

Special 301 in China and Mexico: A Policy Which Fails to Consider How Politics, Economics, and Culture Affect Legal Change Under Civil Law Systems of Developing Countries

Keshia B. Haskins*

INTRODUCTION

The year is 1994. Imagine that you have been found guilty of selling pirated cassette tapes in China. By what possible penalties is your crime, copyright piracy (“piracy”), punishable? Believe it or not, in 1994, you could have faced a life sentence in jail or even execution for this crime.¹ Throughout the past decade, China has publicized harsh anti-piracy criminal penalties like these to evidence that it is serious about enforcing punishing copyright piracy. Although extreme, these penalties indicate China’s apparent commitment to bringing its copyright law system in line with rapidly evolving international standards. However, high piracy rates throughout the past decade suggest that China has failed to establish a viable copyright system that deters piracy.

Mexico has experienced similar problems with copyright law enforcement. One author has described Mexico as an “emerging

* J.D. Candidate, 1999, Fordham University School of Law. This Note received Second Prize in the International Intellectual Property Society Competition. The author thanks Professor Chantal Thomas as well as her parents, Norman and Lucy Haskins, for their encouragement and support throughout this project.

1. See Copyright Violators Face Life Term, Execution in China, STRAITS TIMES, May 22, 1994, at 1 (discussing several cases wherein violators of intellectual property laws received life sentences or “immediate execution.”). Senior Chinese official, Justice Minister Xiao Yang proclaimed that “[c]riminal sanctions must be imposed on those who commit intellectual property rights offenses to safeguard the integrity of ideas and dignity of law.” *Id.*

nexus in the pirate trade.”² Mexico’s lack of enforcement of its copyright laws overshadows its “willing[ness] to pass” laws that protect copyrights and punish piracy.³ The difference between passing copyright laws and enforcing them in Mexico has prompted one attorney to resort to private investigation to suppress piracy of his clients’ copyrights.⁴

Copyright piracy is the unauthorized copying and selling of copyrighted works.⁵ Video recordings, sound recordings, and computer programs are among the kinds of works that can be pirated.⁶ The Recording Industry Association of America (“RIAA”) breaks piracy into three categories: “[1] pirate recordings: unauthorized duplications of only the sounds of one or more legitimate recordings - including unauthorized digital recordings on the internet; [2] bootleg recordings: unauthorized recordings of a performance broadcast on radio or television, or of a live concert - including unauthorized digital recordings on the internet; and [3] counterfeit recordings: unauthorized duplications of the prerecorded sounds, as well as the unauthorized duplication of original artwork, label, trademark and packaging of prerecorded music.”⁷

United States companies, which rely on copyright for revenues, have strong interests in punishing piracy around the world. While piracy occurs in the United States,⁸ foreign piracy poses great fi-

2. Jonathan Friedland, *Fighting Fake Merchandise in Mexico is a Difficult Task*, ARIZONA REPUBLIC, Dec. 3, 1998 at D3.

3. *Id.*

4. *Id.* (explaining the job of an investigator hired by several companies with copyrights in Mexico to protect those copyrights).

5. RECORDING INDUSTRY ASSOCIATION OF AMERICA, RIAA TOP TEN FACT BOOK 19 (1997).

6. See INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, 1998 SPECIAL 301 SUBMISSION TO USTR 168 (1998) (submitted to the United States Trade Representative February 1998) [hereinafter 1998 SPECIAL 301 SUBMISSION].

7. *Id.*

8. See OUR GREATEST HITS: SEVEN SMASH STORIES ABOUT THE RECORDING INDUSTRY’S GOOD WORKS: THE RECORDING INDUSTRY ASSOCIATION OF AMERICA’S 1996 ANNUAL REPORT 33 (1996) (noting that from 1995 to 1996, pirate, counterfeit and bootleg seizures grew from “85,000 . . . to approximately 1.5 million in 1996.”); see also Martha Woodall, *Pirated Software Costs Pennsylvania, Microsoft Official Says*, *Knight-Ridder Tribune Business News*: PHILADELPHIA INQUIRER, Feb. 6, 1999, at 1-3 (discussing how pirated software costs millions of dollars and causes lost jobs, “wages, tax revenues and retail sales.”).

nancial burdens on United States companies.⁹ As these companies increasingly participate in the global economy, they desire to combat piracy and ensure that their copyrights will be protected abroad. To this end, the United States has become a party to international agreements aimed at setting standards for adequate copyright law enactment and enforcement.¹⁰

Even with these international agreements in place, piracy in foreign countries remains a tremendous problem. Both China¹¹ and Mexico¹² have adhered to international agreements, promising to promulgate and enforce adequate copyright laws. Even so, as arguably two of the world's top sources of piracy, China and Mexico send conflicting messages to the global market place about the

9. See, e.g., Howard Coble, *The Spring 1998 Horace S. Manges Lecture—The 105th Congress: Recent Developments in Intellectual Property Law*, 22 COLUM.-VLA J.L. & ARTS 269, 296-97 (1998) (evaluating the “No Electronic Theft (Net) Act” and emphasizing that “[i]n some countries, software piracy rates are as high as 90% of all sales.” While “[t]he U.S. rate is far lower (27%), . . . the dollar losses [in the United States] (\$2.3 billion) are the highest worldwide.”).

