

LET A HUNDRED FLOWERS BLOOM

The Future of Copyright in China

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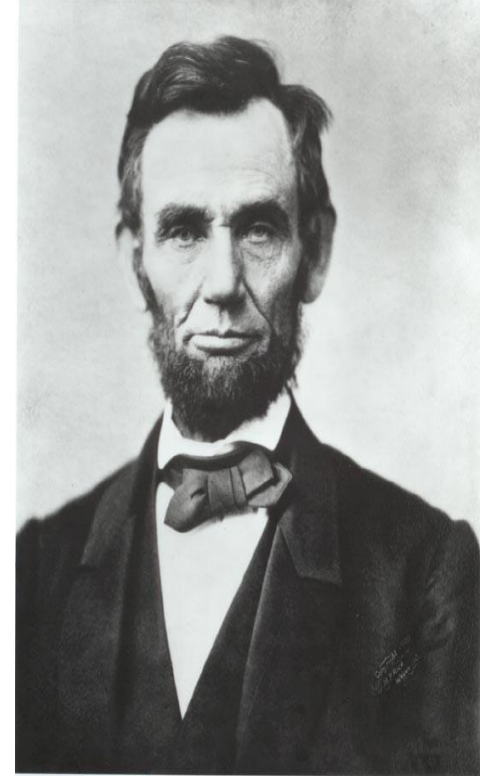
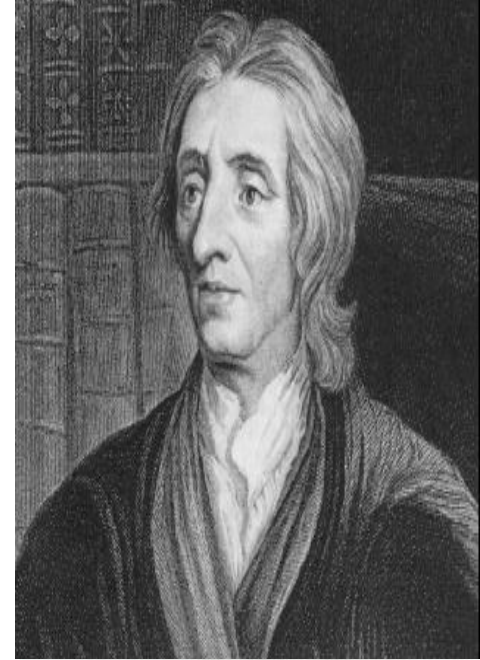
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Introduction

- Natural right
 - Confucianism
 - *To Steal a Book is an Elegant Offence*
- Utilitarianism
 - Piracy mostly targets foreign works
 - Widening access to knowledge
 - Boosting local business and employment
- International Obligations
 - The Berne Convention
 - The TRIPS Agreement
 - WCT & WPPT



