

House Committee on Ways and Means

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of the House Committee on Ways and Means

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The Association of American Publishers (AAP) thanks Chairman Levin and the Ways and Means Trade Subcommittee for the opportunity to participate in today's public hearing on the matters related to the protection of intellectual property rights in China. The pervasive problems of copyright piracy and trademark counterfeiting in China, exacerbated further by severe restrictions on market access for several industries including publishing, are some of the most important issues facing China and the U.S. today.

About AAP

The Association of American Publishers is the national trade association of the U.S. book and journal publishing industry—an industry with 2006 sales exceeding \$25 billion. AAP's more than 300 members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses and scholarly societies. AAP members publish books in every field, educational materials for the elementary, secondary, postsecondary, and professional markets, scholarly journals, computer software, and electronic products and services. The protection of intellectual property rights in all media, the defense of the freedom to read and the freedom to publish at home and abroad, and the promotion of reading and literacy are among the Association's highest priorities.

Introduction to Book and Journal Piracy in China

In 2006, AAP estimated losses to U.S. publishers in China at \$52 million, not including losses due to piracy on the internet. Visits to China and discussions with our member publishers reveal a staggering amount of book piracy plaguing this most promising of markets.

Book piracy manifests itself in a number of different forms in China. Illegal commercial scale photocopying of academic materials is the industry's most immediate concern. Print piracy (unauthorized reprints approximating the quality and appearance of the original) and illegal translations have profound effects on the market as well. Internet piracy in the form of sites offering illegally scanned books for download, peer-to-peer trading and unauthorized access to electronic journals and other database compilations, is growing by leaps and bounds. Furthermore, trademark counterfeiting, especially with regard to books produced by university presses, misleads Chinese consumers. All of this is exacerbated by market access barriers that deny foreign publishers the ability to freely import into the Chinese market, distribute their own materials, obtain local Chinese book publication numbers or print for the local market.

- *Commercial photocopying*

One of the most destructive forms of book and journal piracy is commercial-scale illegal photocopying of academic materials, an activity that takes place on and near school and university campuses all over the world. The mechanisms differ slightly from place to place. In some cases, most of the photocopying takes place at small copyshops lining the campuses. These shops often appear to be minute, independent operations, but in reality are frequently linked in ownership and highly organized. Campus facilities are often used to make illegal copies as well, including library books, copiers in libraries, student centers and academic buildings and commercial operations leasing space on the premises of the institutions.

In China, this is taken one step further. Almost every Chinese university has at least one “textbook center” on campus, in most cases run by the university itself and charged with distributing textbooks to students at the start of each term. In some cases, these textbook centers are distributing legitimate texts, legally printed or imported for the use of the students. In the vast majority of cases, however, these centers are distributing photocopied or illegally printed texts in large quantities. These illegal copies are generally made on the campus—at or near the textbook center, presumably at the request of the university authorities or the lecturers adopting the books. It is often a highly organized practice, complete with stock lists, storage warehouse, bar codes and colorful covers bearing the name of the department or the university crest.

It is important to note two things when discussing these textbook center practices. First, being mindful of the notion of “fair use” or “fair dealing” in academic materials—legal provisions stipulating that a certain amount of copying is permissible for purposes of private study or research—I must emphasize that the copying taking place at these textbook centers far exceeds the possible bounds of fair dealing. Routinely, books are copied in their entirety. Large portions of books or journals included in “compilations” go well beyond “fair use” as well. AAP respects the balance reflected in the fair use provisions contained in international agreements. These practices, however, disrespect that balance greatly. Second, it is important to recognize that these textbook centers hurt Chinese publishers just as much as foreign publishers. Many of the illegally copied books found in textbook centers are Chinese language, Chinese published books. This results in massive losses to a local industry that is trying to establish itself in an international marketplace.

The practices of these textbook centers, undertaken with either the tacit or active consent of the universities themselves, are destroying the market for English and Chinese-produced textbooks alike. AAP and the Publishers Association (PA), its sister association in the U.K., have been working with authorities in the General Administration of Press and Publication (GAPP), the National Copyright Administration of China (NCAC), regional copyright authorities and the Ministry of Education (MOE) to bring light to these issues.

- *Print piracy and translations*

Print piracy and unauthorized translations have a profound effect on the market as well. Bestsellers such as the Harry Potter® series, Dan Brown’s novels and political autobiographies are pirated in English and Chinese within days of their home country releases. These books—of varying quality—are readily available in retail markets and street stalls, apparently without fear by the vendors of any government action. AAP representatives have routinely seen pirate books sold by street vendors outside the Beijing International Book Fair venue! Clearly, the boldness of the pirates suggests that enforcement measures to date have not been effective.