10. See, e.g., North American Free Trade Agreement, Dec. 17, 1992, Can.-Mex.-U.S., 32 I.L.M. 289, 605 (1993) (entered into force Jan. 1, 1994) [hereinafter NAFTA] (setting copyright standards for the United States and Mexico).

11. Several agreements govern copyright protections between the United States and China. See Convention Establishing the World Intellectual Property Organization (“WIPO”), July 14, 1967, 21 U.S.T. 1770, 828 U.N.T.S. 3 [hereinafter WIPO Treaty]; Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, completed at Paris on May 4, 1896, revised at Berlin on Nov. 13, 1908, completed at Berne on Mar. 20, 1914, revised at Rome on June 2, 1928, at Brussels on June 26, 1948, at Stockholm on July 14, 1967, and at Paris on July 24, 1971, 1161 U.N.T.S. 3. [hereinafter Berne Convention]; Universal Copyright Convention, 6 U.S.T. 2731, 216 U.N.T.S. 134 (1952), revised July 24, 1971, 25 U.S.T. 1341, 943 U.N.T.S. 178.

Currently, China is attempting to gain World Trade Organization (“WTO”) admission by complying with the Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 33 I.L.M. 1197 (1994) [hereinafter TRIPs Agreement]; see also Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (“Uruguay Round”), Apr. 15, 1994, 33 I.L.M. 1125 (1994) [hereinafter Final Act]. The WTO and TRIPs are products of the General Agreement on Tariffs and Trade, Oct. 30, 1947, T.I.A.S. No. 1700, 55 U.N.T.S. 187 [hereinafter GATT]. The GATT, WTO, TRIPs combination are part of a move toward making international trade rights and responsibilities more uniform as global trade increases. See Assafa Endeshaw, *Commentary: A Critical Assessment of the U.S.—China Conflict on Intellectual Property*, 6 ALB. L.J. SCI. & TECH. 295, 295-298 (1996).

12. The NAFTA governs copyright relations between Mexico and the United States. See NAFTA, *supra* note 10.

level of copyright protections offered under their legal systems.¹³ Each year the sale of pirated goods in China and Mexico flourish at the expense of legitimate United States copyright owners.

How has copyright piracy continued to thrive in China and Mexico even after these countries have agreed to protect copyrights owned by United States citizens and companies? China and Mexico, two of the world's "larger developing countries"¹⁴ face similar challenges with passing adequate copyright laws and punishing piracy. Developing countries often find piracy to be profitable and therefore fail to enforce laws enacted to protect copyrights.¹⁵ China and Mexico resist enforcing its copyright related laws partly for this reason.

Another issue that impedes the development of a viable copyright system in China and Mexico is to the newness of copyright law in both countries.¹⁶ Compared with industrialized countries, developing countries have historically offered few, if any, legal intellectual property rights protections.¹⁷ While industrialized countries have accepted the intellectual property laws because the bulk of the world's "intellectual property producers and consumers reside" in industrialized countries,¹⁸ developing countries often struggle with creating strong intellectual property laws because upon creation of such laws in developing countries, industrialized producers appear to gain at the expense of consumers of developing countries.¹⁹ This problem, attributable to the relative novelty of copyright law in developing countries, has plagued the copyright systems of China and Mexico.

In addition to their status as large developing countries and the

13. See 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 65-79, 166-82.

14. See Gabriel Garcia, Comment, *Economic Development and the Course of Intellectual Property Protection in Mexico*, 27 TEX. INT'L L. J. 701, 709-10 (1992) (citing Katherine Marton & Rana K. Singh, *Technology Crisis for Third World Countries*, 14 WORLD ECON. 199, 201 (1991)).

15. See *id.* at 708-10.

16. See *id.* at 721-29; see also Kenyon S. Jenckes, *Protection of Foreign Copyrights in China: the Intellectual Property Courts and Alternative Avenues of Protection*, S. CAL. INTERDISCIPLINARY L.J. 551, 553-56 (1997).