Copyrightability and Censorship



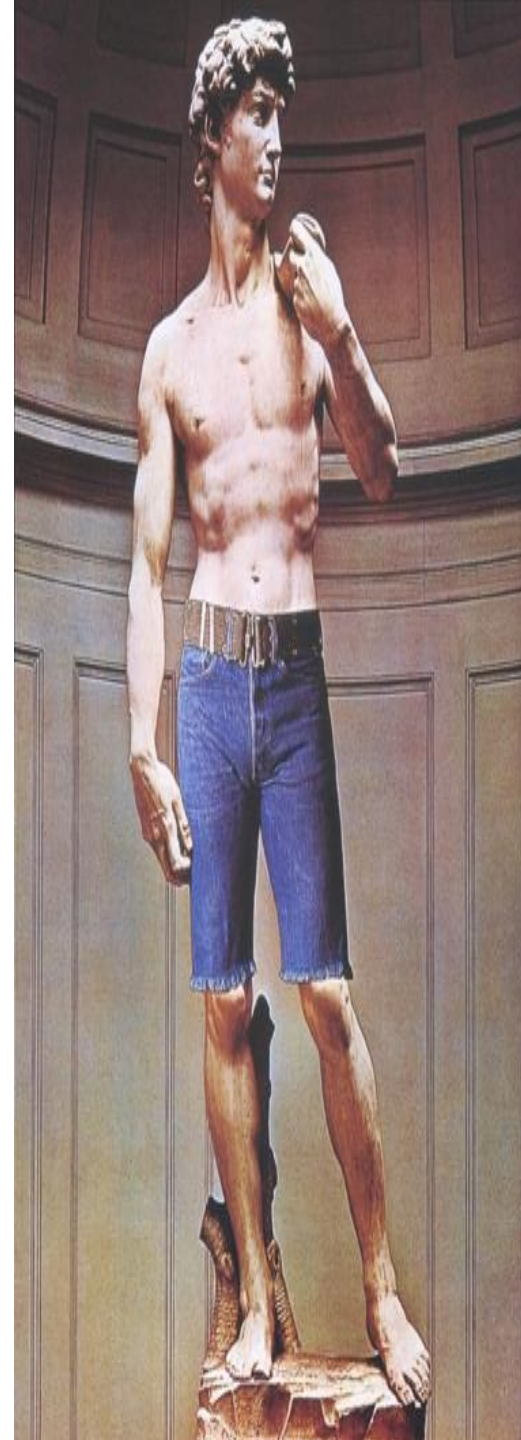
Copyrightability and Censorship

- Article 4
 - *Works the publication or dissemination of which are prohibited by law shall not be protected by this Law.*



Copyrightability and Censorship

- The US-China WTO Dispute (WT/DS362)
 - The Berne Convention (1971)
 - Article 5(1)
 - Minimum protection requirement
 - Article 5(2)
 - No formality requirement
 - The TRIPS Agreement
 - Article 41.1



Copyright and Censorship

- Amendment

- *A copyright owner shall not exercise her rights in a way that violates the Constitution and law or harms public interest.*



Copyright and Censorship

- Judicial protection for pre-censorship works
 - Injunction
 - No damages
- Comments
 - Infringement in January, 2015
 - Litigation in March 2015
 - Approval in May 2015



Neighboring Rights

- Audiovisual Works
 - Motion picture (Article 3)
 - Copyright
 - Video Recording (Article 39)
 - Neighboring right
- Implications
 - No public performance right within neighboring rights
 - Right of making available for interactive transmission



Neighboring Rights

- Draw a line in the sand
 - Music videos
 - Levels of creativity
 - Scripted
 - Motion picture
 - Copyright – public performance right
 - License from record label as producer
 - Unscripted recording of a live concert
 - Video recording
 - Neighboring right – no public performance right
 - License from Music publisher (via collecting society) for musical composition
 - Are all motion pictures scripted?



Neighboring Rights

- German law
 - Photography and cinematography
 - Copyright
 - Above certain levels of creativity
 - Neighboring right
 - Below certain levels of creativity
- Chinese law
 - Photography
 - Copyright with a modicum of creativity
 - Neighboring right irrelevant
 - A selfie by a monkey
 - Copyright



Neighboring Rights

- Sports
 - Unauthorized streaming
 - World Cup
 - Olympics
 - Motion picture?
 - Video recording?



Neighboring Rights

- Sports
 - Not video recording
 - Broadcast (Article 44)
 - WIPO Broadcasting Treaty?
 - No right of making available
 - Options
 - Simulcast
 - Rebroadcasting right
 - Delayed broadcast
 - Reproduction



Enforcement

- Are foreign concerns over Chinese copyright enforcement unfounded?
 - U.S.
 - Plaintiffs prevailed in 50%-60% cases
 - China
 - Foreign plaintiffs prevailed in 90% cases



