Policy Enforcement Markets: How Bureaucratic Redundancy Contributes to Effective Intellectual Property Implementation in China

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Policy Enforcement Markets

How Bureaucratic Redundancy Contributes to Effective Intellectual Property Implementation in China

Andrew C. Mertha

Redundancy...is rarely regarded as economic and even less often as efficient....The removal of redundancy is rarely, if ever, challenged in the technology of public administration. It is an article of faith, a commanding precept: and if its injunctions cannot be followed today, one can always dream of tomorrow.1

Over the past several decades a debate, extending up from obscure academic circles all the way to the highest levels of policymaking, has emerged over the relationship between bureaucratic efficiency and the successful execution of policy. Two contending approaches provide the broad parameters of debate. One school argues that redundancy is a symptom, if not an actual cause, of administrative inefficiency. The alternative approach avers, somewhat counterintuitively, that bureaucratic redundancy is what makes possible the smooth execution of policy. This article argues that the widespread assumption that redundancy necessarily leads to inefficiency is incorrect; there are different types of redundancies. In some cases, redundancy does produce inefficient results. But in others, such “parallel systems” can contribute to efficient and effective policy outcomes, while their absence can lead to wasteful and ineffective policy implementation.2

Traditional public administration theories embrace the commonly held notion that strict divisions of labor among administrative agencies lead to effective outcomes. As early as the 1920s redundancy was seen as wasteful at best and counterproductive at worst.3 Martin Landau challenged this view, arguing that the efficiency of an organization can result precisely from the inefficiencies of its parts. However, to do so, administration channels must be independent of one another. Looking at public infrastructure projects in the Twin Cities and the Bay Area, Jonathan Bendor found that redundancy theory was sound even in the absence of such complete independence, as in the case of interagency rivalry. Yet these conclusions remain far from universally accepted. In analyzing the space shuttle Challenger’s mission in January 1986, C. F. Larry Heimann argues that neither the traditional approach nor the redundancy model advocated by Landau, Bendor, and others—both of which were used in preparing the shuttle launch—was able to prevent the Challenger disaster.4

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The debate can be moved forward by drawing from the case of China. One issue that can be explored is intellectual property rights, specifically trademarks and copyright. A trademark is a word or symbol that identifies the source of goods and has an intrinsic value by denoting the quality, prestige, or other positive qualities of the good in question. Copyright has traditionally referred to artistic works and encompasses the exclusive right to reproduce, distribute, perform, or prepare derivative versions of the work, although in recent years such protection has been extended to industrial applications, particularly computer software. Copyright and trademarks are both designed to protect the owner's investment in the work or brand in question, providing the incentive necessary to create or develop it in the first place. Both also protect consumer expectations. Functionally, copyright and trademarks are relatively similar to one another and thus provide a useful basis for comparative inquiry. For the sake of clarity, counterfeiting refers to trademark violations, and piracy refers to copyright violations.

In recent years there has been tremendous variation in the enforcement of copyright and trademarks in China, as suggested in Figure 1. Although Chinese statistics should be treated with caution, there is little reason for these government agencies to underreport copyright enforcement. Moreover, these numbers accurately reflect a strong consensus among dozens of enforcement agents, government officials, and foreign business representatives interviewed for this project. How can trademark enforcement levels that are more than twenty times greater than the corresponding levels for copyright be explained? What accounts for highly uneven but often systematic patterns of local enforcement?

One can argue that this variation simply reflects differences in China's piracy and infringement rates. According to this explanation, there is less copyright enforcement because there are fewer violations of copyright relative to trademarks. While this argument may be true in the absolute, when compared in terms of piracy levels as rates of market share, the opposite is true. The China Quality Brands Protection Committee estimates that sales of counterfeit products on average account for 15 to 20 percent of total sales, while the International Intellectual Property Alliance estimates piracy levels in 2000 at 90 percent for motion pictures, 85 percent for sound recordings and musical compositions, 93 percent for business application computer software, and 99 percent for entertainment computer software.5

Nevertheless, one might conclude that these enforcement levels, although highly asymmetrical, might nonetheless correlate with the ratio of actual economic losses related to copyright and trademarks and therefore represent similar enforcement rates. This explanation is problematic for two reasons. First, a comparison of the absolute numbers indicates that the ratio of dollar losses for trademark and copyright is around 10:1, which is only half the enforcement ratios of up to 24:1 as indicated in Figure 1.6 More important, such a valuation-based argument suggests that there is a causal relationship between the economic loss ratios between trademark counterfei-
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**Figure 1** Cases of Copyright versus Trademark/Anticounterfeiting Administrative Enforcement, 1996–2000

![Graph showing cases of Copyright versus Trademark/Anticounterfeiting Administrative Enforcement, 1996–2000.](image)


...ing and copyright piracy, particularly those pertaining to foreign rightholders in China, and the rates of enforcement by Chinese enforcement agencies. This approach conflates Chinese and U.S. economic interests. Furthermore, it ignores the often divergent preferences on the part of national and local Chinese officials.

