

Final Paper:
On China's Selective Adaptation to the Global Intellectual Property Rights Regime

Casey McCollum
San Francisco State University

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I. Introduction: A Clash of Systems

Since its induction into the World Trade Organization (WTO) in 2001, the People's Republic of China (China) has come under scrutiny for its handling of intellectual property rights (IPR). The case of Huawei, a Chinese telecommunications firm, exemplifies this issue. In the ongoing 2018 case, *United States v. Huawei Technology Co., LTD*, the U.S. Department of Justice (DOJ) has levied multiple charges at Huawei, including in 2020 "Conspiracy to Steal Trade Secrets."¹ The company is scheduled to go to trial in January 2026². Despite its alleged lack of respect for IPR, China has increasingly become an exporter of intellectual property (IP). Huawei, for instance, has become a prolific filer of patents. The company claims it is not meaningfully influenced by the government, which is controlled by the Chinese Communist Party (CCP)—however, this has not convinced U.S. lawmakers, many of whom believe the company threatens U.S. national security due to potential government ties³, emphasizing how this issue is complicated by the opaque relationship between the Chinese state and private sector.

This paper seeks to establish the historical difference between Chinese conceptions of IPR and Western conceptions of IPR, and analyze how the clash of these two systems, as China has grown in economic power, has resulted in increased legal friction between China and the U.S. It argues that, as China has grown into a major economic power, its conception of IPR has not remained static. Rather, it has strategically adapted to the global IPR landscape to simultaneously adopt and flout the rules in ways that enhance its perceived national interest. China's tacit challenge to the existing global IP system has contributed to an increasingly hostile

¹ *Superseding Indictment, United States v. Huawei Technologies Co., Ltd.*, No. 1:18-cr-00457 (E.D.N.Y. Feb. 13, 2020), 35, <https://www.justice.gov/archives/opa/press-release/file/1248961/download>

² Karen Freifeld, "US Criminal Case Against China's Huawei Heads Toward 2026 Trial," Reuters, April 4, 2024, <https://www.reuters.com/legal/us-criminal-case-against-huawei-heads-toward-2026-trial-2024-04-04/>

³ Colin Hawes, "Why Is Huawei's Ownership So Strange? A Case Study of the Chinese Corporate and Socio-Political Ecosystem," *Journal of Corporate Law Studies* 21 (2020): 2, <https://doi.org/10.1080/14735970.2020.1809161>

relationship between it and the West, particularly the U.S., which fears losing its technological hegemony. This matters as the relationship between the world's two most powerful economic states will have important downstream effects for the rest of the world and the global trading system.

II. Literature Review

Historically, China has treated IP in a relaxed manner. Alford (1997) cites many examples of this trend, from foreigners bypassing the Qing Dynasty's legal system and lobbying their home governments to enforce IPR via treaty⁴ to the unsuccessful reforms of the Republic of China's Kuomintang government⁵. He convincingly argues there is no meaningful historical precedent in China similar to Western-style IP law, as Chinese dynasties were usually focused on political harmony, not private ownership⁶. This contrasts with the existing global IPR regime established by the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Brander et al. (2017) argue China's failure to adhere to TRIPS is damaging international cooperation efforts⁷. Even if one is not convinced by their claim that firms' economic incentives are diminished⁸ by China's flouting of TRIPS, their assertion that the international rule of law is in jeopardy if China continues its noncompliance⁹ is well-argued. Fang et al. (2017) build on the innovation component of IPR, arguing that privatization of Chinese state-owned enterprises (SOEs) enhances innovation, especially in cities where IPR

⁴ William P. Alford, *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilization* (Stanford: Stanford University Press, 1997), 35

⁵ Alford, *To Steal a Book*, 52

⁶ Alford, *To Steal a Book*, 24

⁷ James A. Brander, Victor Cui, and Ilan Vertinsky, "China and Intellectual Property Rights: A Challenge to the Rule of Law," *Journal of International Business Studies* 48 (2017): 909, <https://doi.org/10.1057/s41267-017-0087-7>

⁸ Brander, Cui, and Vertinsky, "China and Intellectual Property Rights," 911

⁹ Brander, Cui, and Vertinsky, "China and Intellectual Property Rights," 916

protection is strong, by increasing firms' quality and quantity of patents¹⁰. Scholars who are critical of patents' ability to increase innovation may criticize their methodology, as they equate patents with innovation¹¹.