Until a few years ago, print piracy of all books was the prevalent form of piracy in China. This was due, in part, to the high cost of photocopy paper and implements—it was more profitable to undertake an entire print run of a bestselling commercial or professional book. While photocopying has caught up and perhaps surpassed this problem in prevalence, the issue of print piracy remains significant. Print piracy’s effects are especially severely felt among publishers of high-end technical books, reference books and English language teaching books, as well as commercial fiction.

Print piracy exists primarily in two forms. The first involves print overruns by an otherwise legitimate Chinese printer. This licensing issue is exacerbated by the market access restrictions in place (see below) that prevent U.S. publishers from engaging in direct contracts for printing for the Chinese market. Instead, U.S. publishers must partner with a Chinese publisher, who handles all contracts for book production. This lack of control over the contractual relationship makes it difficult for U.S. publishers to control licensees who violate the contract terms by printing more copies than licensed and selling the “rogue” copies for an extra profit. They then return the unsold legitimate copies to the publisher, who bears the full risk of estimating market demand under the industry’s “remainder” system. Foreign publishers will remain vulnerable to this practice until market access barriers as to printing are removed.

The second form is outright piracy by an entity that has no license to print the book at all. In some cases, book pirates target an English language book that they are able to replicate almost exactly, thus being able to print a book that is virtually indistinguishable from the original. In other cases, books are clearly pirated—the quality varies greatly. Most translation piracy involves print piracy of this type—often, poor quality translations, bound at a printing press. This hurts not only the original foreign publisher, but also the Chinese publisher who was granted the legitimate translation rights.

Recent studies suggest that underground dealing of pirated bestsellers, especially at places such as the Beijing Book Market in Tianshuiyuan, is flourishing. AAP suspects that Tianshuiyuan is the primary source for pirated books sold in the street vendor network in Beijing.

- *Internet piracy*

The industry’s fastest growing problem—a problem we share with many of our fellow copyright industries—is internet piracy. Just in the last six months, complaints from publishers about scanned books being traded online have increased significantly. Clearly, this is a practice that threatens to do more harm to our industry than all other problems combined.

Web sites offering free book downloads are thriving. These books in most cases do not originate in electronic form, but are scanned versions of hard cover books. Sites offering pay or free downloads join traditional peer to peer trading sites as serious threats to the book market. Too often, takedown notices are ignored and government action against these operations is slow.

Internet piracy is affecting publishers of academic and professional journals in a different way. These journals, which unlike most of the books originate in electronic form, are usually made available by publishers to institutional subscribers through use of passwords or similar “gateway” mechanisms. Increasingly, journals publishers are seeing evidence of these electronic “gateways” being left open or accessed by unauthorized users. Publishers have also reported evidence of abuse of “trial” samples of electronic goods sent to libraries through extensive unauthorized sharing of these samples among institutions. All of this activity—in violation of both copyright laws and subscriber agreements, opens the doors for pirate operations to access these materials, reproduce them and sell them in competition with the legitimate vendors.

Electronic piracy is in some cases replacing photocopying as well. Reports indicate that often, scanned versions of academic titles are reprinted and bound for distribution by second hand bookstores, with the label “e-book.” Indeed, this is an increasingly frequent phenomenon throughout the world, as more and more enforcement actions against traditional copyshops are yielding computers full of “e-files” ready to print at customer demand.

- *Trademark counterfeiting*

While most book publishers are primarily focused on copyright piracy, trademark counterfeiting affects the industry as well. Counterfeiting is often incidental to copyright piracy, as pirates use the famous imprints of American publishers to get attention from readers. This is taken to a new level when well-known publishers’ names are used on books that bear no content produced by that publisher at all! These books, available at mainstream bookstores in China, mislead consumers as to the origin of their content.

In addition, book publishers suffer from a sort of “passing off,” by which books bearing titles and fictional authors’ names similar to bestsellers are marketed at the expense of the legitimate authors and publishers. By one example, former President Bill Clinton’s book was marketed, before release in China. One version contained long excerpts of Senator Hillary Clinton’s book in place of President Clinton’s writings.

- *Market access*

One will never effectively tackle a piracy problem without ensuring that legitimate product is available for the market in question. We cannot divorce the concept of market access from the question of piracy. In no case is this more apparent than in China. Activities essential in the publishing chain of events are off-limits to foreign publishers. Many of the restrictions in place violate the commitments China made in acceding to the World Trade Organization (WTO). For instance, foreign publishers cannot import, hold stock and distribute their own materials in the Chinese market, resulting in delays in delivery and increased costs. Some of these activities are restricted to State-owned enterprises; others are limited in such ways as to keep them effectively entirely closed. Foreign owned enterprises are also prohibited from making final decisions about content to be published in the market, or obtaining the necessary Chinese book number that is a prerequisite for publishing in China. Foreign publishers cannot print for the Chinese market, but only for export. AAP believes wholeheartedly that, in order for publishers to be able to tailor a product to the market—in substance and in price—foreign publishers must have greater access to the market than they do today.