Others may claim that such variation can be explained by differences in the inherent difficulty in enforcing copyright relative to trademarks. The manufacturing, distribution, and sale of music and video compact discs and computer software are cheap, fast, and profitable and satisfy a growing consumer demand. Production start-up costs in the late 1990s were estimated to be one million U.S. dollars, which could be recouped after a single month of operation. Moreover, such facilities are easily hidden, as with the compact disc factories concealed within a duckling hatchery in Hengang, Guangdong Province.

However, the same holds true for counterfeiting. Production of counterfeit goods is often highly decentralized along sophisticated manufacturing and distribution networks. As in the case of copyright, with trademarked goods legitimate factories are often used to make illegitimate product outside of their contracted production runs,
while profit rates from counterfeiting and piracy are similarly high. In short, there is little substantive difference in the inherent ease or difficulty of copyright and trademark enforcement.

One might also contend that variation in enforcement reflects different government priorities, that antipiracy enforcement is at most a second-tier goal for the Chinese government, relative to anticounterfeiting enforcement. Recent history soundly rebuts this claim. The overwhelming focus of the Sino-U.S. negotiations over intellectual property from 1991 through 1996 was on copyright; trademark concerns barely registered in the talks or were represented in the subsequent bilateral agreements. Therefore, if only to maintain normal trade relations with the U.S., one would expect the Chinese government to favor copyright enforcement at least as much as, and probably far more than, trademark enforcement, and certainly to a greater degree than China’s actual copyright enforcement behavior would suggest.9

Policy Enforcement Markets

This variation in implementation is an outcome of a policy enforcement market. Such a market develops when two or more discrete bureaucracies without traditional endogenous institutional incentives to enforce policy discover that their enforcement jurisdictions overlap.10 When this redundancy is coupled with demand for services within these jurisdictions, these bureaucracies will compete to secure a greater share of this enforcement market in order to capture the financial and other rewards for doing so. The likely result is an increase in the effectiveness and a decrease in the costs of policy enforcement. This framework can help establish a positive conceptual and empirical link between redundancy, on the one hand, and economy and efficiency, on the other. It would be overstating the case to assert that redundancy alone is sufficient to increase economy and efficiency. Rather, redundancy is a necessary condition.11 But because it is somewhat counterintuitive, it can be easily overlooked as an explanation for variation in policy enforcement outcomes.

In the case to be examined here, beginning in the mid 1990s and coinciding with the rise in foreign direct investment during this period, a growing degree of administrative overlap has evolved between two key Chinese anticounterfeiting enforcement bureaucracies, the Administration for Industry and Commerce and the Quality Technical Supervision Bureau. The increasingly intersecting jurisdictions of these otherwise independent bureaucracies reveal significant redundancies in anticounterfeiting enforcement capacity. However, this jurisdictional overlap differs from those anticipated by Landau. This jurisdictional intersection is not the result of policy. Something else is causing this redundancy: agency. This overlap is not simply the result of ambiguous jurisdictional parameters; it is the outcome of strategic interac-
tion, of genuine and often intense interbureaucratic rivalry between the Administration for Industry and Commerce and the Quality Technical Supervision Bureau. This rivalry, in turn, has created basic market efficiencies: a reduction in the costs and increases in the effectiveness of the overlapping jurisdiction in question, anticontfeiting enforcement. Such competition has transformed what began as a narrowly contested administrative portfolio into a dynamic and flourishing policy enforcement market.

When such bureaucratic redundancy is absent, however, even when demand is high, enforcement markets are unlikely to evolve, as demonstrated by China's copyright enforcement apparatus. Much like the Trademark Office located within the Administration for Industry and Commerce, China's copyright management agencies below the provincial level are firmly embedded within a larger bureaucracy, headed by the ministry of culture, along with other potential competing subbureaucracies. Copyright enforcement was expected to benefit from organizational economies of scale, that is, through the availability of extra personnel and the channeling of budgetary resources. In practice, these economies have not been realized. A large part of the explanation for this outcome is the absence of an exogenous, competing bureaucracy.

Redundancy is a product of dynamics exogenous to the bureaucracy, the impact of which depends in part on the degree to which the bureaucracy is consolidated. This variation in consolidation depends on the degree to which potential competing units have been coopted into the bureaucracy in question. The greater the cooptation, the less opportunity there is for a situation of redundancy to arise and the less likelihood for enforcement markets to emerge. The Administration for Industry and Commerce and the culture bureaucracy differ on this dimension. The latter has effectively consolidated all rival claimants to its enforcement portfolio, while the former has not. In other words, the differences between the Administration for Industry and Commerce and the culture bureaucracy are not so much differences in kind as differences in the degree of consolidation.

Although these case studies are specific to China, the broader analytical claims are not. The policy enforcement market framework has both theoretical and substantive significance. Theoretically, it adds to the debate in public administration and institution theory over the relationship between administrative redundancy and policy execution. It also suggests a more suitable framework through which to understand the evolution of developing states' participation within the global international intellectual property regime, as well as the local policy implementation and enforcement dynamics currently emerging in China and elsewhere.

Substantively, it is important because China's leaders appear to favor the logic of consolidation and streamlining as a way to increase the efficient operation of the government bureaucracy through clearer divisions of labor and a minimum in over-
lap, a trend indicated in Table 1. In 1998 Chinese bureaucracies at all levels were ordered to cut their staffing in half, even as many of the bureaucracies themselves were being merged with one another, downsized, or even eliminated.