Beyond considerations of innovation, Li & Alon (2020) suggest that if IPR protection is not in the best interest of the CCP, it will not be adopted. Echoing themes from Alford's analysis, they place the unique character of China's government at the heart of its approach to IPR¹². They argue compellingly that the notion that China will improve its adherence to IPR protection as it begins to export more IP (as, say, the U.S. did when it was a small economy¹³) is based on the assumption that China will develop similar to democracies, but that China's "party-state" rejects the rule of law, a key component of IPR development in democracies¹⁴. Focusing on the Huawei case, Tang (2020) takes a critical view of the U.S.'s role in Huawei's legal troubles. She argues that the DOJ's legal escalation against the company in 2018 is an example of a U.S.-led effort to "push Huawei out"¹⁵, specifically in the field of 5G, where it feels threatened as it lacks "national champions."¹⁶ Tang's argument is consequential as it highlights the selectiveness with which law is enforced and to what political ends. Bu (2023) expands on this political economy approach, logically arguing that Huawei's advantage in 5G gives China a "first-mover advantage" in developing standards for the digital economy, which could limit "future economic opportunities for the US."¹⁷ Bu also notes that per China's National Security Law (NSL 2015), domestic firms

¹⁰ Lily H. Fang, Josh Lerner, and Chaopeng Wu, "Intellectual Property Rights Protection, Ownership, and Innovation: Evidence from China," *The Review of Financial Studies* 30, no. 7 (2017): 2475, <https://doi.org/10.1093/rfs/hhx023>

¹¹ Fang, Lerner, and Wu, "Intellectual Property Rights Protection," 2455

¹² Shaomin Li and Ilan Alon, "China's Intellectual Property Rights Provocation: A Political Economy View," *Journal of International Business Policy* 3 (2020): 60, <https://doi.org/10.1057/s42214-019-00032-x>

¹³ Li and Alon, "China's Intellectual Property Rights Provocation," 65

¹⁴ Li and Alon, "China's Intellectual Property Rights Provocation," 66

¹⁵ Min Tang, "Huawei Versus the United States? The Geopolitics of Exterritorial Internet Infrastructure," *International Journal of Communication* 14 (2020): 4564, <https://ijoc.org/index.php/ijoc/article/view/12624>

¹⁶ Tang, "Huawei Versus the United States?" 4568

¹⁷ Qingxiu Bu, "Behind the Huawei Sanction: National Security, Ideological Prejudices or Something Else?" *International Cybersecurity Law Review* 5 (2024): 297, <https://doi.org/10.1365/s43439-024-00112-6>

are required to assist the government in national security¹⁸. Lee (2017) illuminates the implications of this law as it relates to the digital realm (and by extension, Huawei) by analyzing China's 2017 Cybersecurity Law, which defines "cybersecurity as a national security issue."¹⁹ She introduces the concept of cyber-sovereignty, explaining how China effectively constructs digital "borders" to prevent foreign influence over its internet space²⁰. Though the Chinese government can directly influence private firms, Hawes (2020) argues the case of Huawei represents a clear "convergence of interests."²¹ He reasonably argues that Huawei is self-managed but CCP-aligned—that the links between the two are not hidden but open²². Muehlfeld & Wang (2022) introduce an interesting dimension to the literature that adds to Alford's broad historical perspective, arguing "culture alone" is likely not explanatory of Chinese "variation in IPR implementation."²³ They argue, using data on public perception of counterfeit goods, that Chinese IPR regulation is "less categorically different ... than previously thought."²⁴ This argument may be limited by the implications of IPR violations, which go beyond counterfeit goods, like conspiracy to steal trade secrets, as Huawei is charged with. Yu (2006) expresses reasonable concern, based on U.S.-China arguments over intellectual property before China joined the WTO from the late 1980s to early 1990s²⁵, that friction at the intersection of the global trading system and the U.S.-China bilateral economic relationship may "backfire on the entire international community"²⁶. Ultimately, he concludes that China's joining the WTO is a

¹⁸ Bu, "Behind the Huawei Sanction," 285

¹⁹ Jyh-An Lee, "Hacking into China's Cybersecurity Law," *Wake Forest Law Review* (2017): 65, https://www.wakeforestlawreview.com/wp-content/uploads/2019/01/w05_Lee-crop.pdf

²⁰ Lee, "Hacking into China's Cybersecurity Law," 68

²¹ Hawes, "Why Is Huawei's Ownership So Strange?" 28

²² Hawes, "Why Is Huawei's Ownership So Strange?" 22

²³ Katrin Muehlfeld and Mei Wang, "Intellectual Property Rights in China—A Literature Review on the Public's Perspective," *Frontiers in Sociology* 7 (2022): 4, <https://doi.org/10.3389/fsoc.2022.793165>

²⁴ Muehlfeld and Wang, "Intellectual Property Rights in China," 8

²⁵ Peter K. Yu, "From Pirates to Partners (Episode II): Protecting Intellectual Property in Post-WTO China," *American University Law Review* 55, no. 4 (2006): 903, <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1066&context=aulr>

²⁶ Yu, "From Pirates to Partners," 946

moment of opportunity, but that China's "WTO accession" has the potential to "ruin the entire international trading system"²⁷ due to this tension.

