR is sponsored by the State Intellectual Property Office. The National Working Group for IPR Protection and the Ministry of Commerce jointly launched "Intellectual Property Rights in China" (<http://www.ipr.gov.cn/cn/index.shtml>), which is the Chinese government's first official website to focus on IPR protection issues.

In contrast to the extensive media coverage relating to private dimension of software copyright, the Chinese government's concern of the public dimension of software copyright is expressed in more nuanced ways. At first, it is subtly explained under the slogan "building an innovative country with autonomous innovation" as the core principle of science and technology development. The promotion of autonomous innovation in social norms provides legitimacy for the state's macro-regulation in domestic software industry. The government's support of domestic software companies is viewed as a necessary

step toward improving the country's research and development in computer science and technology, and to build up its overall capacity for autonomous innovation.

According to Yu (2001), the government's guideline in science and technology development reflects its self-strengthening worldview. This worldview, in some sense, helps to justify unauthorized reproduction of foreign works which is regarded as a way of strengthening the country by narrowing the technology gap with Western-developed countries. Therefore, pirated software is sometimes ironically looked upon as "patriotic software," which assists in speeding up the nation's information modernization at little or no cost. The increase in the intensity of self-strengthening worldview and patriotism reflects a recent resurgence of Chinese nationalism which the Chinese government intentionally uses to legitimize its role to govern in a rapidly changing social system as defined by a one party political structure (Yu, 2001; Downs & Saunders, 1999).

Lu and Weber (2007) observe that Chinese nationalism, with core values of patriotism and Confucianism, were used by Chinese end-users to resist global copyright enforcement. While patriotism and self-strengthening worldview were adopted to resist the economic exploitation of foreign developed countries in terms of copyright, traditional Confucianism emphasized collectivism as a counter-discourse to challenge the cultural assumption of the concept of copyright, which features individualism and commercialism (Lu & Weber, 2007). Although the Chinese government does not openly relate the issues of software copyright and piracy to its promotion of self-strengthening worldview, messages disseminated through its controlled mass media and education systems under the name of building up "Socialist Spiritual Civilization" actually provide solid cultural grounds for the formation in the call for public dimension of software copyright among individual citizens' private talks and discussions.

Chinese governmental practices in "Socialist Spiritual Civilization" suggest that the Chinese government, though deciding to establish the centrality of private dimension of software copyright in the country's public opinion, does not want to totally smother public dimension of software copyright. Through carefully crafted messages on patriotism, Confucianism and self-strengthening worldview, the government expects to maintain the call for public dimension of software copyright to some extent in order to support its goals of nation-building and the country's overall modernization. Because public dimension of software copyright benefits millions of grassroots software users, the individual's private household emerges as the best place to contain this call, as the government promises to open more private space to citizens in order to safeguard their individual freedom and legal rights.

In recent years, resistance to global copyright enforcement has become a popular topic among software end-users in China. Particularly in bulletin board services (BBS), the discussion on software copyright continues unabated. Many online participants support software piracy because the current global copyright enforcement is viewed as economic imperialism over China (Wang et al., 2005; Lu & Weber, 2008 in press). This increase in resistance to global copyright enforcement among end-users attracted the attention of some prominent mass media. For example, in December 2001, the *21st Century Business Herald*, one of the most popular business newspapers in China, launched a debate on whether software protection legislation should extend legal liability to all individual end-users. It was the first time that Chinese mainstream mass media openly reported the tensions that exist between public and private

dimensions of software copyright. Later, Sina.com and Sohu.com, the two largest portal websites in China opened special discussion columns on the extent to which software copyright should be protected in China. With this media coverage, the call for protecting public dimension was loudly expressed in the public sphere and developed into a bottom-up social movement on a large scale. In March 2002, several key Congress representatives proposed bills to protect the public interest in the issues of software copyright. As a result, the Supreme Court released judicial interpretations in October 2002, reiterating that civil legal liability can only be imposed on end-users with commercial purpose (NCAC, 2002).