The conclusions of this analysis may also be useful in anticipating and explaining variation in China’s compliance with its World Trade Organization (WTO) obligations and in providing testable predictions of future patterns of WTO compliance. The greater the degree of redundancy-induced bureaucratic competition is among Chinese enforcement agencies, for example, the more the likely it is that China will comply better. Moreover, insofar as this argument is correct, current attempts to downsize China’s bureaucratic apparatus may actually lead to less effective outcomes in policy implementation and enforcement. As China finds itself under increasing obligation to honor its WTO and other international commitments, such a conclusion is alarming indeed.

Bureaucratic Redundancy, Administrative Rivalry, and Enforcement Markets

The use of the market as a heuristic to explain political behavior is not new to political science. Writing primarily about Europe, Charles Lindblom stated that “economics’ refers to activities, which may simultaneously be political activities.” John Kingdon has identified “policy entrepreneurs” who opportunistically shape the public policymaking process in the United States. The market is the principal image through which Ramseyer and Rosenbluth have analyzed Japanese politics. Celestin Monga uses it to explain policy processes in Africa. Yet scholarship on China’s economic reforms has shown a general disinclination to use the market as a metaphor for the policy implementation and enforcement process.

Table 1 Administrative Consolidation in China

<table>
<thead>
<tr>
<th>Year of Reform</th>
<th>Number of Central Government Organs the Year Before Reform</th>
<th>Number of Central Government Organs the Year of Reform</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>100</td>
<td>61</td>
<td>-39%</td>
</tr>
<tr>
<td>1987</td>
<td>72</td>
<td>68</td>
<td>-6%</td>
</tr>
<tr>
<td>1993</td>
<td>86</td>
<td>59</td>
<td>-31%</td>
</tr>
<tr>
<td>1998</td>
<td>59</td>
<td>53</td>
<td>-10%</td>
</tr>
</tbody>
</table>

However, such a market metaphor may be a more accurate description of the current behavior of China’s local enforcement bureaucracies than previous frameworks upon which the policy enforcement market approach builds but from which it is analytically distinct. The first of these approaches is what others have termed the “power model.” In this approach, “[p]olicy outcomes result from struggles among the top leaders who are quite sensitive to the implications of alternative policy choices upon their stature and power...[while issues] are not just or even largely decided on their merits in terms of promoting the national interest.” Bureaucratic turf wars based on resource competition provide the motor for the power politics argument but posit only the most tenuous relationship between such competition and the effective performance of these bureaucratic actors’ assigned duties. By contrast, in the enforcement market framework functional bureaucracies compete precisely over the performance of these assigned functions, which in turn bring in monetary resources and status.

The market approach also departs from the power politics model’s assumption that power is strongly correlated with a bureaucracy’s ability to compete effectively. Implicit in the enforcement market argument is the notion that a bureaucracy need not be more powerful relative to its opponent, but only that it have the capacity to carry out the functions over which it is competing. The weaker bureaucracy need only have “power” in the narrowest sense of being able to compete in performing the assigned functions in question, as distinct from traditional indicators of power such as budget, number of personnel, and multiplicity of administrative functions. In this analysis the younger, smaller, and arguably weaker Quality Technical Supervision Bureau nevertheless demonstrated itself to be a tough competitor. Precisely this relative weakness motivated it to compete for the anticonteaterfiting enforcement portfolio; it was “hungry for more.” Conversely, other potential, more powerful bureaucratic competitors did not aggressively compete over the copyright enforcement portfolio because they were relatively strong. For them, the marginal utility of taking on these additional responsibilities was negated by the costs involved in staking such a claim.

This approach also departs from the political bargaining framework that succeeded the power politics model. Studies of Chinese political bargaining posit that subnational fragmentation within the Chinese political system creates opportunities for functionally and geographically defined political actors to derive political or economic gain in exchange for providing support for or withdrawing threats of potential defection from the agreed-upon policy outcome. As articulated by David Lampton:

[b]argaining occurs among proximate leaders, persons of equal rank, or among immediate superiors and subordinates. Bargaining is most in evidence when one is dealing with two or more bureaucracies of approximately equal resources, none of which can carry out the undertaking without the cooperation of the other(s) and cannot persuade a senior authoritative leader or institution to compel the other(s) to cooperate.
Within such a framework policy often reflects the immediate interests of the implementing agencies as much as, if not more than, the actual goals the policy was intended to address.

In the bargaining model, specific political outcomes arise from bargains struck when organizational goals of interested bureaucracies collide. Actors enter formal or informal but officially sanctioned negotiation arenas to arrive at agreements that allow the policymaking process to move forward. In these negotiated outcomes everybody wins something. It is, in short, a consensus-building process with a largely partially positive-stun outcome. A superior-ranking body such as a “leading small group” (lingdao xiaozu) is often necessary to manage the process and legitimate the outcomes and often creates an ad hoc coordinating agency to represent it during the actual bargaining process.