III. Argument: China's Selective Adaptation to the Global Order

Though China is no longer a dynastic system, Li & Alon (2020) highlight that the general trend highlighted by Alford (1997) in his civilizational analysis of Chinese IPR remains true. As a primary goal, the CCP is more focused on political stability than it is on private ownership, meaning it will adapt global IP norms selectively and strategically in ways that suit its national interest. This tendency leads to inconsistent signals, and though it may appear contradictory, it is better understood as rational decision-making on the part of China, explaining why the state may selectively overlook IPR protection when it comes to powerful state-aligned companies like Huawei while simultaneously becoming a large exporter of patents. Ultimately, this selective approach has soured its relationships with Western powers, but especially the U.S., as emphasized by the high-profile *United States v. Huawei* case. These bilateral tensions have contributed to the paralysis of the global trading system, governed by the WTO, as the U.S. has been blocking new (re-)appointments to the WTO Appellate Body since 2017. This decision is influenced by many variables, but it is reasonable to conclude that U.S.-China disputes over IP are a contributing factor, given that the U.S. has argued that TRIPS is "inadequate for addressing China's IP violations."²⁸ In this context, the concerns of Yu (2006) regarding the breakdown of the global trading system appear salient, and suggest this development may signal a global

²⁷ Yu, "From Pirates to Partners," 1000

²⁸ Kevin J. Hickey and Brandon J. Murrill, *Intellectual Property Violations and China: Legal Remedies*, Congressional Research Service, R46532, September 17, 2020, 26, https://www.congress.gov/crs_external_products/R/PDF/R46532/R46532.2.pdf

devolution from multilateral enforcement mechanisms to IP disputes settled by bilateral enforcement.

That being said, China's selective adaptation to the international order is not designed to create chaos—this paper argues that this pick-and-choose approach, from the perspective of the CCP, is strategic and designed to serve Chinese national interests. China's growth has been misunderstood by Western observers, emphasized by the unhappiness around China's continued inability to adhere to global IP law as it grows wealthier, illustrated by scholars like Brander et al. (2017). Not enough attention has been paid to the CCP's desire for and ability to maintain political order—for instance, it was also largely speculated that as China became a wealthier state, it would democratize, but this has not happened yet. One explanation as to why goes back to Mao Zedong's successor, Deng Xiaoping, who presided over China's post-Mao economic transformation. Deng was willing to support economic liberalization insofar as it promoted growth, but he was always unwilling to accept democratization, culminating in the total suppression of the Tiananmen Square pro-democracy movement in 1989²⁹. While China may seem to display mixed signals, this paper argues that its selective engagement with global norms, in this case, IPR, is strategic. Deng Xiaoping had a rhetorical phrase he liked to employ: "It doesn't matter if a cat is black or white, as long as it catches mice."³⁰ Since the Deng administration, the country has followed a mixed development approach which distributes power across various actors and provides incentives for private actors—ultimately, while the state can influence private actors directly if it chooses to, it tends to rely on convergence of interests, as will be discussed later in the case of Huawei.

²⁹ Encyclopedia Britannica, "Tiananmen Square Incident: Chinese History [1989]," Encyclopedia Britannica, accessed May 21, 2025, <https://www.britannica.com/event/Tiananmen-Square-incident>

³⁰ Oxford Reference, "It Doesn't Matter if a Cat Is Black or White, as Long as It Catches Mice," Oxford Reference, accessed May 21, 2025, <https://www.oxfordreference.com/display/10.1093/acref/9780199539536.001.0001/acref-9780199539536-e-312>

