

While extensive scholarship addresses the economic impact and cultural and political roots of copyright infringement and piracy of mainstream works of creation (ie: movies and music) by companies in China, little has been written of the copying and selling of works of fine art. This activity has more than purely economic roots - it is culturally driven by a centuries-old tradition of teaching art by imitation - by literally "channeling" the spirit of the old masters into new imitations of their works.

The focus of this article is to examine these cultural drivers in the context of the intersection of politics, economics, intellectual property law, (both its policy and its enforcement), and culture and art history in China. The goal of this work is to serve as a means of building a greater understanding of what the likely result will be when China, through membership in the WTO and potentially treaties like Berne, is asked to comply with a Western world orientation to the doctrine of derivative works in copyright.

My working thesis is that this intersection will only have positive results if both sides of this cultural divide come to understand their differing approaches, and forge some form of compromise and adjustment of derivative works theory to achieve a higher degree of harmonization. All too often, efforts to create a unified approach to IP issues of this nature are unsuccessful due in large part on the lack of understanding, and unwillingness to devote the effort to gain that understanding, of the very different cultural and social drivers that form the foundation of legal systems in our respective countries.