The dynamics of political markets, by contrast, are characterized by intense competition over enforcement jurisdictions in which the outcome takes a zero-sum, winner-take-all character. One agency gains what the other agency loses. Collusion is difficult, even within an oligopoly with as little as two supply-side actors. Moreover, in a political system in which actors’ jurisdictional boundaries have traditionally been regarded as theoretically inviolable even while they remain somewhat vague, such competition lies outside acceptable norms of organizational behavior. Because such jurisdictional clashes defy norms governing administrative divisions of labor, they can not be openly acknowledged, let alone validated, through state-sponsored bargaining. Such turf battles must exist outside official organizational mediation structures. To explain this behavior, therefore, a conceptual approach other than political bargaining is needed.

Finally, studies of political bargaining do not sufficiently accommodate the growing number of nongovernmental (indeed foreign) actors that have entered the political arena over the past decade. Government units increasingly go outside the traditional political arena, drawing from networks with foreign actors to increase their administrative resource base, their prestige, and even their power. The growing strength and robustness of the demand side of the trademark enforcement market is largely a result of these foreign actors’ penetration of the Chinese political marketplace.

**Supply-Side Actors: The Enforcement Bureaucracies**

“Supply” here refers to a viable enforcement apparatus, measured by the human and material resources it brings to enforcement. In a competitive enforcement market, two or more actors supply these resources, increasing the quality and decreasing the cost of enforcement. Contrary to the expectations of the efficiency argument in traditional public administration theory, noncompetitive or single agency enforcement resembles a weak and ineffective market with high barriers to entry.
Anticounterfeiting: Organizational Rivalries and Political Markets

Anticounterfeiting enforcement in China is characterized by robust competition between two bureaucratic agencies over this enforcement portfolio (see Figure 2). This rivalry, in turn, has been transformed into a political market with the increase of demand-side actors who actively consume this service of de facto trademark enforcement.24 The effect has been to lower the costs and increase the effectiveness of anticounterfeiting enforcement. According to this logic, when redundancy is combined with certain demand-side incentives, market efficiencies in enforcement arise not by embracing but by consciously and deliberately rejecting official organizational norms of streamlining and clearly established divisions of labor.

Trademark enforcement is officially the responsibility of the Administration for Industry and Commerce (gongshang xingzheng guanli xitong) through its investigation teams (icha dui). The Administration for Industry and Commerce has a long and relatively uninterrupted institutional history. During its organizational formative years in the mid 1950s and as recently as the late 1970s it was responsible for the arguably illiberal task of regulating commercial activity and reining in capitalism in China. In the 1950s it was charged with registering commercial enterprises and managing their transformation from capitalist to socialist modes of production. During the Cultural Revolution it was reduced to coordinating markets for commodities and basic goods. By the end of the 1970s its responsibilities included “protecting the socialist system of public ownership, maintaining the state plan, striking down capitalism, and guarding against the direction of capitalism.”25 Subsequent institutional evolution has paralleled China’s experiment with de facto capitalism through the establishment of a socialist market economy.

This history has left the Administration for Industry and Commerce with considerable ambivalence regarding the rubrics of advanced capitalist development, including the protection of intellectual property rights, on the one hand, and other, sometimes contradictory, organizational and/or policy goals, on the other. This institutional history has allowed the development of an overwrought administrative structure straddling numerous conflicting responsibilities amassed over time.

Symptomatic of this ambivalence are the latent tensions between such responsibilities as trademark protection/anticounterfeiting enforcement and enterprise registration and market management. Enterprise registration provides local Administration for Industry and Commerce offices with a substantial amount of tax-exempt extrabudgetary income. Enterprise registration and market management are relatively straightforward tasks and rarely involve any real risk. Enforcement of commercial laws and regulations requires the location of the violating factory, warehouse, or retail outlet and confiscation of the offending merchandise. Both are costly, time-consuming, and potentially dangerous undertakings.

The Xichang Audio-Visual Market in Kunming, Yunnan Province, demonstrates the outcomes of such trade-offs. Most goods sold in the Xichang market are illegal
Figure 2 China’s Anticounterfeiting Bureaucracies

National Level

Provincial Level

Prefecture Level

County Level

Township, Village Level
video compact disks. In order to operate in this market, each of the more than two hundred stalls pays rents to the local district government through the appropriate collection agency, the Administration for Industry and Commerce. A conservative estimate based on interviews with the retailers places the average annual payout to the district government at about 7.2 million yuan (U.S. $872,000), a substantial sum for a single market to pay out to an urban district government in a relatively backward region in China. This amount alone is more than seventy times the annual budget of the Press and Publications/Copyright Bureau Investigation Team for the entire province.

It is, therefore, particularly surprising that anticounterfeiting enforcement, the portfolio managed under the Administration for Industry and Commerce Trademark Office and enforced by the Administration for Industry and Commerce investigation teams, has improved since the mid 1990s. Indeed, by 2001 the Xichang Market had been closed down. What accounts for this seemingly systematic progress in anticounterfeiting enforcement? The answer is the intrusion into this jurisdiction of the Quality Technical Supervision Bureau.

Sensing a chance opportunity arising from Administration for Industry and Commerce inertia, the local Quality Technical Supervision Bureau units were able to successfully exploit this slack and recast themselves as units within a parallel anticounterfeiting enforcement bureaucracy. This understated but deliberate extension by the Quality Technical Supervision Bureau of its own jurisdictional mandate into the arena of anticounterfeiting enforcement has fundamentally changed the situation, bringing a new bureaucratic competitor into the fray and forcing the Administration for Industry and Commerce into action.