Following Dengist logic, it makes sense from the perspective of the Chinese state to simultaneously ignore IPR and enforce IPR wherever it may give Chinese firms an edge in technological development. Legal consequences or a potential decline in innovation may factor into the state's decision-making, but they do not take precedence over what the CCP perceives to be China's national interest, in this case, national security. The CCP is focused on building cyber-sovereignty, which, again, is the idea that China should have national control over its internet, or digital zone of control. The reasoning behind this, as Lee (2017) highlights, is that the government explicitly sees it as linked to national security, and by extension, political stability. This stability, in turn, is viewed as essential to the continued success of the Chinese state—this is the same logic that drove Deng's suppression of the 1989 pro-democracy movement. Cyber-sovereignty can only be maintained by possessing sufficient advantages in technology, which may be obtained either via innovation or via IP theft. Ultimately, China is incentivized to challenge U.S. hegemony in the digital ecosystem to achieve this goal of cyber-sovereignty. Huawei is a national champion firm, meaning that it is private but works in relative tandem with the Chinese state on achieving goals such as cyber-sovereignty—as such, the state is incentivized to ignore bad behavior by Huawei, including IP violation of foreign firms, as is alleged in the *United States v. Huawei* case. Again, this is a broader reflection of China's historical approach as outlined by Alford (1997), prioritizing issues of social stability over issues of private ownership, and certainly foreign private ownership.

To emphasize how the CCP prioritizes its interests (what it perceives to be China's national interest), it is useful to analyze how the private sector and the state sector in China interact. As emphasized, since the Deng era, the country has employed a mixed approach to development and experimented with allowing varying levels of private and public enterprise,

starting with Special Economic Zones mostly along China's coast³¹. During China's period of explosive growth, incentives were often aligned between the state and private firms, as Hawes (2020) makes clear in his evaluation of the relationship between Huawei and the CCP. This convergence of interests extended to foreign companies, as well, many of whom sought to offshore their manufacturing to China during its period of export-led growth to manufacture their goods at cheaper rates due to the relatively low cost of Chinese labor, even as the state demanded they share their technology³². More recently, however, current Chinese President Xi Jinping has begun to assert greater state control over all aspects of Chinese civil society, pushing for more authoritarian reforms³³. This shift highlights the party's willingness to subvert norms typically assumed to be crucial to market stability, namely the rule of law, to further its strategic goals. Bringing the argument back to IPR, this chain of logic explains why the Chinese state chooses to selectively protect or overlook IPR—ultimately, the decision is rooted in whether or not the state perceives it as forwarding their national objectives, not whether it is adherent to TRIPS. Furthermore, this outsized power of the state means that while public opinion in China, as highlighted by Muehlfeld & Wang (2022), may matter to some degree, its significance is not as notable as it would be in a democratic state, as Li & Alon (2020) highlight.

This approach may ultimately come at a cost to the Chinese state, assuming matters of national security of private ownership cannot be decoupled. Already, Xi's reforms appear to be significantly decreasing the amount of foreign direct investment (FDI) inflows³⁴ and somewhat

³¹ FDI China, "Learn All About Special Economic Zones In China," accessed May 21, 2025, <https://fdichina.com/blog/special-economic-zones-china/>

³² Investopedia Team, "Forced Technology Transfer (FTT): Meaning, History, Criticism," Investopedia, accessed May 21, 2025, <https://www.investopedia.com/forced-technology-transfer-fft-4687680>

³³ Susan L. Shirk, "China in Xi's 'New Era': The Return to Personalistic Rule," *Journal of Democracy* 29, no. 2 (2018): 25, <https://doi.org/10.1353/jod.2018.0022>

³⁴ World Bank, *Foreign Direct Investment, Net Inflows (BoP, Current US\$) - China*, accessed May 21, 2025, <https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?end=2023&locations=CN&start=2012>

reducing GDP growth rates³⁵. This may have deleterious effects on the economy, which may negatively impact the social harmony of Chinese society, the opposite of what the CCP intends. Not to mention, increasing state authority over Chinese firms could reduce innovation, as Fang et al. (2017) argue. Whether the Chinese-style approach to IPR, or broadly, economic development, is successful is inconsequential to this argument. The reason for this is that this paper does not assert that the CCP is pursuing the best course of action for China's development; rather, it builds on the structural case that scholars like Alford (1997), Li & Alon (2020), and Lee (2017) put forward. It seeks to highlight that China's seemingly contradictory approach to IPR protection reflects the logic of the Chinese state, which is not structured around the rule of law as a democracy is. China is incentivized primarily by political stability, because it is wholly run by a one-party system—to maintain this stability, China will seek to obtain technological advantages to build cyber-sovereignty and, in turn, enhance the CCP's version of national security. This may align with private interests, but in many cases it will not. The party will employ any available means to push their vision forward, including turning a blind eye to alleged IP theft, as in the case of Huawei—again, it does not matter what color the cat is, as long as it can catch mice. As China grows, the state becomes more emboldened to ignore legal challenges as it gains the ability to leverage its economic power (as illustrated by the Xi administration), contradicting the optimistic view that China will improve its IPR protection as it grows wealthier.