Publishers understand the needs of a local government to exercise some degree of content control, and remain willing to abide by China’s censorship process. Yet, the censorship process should not be coupled with such severe restrictions on activities in the market.

Market access issues affect the ever-growing market for online content as well as hard goods. High fees charged for access to foreign material on the China Education and Research Network (CERNET) result in high costs to publishers of electronic materials (such as academic and professional journals) in making their products available in China, and fewer, lower quality options available to Chinese scholars and students.

China’s lack of transparency with regard to the laws and regulations governing market access further exacerbate an already frustrating situation. This must be improved. AAP calls on China to increase its

transparency with regard to all provisions pertaining to implementation of its obligations under international agreements.

Industry Efforts and Activities

AAP, along with the Publishers Association of the U.K. (PA), has been working hard to engage the relevant Chinese authorities on the various issues facing the industry. The association has worked extensively with the National Copyright Administration of China (NCAC), the General Administration of Press and Publication (GAPP), the Ministry of Education (MOE), the Ministry of Information Industry (MII) and regional copyright authorities to address the problems of illegal reproduction at university textbook centers and internet piracy.

Between June and October 2006, NCAC and GAPP, together with regional authorities, investigated and took action against textbook copying at six universities, including some of Chinese most prestigious institutions. These organizations and the Ministry of Education also issued a series of notices to be disseminated to universities mandating that the infringing activities be halted. AAP and PA are working with authorities to verify the effects of these notices and actions. Since copying of academic materials in particular is cyclical in nature, it is especially important that the authorities monitor campus activities at the beginning of the academic terms. The starting points of classes this year—in March and September—therefore present excellent opportunities for the Chinese government to show that it is serious about stopping this form of piracy.

In addition, AAP and the PA are working with NCAC, MII and regional authorities to ensure that sites infringing our materials receive adequate attention. The associations have had at least one early success but progress has been slow on a second complaint.

These enforcement efforts have been complemented by a number of educational programs and dialogues that have allowed foreign and local publishers to join voices in the fight against piracy. On May 19, 2006, AAP and PA partnered with the Publishers Association of China (PAC) to bring a dialogue on these efforts to BookExpo America, the largest book publishing trade show in the United States. The program featured speakers from the GAPP, the Chinese Institute of Publishing Science, the U.S. Patent and Trademark Office, the Office of the U.S. Trade Representative and many industry bodies from China, the U.S. and the U.K. AAP was pleased to see the recognition that piracy is a common problem affecting many economies and a host of book-related industries.

The May 19 program followed a groundbreaking event held at the Beijing International Book Fair in September 2005. Also cosponsored by the Chinese, British and U.S. publishing associations, the program was entitled “Intellectual Property in the Global Economy: China’s Place in the World Publishing Community” and featured speakers from the U.S. Embassy Beijing, the NCAC, the GAPP, the Beijing Municipal Copyright Bureau, Renmin University, the Chinese Academy of Social Sciences and several publishing associations and companies. Again, all came away with the clear conviction that there was a common goal to pursue.

Conclusions and Industry Suggestions

The industry is working hard to inform itself, speak to the authorities and make a dent in this landscape of piracy. AAP and its members firmly feel, however, that government-to-government dialogue is essential in bringing about meaningful change in the Chinese market place. We encourage the Administration and Congress to keep engaging the Chinese government in a variety of venues, consistently emphasizing the need for strong intellectual property rights protection for China’s local

industry as well as foreign industry, and the need for greater market opening in this sector so important to Chinese culture and scholarship. China is a country that boasts millions upon millions of eager potential readers and scholars, and these readers are largely being supplied with illegal goods.

AAP asks that government-to-government discussion of book piracy—including in the Joint Commission on Commerce and Trade (JCCT) talks, the Strategic Economic Dialogue (SED), and other appropriate venues be stepped up. AAP also joins its fellow copyright industries in asking that the U.S. government continue to pursue strong laws and regulations governing internet infringement, in hopes of saving the market from utter destruction by file-sharing and downloading sites. Third, AAP emphasizes the need for more effective enforcement against hard goods pirates, through the administrative, civil and criminal systems. Finally, AAP stresses that market access for foreign companies is imperative in the fight against spreading piracy, that transparency of laws and regulations affecting both market access and intellectual property protection must be increased and that China must bring its laws and regulations into compliance with the commitments it made upon acceding to the WTO. AAP looks forward to working with all relevant parties to ensure that the market becomes increasingly viable for legitimate businesses.