The Quality Technical Supervision Bureau (zhiliang jishu jiandu xitong) that exists today was established in 1988 and charged with managing product quality and providing consumer protection from shoddy or dangerous goods. Perhaps sensitive to the trend toward consolidation, by the mid 1990s the Quality Technical Supervision Bureau sought to enhance its power before it could be merged into another, superior bureaucracy. Beginning in earnest in the mid 1990s, the Quality Technical Supervision Bureau increasingly interpreted its role to include the direct and aggressive combating of the production and sale of counterfeit goods, intruding upon what had formerly been anticounterfeiting responsibilities of the Administration for Industry and Commerce.

Apart from enhancing its own power, what else did the Quality Technical Supervision Bureau receive? To a large degree, the answer is money. Issuing fines to and collecting fees from violators and obtaining side payments from trademark rightholding clients provide these enforcement agencies with revenue impossible to secure through normal budgetary allocation processes. Very often, foreign firms and the private investigators in their employ are required to pay case fees, often little more than bribes. Other side payments can take the form of underwriting legitimate
enforcement-related expenses, including costs associated with overtime pay, the renting of extra vehicles, and the destruction and disposition of confiscated merchandise. Investigators often provide banquets and other entertainment for these officials, and some foreign companies have taken it upon themselves to build recreation facilities for individual enforcement agencies as gestures of "goodwill."\(^{28}\)

The Administration for Industry and Commerce has in turn been prompted to pursue its anticounterfeiting responsibilities more vigorously. For these units, such competition provides a not-so-subtle reminder of their own suboptimal performance in fulfilling their organizational mandate and provides incentives to demonstrate that they can effectively undertake such duties. Indeed, a loss of an established portfolio can be devastating to a bureaucracy, demonstrating weakness, a decline in relevance, or a loss of political favor with the ruling elite. The potential damage to the Administration for Industry and Commerce as a whole (not simply to the Trademark Office) extends far beyond simply losing its trademark management responsibilities. On the other hand, the growing amount of money to be made provides a positive incentive to engage in effective enforcement. Tiros, outside competition increases incentives towards more effective trademark enforcement while raising the stakes for neglecting to do so.

More recently, both of these enforcement agencies have realized that there is more money to be made by retaining a portion of the fines levied against counterfeiters than by collecting case fees or charging for unofficial "enforcement services."\(^{29}\) This realization represents a dovetailing of incentives between the enforcement agencies and the rightholders (indeed, levying case fees provided a disincentive to retain the services of these agencies). Finally, it has led to a rise in the financial rewards for anticounterfeiting enforcement and a corresponding increase in the stakes over which the two agencies compete.

Copyright: The Absence of Administrative Competition

From the perspective of a qualitative research design, the case of copyright is a bit tricky because of an analytical double negative. Specifically, in a small-n study it is necessary to demonstrate that a nonevent (effective policy enforcement) is caused by the absence of the causal factor examined here, a competing bureaucracy.\(^{30}\) One way to do so is to employ the indirect method of difference to demonstrate similarities between the copyright bureaucracy and the trademark office system within the Administration for Industry and Commerce and to isolate and underscore the essential difference between them: the existence or nonexistence of a competing bureaucracy.\(^{31}\) Before doing so, it is necessary to provide an institutional map of the copyright bureaucracy itself.

In theory, the National Copyright Administration is a separate but equal organization with the National Press and Publications Administration. In practice, the National Press and Publications Administration outranks the National Copyright
Administration. The director-general of the National Press and Publications Administration has five deputies, one of whom is the director of the National Copyright Administration. National Copyright Administration officials, though spread thin, are knowledgeable and aggressive and appear to care a great deal about copyright, both intellectually and in terms of policy. By contrast, their provincial counterparts manage what are little more than lonely outposts scattered along China’s copyright protection frontier.

The logic of organizational consolidation and streamlining governs the subnational administrative structure of China’s copyright enforcement apparatus. The Provincial Copyright Department (banquan chu) is nestled within and subordinate to the Provincial Press and Publications Administration. The latter makes all the decisions regarding personnel, budget, and any additional ad hoc resources that are to be allocated to the Copyright Department. This embeddedness makes the copyright enforcement agencies dependent on their host units. Indeed, this dependence is virtually guaranteed by the impossibly low personnel allocations for copyright management: at the end of the 1990s only two hundred people were engaged in full-time administrative copyright work. Because budgetary outlays are based upon personnel allocations, the operating budgets for the copyright agencies are correspondingly infinitesimal.

The Press and Publications Administration can, at its own discretion, request extra funds for the copyright bureaucracy from the provincial government. In theory, the Press and Publications Administration allocates additional staff temporarily from its other subunits to compensate for the Copyright Department’s personnel shortfalls. In practice, such conscription is costly, as mobilizing extra personnel from other Press and Publications offices raises preparation and coordination costs, incurs opportunity costs by preventing staff from performing their regular duties, and increases inefficiencies brought about by intra-agency bargaining (that is, within the Copyright Department and the Press and Publications Administration), an exercise in which the Provincial Copyright Department is at a disadvantage. Consequently, enforcement activity is sporadic and often unproductive.