This all being said, it is critical to acknowledge the political economy dimension of this issue. As disputes over Chinese IPR violations become less governed by the WTO and more by unilateral actions like DOJ's the *United States v. Huawei* case it should be emphasized that the U.S. is also incentivized to selectively target and sanction Chinese firms like Huawei to reduce

³⁵ World Bank, *GDP Growth (Annual %) - China*, accessed May 21, 2025, <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?end=2023&locations=CN&start=2012>

their competitive advantage as the U.S. government has explicitly viewed China as a competitor since 2017, citing intellectual property theft as a serious concern³⁶. Viewing the Huawei case through a political economy lens, focused on the strategic rivalry between the U.S. and China, is the view that Tang (2020) holds and argues effectively, asserting that Huawei's primacy in 5G is the main reason for the U.S. DOJ's increasingly aggressive attacks on the company. As Bu (2023) compellingly argues, if a Chinese firm like Huawei can become the world leader in next-generation digital technologies like 5G, China will be able to play a greater role in shaping, or even writing, the rules of the digital landscape due to its first-mover advantage in the space. Not to mention, Chinese dominance of global technology standards would provide "economies of scale"³⁷ which enhance not only Chinese firms' revenues but their access to data, an increasingly powerful commodity as artificial intelligence (AI), primarily trained on large datasets, becomes an increasingly important dual-use technology (meaning it has both commercial and military applications). The potential of Huawei is threatening to the U.S., which is concerned with maintaining its status as a hegemon in the realm of emerging digital technologies³⁸.

Ultimately, Huawei serves as the archetypical example of China's approach to IPR. Though Huawei is not a state-owned enterprise, its interests have historically been convergent with the state, and, if need be, the Chinese state could assert authority over it per NSL 2015. To enable its firms to gain competitive advantages in the global marketplace and become leaders in emerging technology fields like 5G or AI, China is incentivized to pursue a selective approach to IPR—as has been established, rule of law is not the primary motivator for a state like China

³⁶ *National Security Strategy of the United States of America: December 2017* (Washington, DC: White House, 2017), 21, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf>

³⁷ Bu, "Behind the Huawei Sanction," 297

³⁸ Tang, "Huawei Versus the United States?" 4569

where party incentives tend to overrule market logic. This approach sharply contrasts with the set of principles that have come to govern the global trading order as established by the WTO.

Unhappy with the multilateral trading order's supposed inability to curb China's selective adaptation, what they perceive as flagrant Chinese disregard for IPR protection, the U.S. has increasingly begin to resort to unilateral mechanisms of enforcement such as the *United States v. Huawei* case, meaning the implications of these disputes for the broader health of the global trading system could be profound if the situation is not resolved between the two countries.

IV. Conclusion: The Implications of China's Approach to IPR

In some ways, the Chinese approach to IPR echoes the strategies of powerful nations that developed before it, namely the U.S., which similarly ignored IP in its early development. Overall, however, this paper concludes that China, especially now that it has grown into a relatively mature economy, has a meaningfully different approach to IPR than is the standard established by TRIPS and the WTO as a result of its unique governance structure and the incentives created by it. Ultimately, this issue is already having significant effects on the rest of the world. China's selective adaptation to the global trading order made logical sense from the perspective of the CCP, focused on political stability, in the process of its ascension. However, the rapidly evolving landscape around trade law indicates that China will have to shift its strategy in a potentially post-WTO world. Indeed, it appears the hostile economic relationship between the U.S. and China will increasingly come to define how issues of IPR between the two are handled—that is, unilateral enforcement mechanisms rather than multilateral will likely be the tools of states regarding IPR protection (and broadly, trade) moving forward.

The Huawei case, again, exemplifies this as the U.S. has moved to take unilateral action against a Chinese firm for alleged IP theft. This broad trend, though, has been observable throughout U.S. President Donald Trump's first term (2017-2021) and President Joe Biden's first term (2021-2025), as U.S.-China bilateral trade disputes increased, and most recently observable in the ongoing trade war in Trump's second term (2025-). This paper does not identify China's selective application of IPR as the *cause* of this trend, but rather as a *contributing factor* to it, and an example through which to understand how Chinese engagement with international systems looks different than Western engagement. After all, the international order was created by Western powers, and China, with a meaningfully different government structure, is bound to approach it differently—the question is whether the semblance of a multilateral international order can be maintained in the face of these clashing systems. In the case of a global trading order, the answer looks increasingly uncertain.

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