Throughout this civil movement, the government and state-owned mass media remained silent. Of more importance, though, is that even after the official announcement of judicial interpretations, none of the government-controlled media were willing to further explain or comment on the anticipated effects of the clauses in favor of public copyright interest. Given that any kind of civil movements in China are regarded as sensitive and potential threats to social stability, the government's non-response in this case is most unusual. In Chinese context, the state's silence is interpreted as a meaning of acquiescence and encouragement and can be based on two considerations. At first, this bottom-up movement objectively helps the government to realize its goals of nation-building and overall modernization in terms of wide diffusion of software products in society. Second, this movement can distract the foreign pressure directed on the government to strengthen protection of private dimension of software copyright. Especially when this movement finally transforms into Congress bills and judicial interpretations, the government can identify it as an issue in legislature channel, instead of the administrative one. As a result, the government's silence strategically detaches itself from this movement and leaves no excuse for foreign countries to make further criticism on the government's failure to protect private dimension of software copyright.

Discussion

So far, we have explored the Chinese government's practice in public and private dimensions of software copyright through a triple-layer framework of public and private. Under this practice, the government's strategies for dealing with software copyright reflect the major principles of new authoritarianism. In economic terms, the state adopts market economy as a fundamental mechanism to direct and regulate all economic activities in society. Meanwhile, the government's macro-regulation is also required to correct deficiencies of market economy and protect public interests. Weinstraub (1997) suggests that private-public distinction in economic terms primarily resides in the distinction between market economy and state administration. So the establishment of private market economic structure in China inevitably demands the emphasis on private dimension of software copyright. In practice, this concern is achieved primarily by the state's administrative and judicial regulation on protection of software copyright. At the same time, state macro-manipulation is used to address public dimension of software copyright in order to trade-off the defects of sole market economy. This concern is handled practically by the state's preferential policy on domestic software industry.

In political terms, the state controls the public sphere, including political power and public opinion. Meanwhile, the state allows for opening up of the private sphere to increase transparency of

government practices and provide citizens with some opportunities for expanded freedoms relating to social and economic justice issues (Ding, 2002). According to Weinstraub (1997), this public-private distinction in political terms is based on Aristotle's classification of political community and household. To establish the centrality of private market structure in the country's economy, the state is required to control political community/public opinion to provide legitimacy for the dominant position of market economy. Accordingly, in the issues of software copyright, the private dimension is emphasized in public opinion facilitated by the state's control over mainstream mass media and education systems. Although the state's promotion of autonomous innovation, patriotism and Confucianism in public opinion objectively favor public dimension of software copyright, none of these messages have been directly connected with software copyright in mass media coverage. Conversely, the state's promise to open the private sphere to individual citizens can be found in its acquiescence to the call for public dimension of software copyright, derived from online discussions among individual software users¹. As a result, the private dimension of software copyright resides in political community/public opinion, and public dimension of software copyright is often found in individual citizens' private sphere.

Under the guideline of new authoritarianism, private/public dimension of software copyright is located differently in private/public distinction in terms of economy and politics. However, the boundaries between private and public in both economy and politics are not always stable (Weinstraub, 1997; Lu & Weber, 2008 in press; Qiu, 2007). This aspect is true in relation to software copyright in China. First, the private dimension of software copyright has a tendency to cross over into public space in the country's economy: state's macro-regulation. This tendency is largely determined by the central position of the market economy and external pressures from foreign developed countries. The state's administration over the domestic software industry becomes secondary to market operations with the sharing and transferring of software technology among different state-owned units never free of charge. Such market operations create internal conflicts in terms of profitable interests involved within the administration system itself. For example, the government purchase of business software has to be conducted through an open bidding process. State-funded/owned software companies often complain that the government allows foreign competitors to win too many contracts. In some cases, this type of complaint has led to open confrontation between different government agencies. One example of such a confrontation occurred between the Ministry of Science and Technology in charge of supporting local software industry and the purchasing agents of local administration in charge of buying software products (Dong, 2004; Wang, 2006). Shou (2003) observes that this kind of conflict was often solved by the direct intervention of higher administrative authorities by following the principle of prioritizing market mechanism over state macro-regulation.