As noted in Figure 3, below the provincial level the negative effects of administrative consolidation and inefficient outcomes for enforcement become even more pronounced. Corresponding units of the Press and Publications Administration and the Copyright Department are merged within and subsumed under the bureaucracy headed at the national level by the ministry of culture. These subprovincial units combine press, publications, copyright, and the responsibilities of other potentially competing administrative agencies, such as those of radio, film, and television, with the local organizational goals of the culture bureaucratic system.

The aggregated priorities of the culture bureaucracy are not principally concerned with or sensitive to the copyright piracy situation on the ground. This bureaucracy is insulated from interbureaucratic competition because the culture bureaucracy...
already manages all administrative actors likely to provide competitive pressure to improve copyright enforcement. One way of illustrating this situation is by counterfactual reasoning. The radio, film, and television bureaucracy, for example, might have been a prime contender for the copyright enforcement portfolio had it not been consolidated into the culture bureaucracy. As Daniel Lynch has amply documented, this bureaucracy has seen its budget dry up over the past decade and has become increasingly dependent on external sources of funding.36 This bureaucracy also has the necessary standing to argue credibly that it has some jurisdiction over copyright (certainly as tenable as Quality Technical Supervision Bureau's claims on anticoun-
terfeiting). Moreover, it would compete over what the culture bureaucracy deems a secondary or tertiary concern, copyright (exactly how the Administration for Industry and Commerce regarded trademarks before the Quality Technical Supervision Bureau stepped in). Finally, there is anecdotal evidence that the radio, film, and television bureaucracy has in fact engaged in some very limited competition with the copyright bureaucracy at the national and provincial levels. This example is methodologically relevant because the radio, film, and television bureaucracy is independent of the ministry of culture at these two levels. In a quasi-experimental setting, it provides something like a control group (with the consolidated culture bureaucracy below the provincial level as the experimental group).

Finally, potential rivals outside the culture bureaucracy lack the incentives to compete. Benefits for actors such as the Public Security Bureau and Customs are not sufficient to entice them into competition. In other instances, such as the court system, legal-judicial actors lack the power to enforce effectively and, by extension, establish an enforcement market for copyright.

Comparing the Anticounterfeiting and Culture Bureaucracies The foregoing discussion notwithstanding, one may still claim that the copyright bureaucracy, unlike the Administration for Industry and Commerce, is so constricted that variation along the dimension of this constriction explains differences in enforcement. Would not static bureaucratic structural differences, particularly the relative constriction of the copyright enforcement bureaucracy, provide a simpler explanation?

The problem with such an alternative explanation is that in terms of their endogenous structure these two bureaucracies are actually quite similar. The Administration for Industry and Commerce Trademark Office, the chief unit in this bureaucratic cluster that manages trademark issues, holds the same administrative rank as the Copyright Department (at the provincial level, for example, they are both chu, or departments). It also receives a similar amount of personnel/budgetary allocations and is faced with a similar paucity of manpower. Parochial trademark office goals can also differ substantially from broader Administration for Industry and Commerce goals, and the trademark offices and the copyright departments both have very little ability to mobilize the bureaucracies in which they are embedded to pursue these narrower goals. Specifically, there is no apparent structural difference between the difficulties of the copyright bureaucracy’s mobilization of the press and publication investigation teams and the Trademark Office and the Administration for Industry and Commerce investigation teams.37

Thus, on the dimensions that provide the basis of the claim of bureaucratic constriction the two bureaucracies’ similarities outweigh their differences. The balance towards better policy enforcement has shifted not through inert bureaucratic structure, but rather through exogenous factors, in the form of supply-side competition.
for the enforcement portfolio in question, a product of administrative redundancy. Moreover, the incentives to enforce increase exponentially when demand-side actors with side payments begin to come on the scene.38

The Demand Side and Market Dynamics in Policy Enforcement

Because a policy enforcement market is a market, it cannot exist without both supply and demand side actors. For the market framework to be complete, it is also necessary to look at demand. It is challenging to identify levels of demand with any degree of precision. Even if one were able to identify clear differences in rates of enforcement demand, the utility in relying on these differences in demand as the main causal factor to explain variation in enforcement is not certain.39 Documenting cases in which local officials more effectively enforce the least popular policies and are lax in enforcing the policies for which there was more mass-based demand, O’Brien and Li argue that there may effectively be no correlation between policy enforcement and consumer/constituent demand.40 It seems necessary to look beyond a simple comparison of demand levels to explain variation in enforcement to ways in which demand levels are transformed into action.