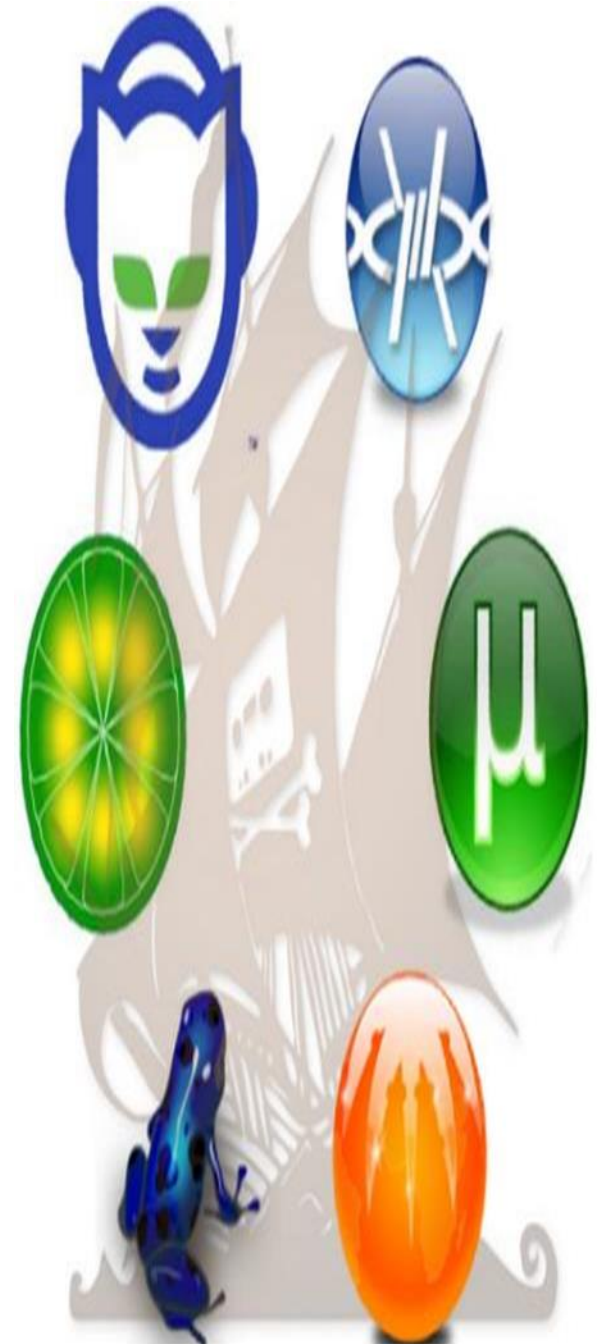
Enforcement

- Enforcement Hurdles
 - Procedures
 - Remedies
 - Protectionism



Enforcement

- Procedures
 - Foreign evidence
 - Notarization and legalization
 - No discovery
 - Hiring private investigators
- Filing
 - A & M v. Napster
 - 21 plaintiffs
 - 1150 samples
 - Millions involved
 - Beijing News v. Zhejiang Online
 - One plaintiff
 - 7706 works
 - Filings?
 - Filing fees, copying fees, legal fees



Enforcement

- Remedies
 - Injunctive Relief
 - A & M v. Napster
 - Covering all works that plaintiffs own
 - Including future works
 - Not equitable relief
 - Covering works specified
 - Statutory Damages
 - US
 - US\$200-US\$150,000 per work
 - China
 - < US\$ 150,000 (RMB 1,000,000) per work
 - CAVCA v. Xinjianghui
 - 49 songs performed by a karaoke bar
 - US\$ 9800 – US\$ 7,350,000
 - US\$ 3950 (RMB 24,500)
 - US\$ 80 per work



Protectionism

- Hangzhou Architectural Infringement



Enforcement

- Are foreign concerns over Chinese copyright enforcement unfounded?
 - U.S.
 - Plaintiffs prevailed in 50%-60% cases
 - 90% cases are settled quickly
 - Remaining cases are usually 50/50
 - China
 - Foreign plaintiffs prevailed in 90% cases
 - Defendants are unwilling to settle in simple cases
 - Undeterred by penalties



Thank You!

谢谢您