¹ In this study, we adopt Yang's (2003) position that online space has duality of public and private, because it is regarded as a communication space outside the immediate control of the state but not entirely contained within the private sphere of the family. Although there is no direct evidence to show the Chinese government's promise to open the private sphere relating to the issues of software copyright, the existence of online counter-discourse to the private dimension can be used to explore this aspect. It is rationalized that before the emergence of the online counter-discourse in online environments, it must have been present in a purely private sphere within citizens' household.

The penetration of private dimension of software copyright into the state's macro-regulation and private sphere of citizens is also reflected in the legal system. So far, most parts of existing copyright laws in China favor private dimension of software copyright. Moreover, the Chinese government continues to face significant pressures from foreign developed countries to revise some clauses of the copyright law to extend legal liability to all individual piracy users and further lower the criminal punishment threshold for piracy producers and sellers. Second, public dimension of software copyright is also found to cross the boundary to the domains of market economy and public opinion. It is determined by the government's obligations for nation-building and the country's modernization as well as the internal demand from millions of grassroots users. For example, software piracy is made accessible on the market by judicial tolerance for non-profit piracy users and loose enforcement of anti-piracy policies at the local government level. Pirated products sustain a price advantage in competition with copyrighted products and allow a broad range of Chinese users to enjoy copyright-protected software at little or no cost. So under the private market economic structure, public dimension of software copyright is realized through broad availability of pirated software within the market.

Moreover, the Internet technology plays an important role to promote the penetration of public dimension of software copyright into private market economy and public opinion. Because of increasing Internet accessibility and lower risk of detection and punishment (Nicole, 2003), more and more Chinese users go online to "download" software. Through the Internet, the public dimension of software copyright successfully permeates into the domain of market economy. In political terms, the Internet enables the transferring of the public dimension of software copyright from individual citizens' private sphere to political community/public opinion. Although it is debatable as to whether, or to what degree the cyberspace is public or private (Broad & Joos, 2004), the Internet provides a place where Chinese end-users can express their concerns over software copyright in many ways, such as instant messenger, online discussion board, and personal weblogs. Before the Internet emerged, these concerns only existed in strictly private spaces such as the home with low visibility and collectivity². On the Internet, these previously private messages have since become widely visible and collective protests among online participants have been organized (Lu & Weber, 2007). In this way, visibility and collectivity of public dimension have been greatly enhanced by the Internet, though still limited to a little more than 10% of the population. Yang (2003) argues that this contribution of the Internet to formation of the public sphere in China has been significant, defining this tool as open spaces for communication "outside the immediate control of the state but not entirely contained within the private sphere of the family" (Calhoun, 1998, p.

² Weintraub (1997) suggests two basic criteria to distinguish between public and private: "visibility (what is hidden or withdrawn versus what is open, revealed or accessible) and collectivity (what is individual, or pertains only to an individual, versus what is collective, or affects the interests of a collectivity of individuals. This individual/collective distinction can, by extension, take the form of a distinction between part and whole of some social collectivity)" (p. 5). According to Weintraub (1997), these two criteria may blur into each other in specific cases, and can also be combined in various ways, but the difference in principle is clear enough.

190). According to Yang (2003), the Internet serves the "problem articulation" function of the communication structures in public sphere, because the Internet bridges individual private life sphere and political center so as to have the advantage of greater sensitivity in detecting and identifying new problems emerging from private space.

In sum, public/private boundaries set up by new authoritarianism are not stable in issues of software copyright. Subject to various situations, the government has to adjust the boundaries in order to realize competing objectives. The government adopts both explicit and implicit methods to manipulate public/private boundaries. For example, the penetration of private dimension of software copyright to state's macro-regulation is usually achieved by explicit and direct coordination of the state (i.e., commercialization of transferring software technology among state-run institutions and state-funded companies, and the expansion of private dimension of software copyright in legal system). Whereas, more implicit methods are used to make public dimension of software copyright penetrate to private market economy. For example, the availability of pirated software in the Chinese market largely depends on joint efforts of the local administration's loose enforcement and legal tolerance resulting from the bottom-up civil movement against stricter enforcement of software copyright. On appearance, the Chinese government as a whole is not directly involved in this process. However, what should not be neglected is the government's behind-the-scene's role in facilitating the civil movement, promoting the bill pass in legislature, and intentionally overlooking the administration loopholes at the local level.