Since the mid 1990s Chinese and foreign private and quasi-private investigation firms have proliferated in China. Although they do not limit their operations to intellectual property, up to ninety percent of their work involves trademark/anticounterfeiting issues.41 It would be inaccurate, however, to conclude that, solely on the basis of these figures, demand for copyright enforcement is only one-ninth the demand for anticounterfeiting enforcement in China. It remains very difficult for these agencies to establish the types of relationships with the Copyright Departments that they enjoy with the anticounterfeiting units.42 Moreover, the few side payments appear to do little more than throw money at the problem. In one experiment unfolding in China, the copyright bureaucracy is attempting to establish antipiracy “federations” among Chinese copyright-intensive companies that would provide information and money to the Copyright Departments to underwrite copyright enforcement. Interviews with foreign copyright owners in China indicate that they, too, are willing to help sponsor more aggressive copyright enforcement if such enforcement could be expected to be forthcoming. But the dynamics are markedly different. Such side payments appear to be more like unspecified handouts than payment for tangible services in the form of past or future enforcement activity, as in the case of anticounterfeiting.

This presence of foreign firms and investigation agencies has reinforced and strengthened the quantity and quality of local trademark enforcement in China by nurturing and deepening competition between these bureaucracies, often through an
extensive menu of financial incentives.\textsuperscript{43} Investigation firms and their clients, whether Chinese or foreign, can not undertake enforcement actions by themselves. They must secure the cooperation of the local enforcement authorities. In the case of anticyberfeiting enforcement, these firms must choose between engaging the Administration for Industry and Commerce and the Quality Technical Supervision Bureau. Interbureacratic rivalries and competition are strengthened and deepened. Examples are necessarily anecdotal, but they illustrate more general trends.

In one of China’s coastal provinces, a foreign cosmetics manufacturer had decided not to work with the Quality Technical Supervision Bureau on a case because it had demanded high case fees. However, the agency continued to solicit a case fee payment by arguing that it had already conducted a raid and requested that the case fee be paid retroactively, threatening to put the product back on the street if the foreign company refused. When the company continued to refuse, Quality Technical Supervision Bureau officials announced that the confiscated product had been bought by its original owner (the counterfeiter) at an Administration for Industry and Commerce auction, a transparent effort to discredit the latter unit. Ultimately, representatives from the foreign company were invited by the Administration for Industry and Commerce to witness the public burning of the merchandise. One investigator involved in this dispute believes that the Administration for Industry and Commerce would have probably sold this merchandise back to its original owner but was compelled to destroy it because the Quality Technical Supervision Bureau had made a point of bringing the auction to the attention of the foreign company.\textsuperscript{44}

However, foreign companies and investigative firms have to be careful about overplaying their hand in fostering interbureacratic competition. In one city in China’s Yangtze Basin a municipa Quality Technical Supervision Bureau was particularly thorough in conducting a market sweep and at the insistence of the foreign client received a letter of commendation. This Quality Technical Supervision unit, on its own initiative sent a copy of the letter to the municipal government, which in turn used the letter to berate the Administration for Industry and Commerce for not performing its duties effectively. The local Administration for Industry and Commerce officials were furious and called the original foreign investigation company that had coordinated the market sweep to complain. The investigative firm expended considerable time and energy to “patch things up,” as they had also worked with the municipal Administration for Industry and Commerce in the past and wanted to keep the door open for future cooperation.\textsuperscript{45}

**Conclusion**

This inductive inquiry of variation in copyright and anticounterfeiting enforcement in China through redundancy and consolidation within two Chinese bureaucracies
offers theoretical, analytical, and empirical contributions to the study of organizational behavior, political competition, domestic convergence with international law, and the establishment of a viable legal infrastructure in China. First, it adds to the ongoing theoretical debate on administrative redundancy and the effect it has on policy implementation and enforcement. In the case of copyright enforcement in China, administrative consolidation translates into inefficient enforcement outcomes that are inelastic to demand and unresponsive to local conditions more generally. In the case of anticounterfeiting enforcement, by contrast, bureaucratic redundancy through parallel administrative systems has led to more market-efficient enforcement outcomes. These two empirical cases raise questions about the widely held assumption that redundancy equals inefficiency. They also identify a set of conditions that predict the likelihood of the emergence of such redundant efficiency dynamics and associated outcomes. These conditions include similar administrative functions across two or more bureaucracies, the requisite power to enforce these functions, suitable positive and negative incentives, and a sufficient degree of independence from a host bureaucracy.

Second, this analysis offers an alternative framework through which to understand the policy implementation and enforcement processes in China’s rapidly changing state. Anticounterfeiting enforcement dynamics are governed less by traditional explanations of the policy implementation process, such as power and bargaining, and more by the enforcement market. The assumptions guiding such a line of inquiry make it necessary to disaggregate from the state level of analysis and to examine closely the discrete functional bureaucracies and the factors that shape the dynamics of interaction between them, ultimately with an eye to the impact on policy implementation and enforcement outcomes.

In contrast to the predictions of the power model, policy outputs closely mirror initial policy goals. In contrast to the bargaining model, dynamics between bureaucracies are resolved through competition, not consensus. Of course, the immediate incentives facing the enforcers may be different, and even independent of, the social benefits and public goods contained in the policy itself. However, the result, more effective policy implementation and enforcement, is largely indistinguishable from what would arise from a high level of professionalism and genuine commitment to policy goals by the enforcement agencies involved. The private incentives facing these local government actors create behaviors that are consistent with the provision of the public good through better enforcement.