In addition, the Chinese government's implicit method is also expressed in its dependence on the Internet technology to promote the penetration of the public dimension of software copyright to market economy and public opinion. Wide adoption of Internet technology not only facilitates diffusion of pirated software but also gives Chinese users a space to express their concerns relating to the issues of software copyright. Thus, the Internet with emerging new ICTs, provide the advantage that the Chinese government takes to manipulate public/private boundaries to realize their goals of nation building and modernization.

Explicit/implicit distinction in manipulating public/private boundaries of software copyright essentially reflects the Chinese government's guiding philosophy: new authoritarianism. In economic terms, the centrality of the market economy enables the government to conduct explicit adjustment to expand private dimension of software copyright to the state's macro-regulation and legal system. Furthermore, the secondary status of macro-regulation in economy determines the government's adoption of implicit methods to maintain limited spaces for underground piracy industry and the Internet piracy, both of which function to realize public dimension of software copyright under the structure of market economy. In politics, the secondary status of individual citizens' freedom and legal rights in relation to the centrality of state's control in political/social public life only allows the government to depend on the Internet as a means of implicit manipulation to transfer citizens' private talks and discussions to the center of public opinion. Thus, the guiding philosophy of new authoritarianism is played out, not only in formulation of public/private boundaries in issues of software copyright, but also in manipulation of public/private boundaries.

Moreover, explicit/implicit distinction also illustrates the state's strategic tactics in dealing with internal and external pressures. Mertha (2005) suggests that external pressures from foreign countries and international organizations focus on the national level; while internal pressures from grassroots software users concentrate on the local level. Thus, explicit adjustment with the direct involvement of the government as a whole has high visibility and collectivity, and thus, better serves the external demand on the national level. Meanwhile, implicit adjustment without direct involvement of the government as a whole has low visibility and collectivity. This situation better satisfies the internal demand on the local/individual level. In addition, as implicit adjustment is realized through the government's dependence on legislature, civic movements and Internet technology, the government can successfully direct the external pressure from the national level to the local level.

Conclusions

Analysis on the Chinese government's strategy to address the tensions between public and private dimensions of software copyright supports its guiding philosophy of new authoritarianism and its application in economic and political areas: a socialist market economy and harmonious society. The state's adoption of new authoritarianism expects to establish a balance between competing dimensions of modernization, though it differs largely from developed countries in which public and private dimensions are more clearly demarcated in relation to software copyright. However, the increasing external and internal challenges emerging in globalization processes have pushed the government to adjust and manipulate a series of public-private boundaries formulated by new authoritarianism in order to maximize the benefits brought by globalization, and offset its drawbacks through a process of localizing the globalization.

The public-private distinction, therefore, emerges to be an important key to understanding the Chinese government's practice in relation to software copyright protection, because it provides a distinctive lens to explore the state's guiding philosophy of new authoritarianism with core tenets of a socialist market economy and harmonious society. Meanwhile, the boundaries between public and private become unstable because of the unbalanced power distribution between government and citizens as well as wide adoption of new ICTs (Lu & Weber, 2008 in press). First, the Chinese government remains in control of a variety of power resources, which it can manipulate to define and re-define public-private boundaries in order to meet the combined demands of its own goals and interests as well as internal and external pressures. Second, individual citizens, empowered by new ICTs, can make use of private spaces promised to them and challenge the existing public-private boundaries to maximize their personal interests. Of more importance is that confrontation does not have to emerge because of the state's control of power and individual citizens. In the issues of software copyright, the Chinese government's manipulation of public-private boundaries are facilitated by individual citizens' empowerment to achieve a win-win situation to take full advantage of software copyright and piracy. For example, individual users' online call for public dimension of software copyright promotes the Supreme Court to issue judicial interpretations against extension of legal liability to all piracy users. In this way, individual citizens' empowerment not only reinforces their interests but also shields the government from foreign pressure and criticism directed at its inability to control software piracy.

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