Given the increasing role of foreign actors in the process, this framework makes it necessary to recast some assumptions regarding government-business relations in order to accommodate the growing diversity of such networks in China. This framework raises questions with regard to how foreign commercial actors help shape the process of governance in China and how it differs from analyses of government-
business relations that focus exclusively on Chinese actors or relegate foreign actors to the periphery. The ability of foreign actors to restructure and reconfigure the incentives facing local Chinese enforcement bureaucracies only underscores the increasingly important role of foreign businesses in influencing policy outcomes.  

Third, this analysis has implications for China’s accession to the World Trade Organization. Over the past several years, discussions of China and the WTO have suffered from one of two major shortcomings. When not painting an overly rosy picture that strains credibility, they make dire (and equally noncredible) predictions of inevitable social unrest and economic decline. Other analyses are tentative and noncommittal; they argue in some vague fashion that the arrangements for the implementation of China’s WTO protocol are moving forward, although implementation will almost certainly encounter problems. Such conclusions are unfalsifiable and therefore offer no predictive or prescriptive value. By contrast, this analysis makes it possible to construct testable hypotheses about the conditions under which China is likely to be more or less compliant with its WTO obligations. Where policy enforcement markets exist, enforcement will be more effective; where they do not exist, the opposite will hold true.  

Finally, this analysis has implications for the further evolution of the rule of law in China as well as in developing countries more generally. It asks where the nexus of enforcement of China’s laws and regulations is located. Insofar as these administrative agencies can increase their power, they can continue to marginalize the effectiveness of China’s courts. However, if the agencies themselves are weak, as with copyright enforcements, their responsibilities might be more easily transferred to the courts, perhaps by a higher-ranking third party, giving the courts an opportunity to grow into viable, independently powerful institutions. This effect on the rule of law raises an uncomfortable dilemma. More effective administrative enforcement within any particular issue area increases the possibility that these agencies will be able to subvert the development of their legal counterparts. It is thus important to maintain the focus on discrete functional bureaucracies as important units of analysis, as well as on the competitive interagency dynamics that govern their behavior, to explain dynamics of policy implementation and enforcement.

NOTES

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6. Recent estimates place counterfeiting losses in China at U.S. $16 billion and copyright-related losses at U.S. $1.5 billion.


10. The institutional situation could include the overall lack of a viable legal/judicial apparatus and at least one bureaucracy that through inertia lacks the will to enforce its own official mandate or at least one bureaucracy that wishes to expand its own to jurisdiction by enforcing policy that does not officially fall under its official mandate. None of these conditions is particularly uncommon, especially in developing countries.

11. That is to say, in the absence of supply-side competition, side payments would likely give rise to a situation of traditional corruption, rent-seeking, or at the very least indeterminate enforcement outcomes and not to a policy enforcement market.


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22. David M. Lampton, “‘A Plum for a Peach: Bargaining, Interest, and Bureaucratic Politics in China,” in Lampton and Lieberthal, eds., p. 34.
24. The Quality Technical Supervision Bureau can claim jurisdiction over counterfeit goods because they harm or intentionally deceive the consumer; it does not have jurisdiction over trademark-infringing goods.
27. It has been renamed the Quality Technical Supervision Examination and Quarantine General Bureau (Guojia zhiliang jishu jiandu jianyan jianyi zongju) at the national level and the Quality Technical Supervision Bureau at the provincial level and below. Andrew C. Mertha, The Politics of Piracy: Intellectual Property in Contemporary China (Ithaca: Cornell University Press, 2005), ch. 5.
29. Interviews 02SH13, July 5, 2002; 02GY02, July 24, 2002; 02GY03, July 25, 2002.
33. Interviews 99CD06, July 1, 1999; 02CD03, July 12, 2002.
35. Interviews 98CD06, August 10, 1998; 99SH13, May 20, 1999; 02CD01, June 25, 1999; 02SH07, June 28, 2002; 02KM02, July 23, 2002; 02CD05, July 12, 2002; 02GY02, July 25, 2002; 02BJ07, August 9, 2002.
36. Lynch, After the Propaganda State.
37. One might ask why the copyright bureaucracy does not act more like the Quality Technical Supervision Bureau: a single bureaucracy in charge of a narrow policy portfolio. The answer is that structurally the copyright bureaucracy is more like specific units (such as the Trademark Office) within the Administration for Industry and Commerce than like the Quality Technical Supervision Bureau (which is an independent bureaucracy). More to the point, in the policy enforcement market framework the Copyright Department as the inertial bureaucracy is also more analogous to the Administration for Industry and Commerce Trademark Office than to the Quality Technical Supervision Bureau.
38. If side payments are introduced in the absence of a policy enforcement market environment, there is a greater likelihood that the result would be rent-seeking and corruption, not substantially improved policy enforcement.
39. In fact, it is far easier to document specific demand levels for copyright enforcement. The three rounds of Sino-U.S. intellectual property rights negotiations in the early to mid 1990s were driven by foreign demand for copyright enforcement in China, and foreign copyright-intensive associations have mushroomed on Chinese soil in the past several years. See http://www.iipa.com/countryreports.html; and the Business Software Alliance, http://www.iipa.com/rbc/2004/2004SPEC301CHINA.pdf.
42. The local copyright departments remain suspicious of working with foreign actors, a suspicion that might be mitigated with the introduction of a competing agency. Interview 03BJ03, July 24, 2003.
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