17. See Garcia, *supra* note 14, at 714.

18. See *id.* at 708.

19. *Id.*

new phenomenon of copyright law in both countries. China and Mexico share other similar traits that affect the viability of their copyright systems. Both countries operate under Civil Law Systems impacted by historic economic and political instability.²⁰ China is transforming from communism to a political-economy that resembles socialism.²¹ Mexico is evolving from socialism to a freer political-economy.²² These similar economic and political phenomena have reaped cultural distrust for or lack of concern about intellectual property laws in China and Mexico. This combination of issues has detrimentally impacted the legal systems of China and Mexico, rendering their copyright systems inadequate.

United States copyright owners often find the copyright laws and related legal processes unclear or ineffective.²³ In the instances where copyright laws are clear, copyright owners may become victims of piracy because Chinese and Mexican officials fail to properly enforce these laws.²⁴ Where copyright laws are unclear, all parties are left to guess what rights are protected. Therefore, copyright owners seeking protection of their copyrights in both countries face two kinds of obstacles—involuntary barriers such as unclear legislation and voluntary resistance such as the willful failure to enforce copyright laws.

Involuntary barriers surface, for example, when China or Mexico fails to pass laws with clear language that unambiguously protects copyrights.²⁵ Failure to pass clear copyright laws is involun-

20. For a discussion of China, see JIANFU CHEN, FROM ADMINISTRATIVE AUTHORISATION TO PRIVATE LAW: A COMPARATIVE PERSPECTIVE OF THE DEVELOPING CIVIL LAW IN THE PEOPLE'S REPUBLIC OF CHINA 93 (1995) (noting that the Chinese government is not stable enough to be a "planned commodity economy" or a "socialist market economy."). For a discussion of Mexico, see WILLIAM E. MOOZ, JR., AN INTRODUCTION TO DOING BUSINESS IN MEXICO 5-6 (1995).

21. See CHEN, *supra* note 20, at 93 (noting that the Chinese government is not stable enough to be a "planned commodity economy" or a "socialist market economy").

22. See MOOZ, *supra* note 20, at 5-6.

23. For a discussion of Mexico, see 1998 SPECIAL 301 SUBMISSION, *supra* note 13, at 166-82. For a discussion of China, see *id.* at 65-79.

24. For a discussion of Mexico, see 1998 SPECIAL 301 SUBMISSION, *supra* note 13, at 166 (discussing enforcement problems). See *id.* at 175 (noting that Mexico has significantly improved its copyright laws in some ways). For a discussion of China, see *id.* at 66 (describing improvements in Chinese copyright law but emphasizing that enforcement of same is still lacking).

25. For information relevant to China, see 1998 SPECIAL 301 SUBMISSION, *supra*

tary, because the newness of copyright law often leaves developing countries unaware of the language and legal processes required to adequately protect copyrights.²⁶ The copyright systems of China and Mexico and ultimately copyright owners, suffer because of these countries' experience with implementing intellectual property laws.

The other type of issue faced by copyright owners is voluntary resistance to copyright enforcement in China and Mexico. Even where laws unambiguously protect copyrights or prohibit piracy, some officials refuse to enforce them—often ignoring violations.²⁷ This problem is particularly burdensome to copyright owners seeking copyright protection in China and Mexico because an effective remedy to copyright piracy must involve systematic government cooperation and not merely ridding the system of individual pirates or officials who overlook piracy.²⁸

Amidst involuntary and voluntary barriers to adequate copyright law systems, China and Mexico have earned millions of dol-

note 6, at 77-78 (discussing recommendations for clarification of the language of China's law); see also Patrick H. Hu, "Mickey Mouse" In China: Legal and Cultural Implications In Protecting U.S. Copyrights, 14 B.U. INT'L L.J. 81, 109-11 (1996). Hu notes that China's copyright legislation passed in the early 1990's and that "[g]iven the shortage of legal expertise and available resource the Chinese government . . . may not be able to carry out such large scale legal training and mass education in the immediate future." *Id.* at 111. For information relevant to Mexico, see *id.* at 178-82 (noting language in the Mexican Code which falls short of international agreement dictates; see also Guillermo Marrero & Douglas J. Renert, *The Long and Winding Road: An Overview of Legislative Reform Mexico's Road to a Global Economy*, 1 SW. J. OF L. & TRADE AM. 77, 77-78 (1994) (noting that the new copyright laws represent a "philosophical change from a protectionist system . . . to a system designed to facilitate the registration of property rights and the ability to enforce those rights against third parties." *Id.* at 83. Foreign investors [like the United States] will gain more confidence in Mexico's intellectual property regime in the long-run rather than in the short-run. *Id.* at 89.

26. For information relevant to China, see 1998 SPECIAL 301 SUBMISSION *supra* note 6, at 77-78 (discussing recommendations for clarification of the language of China's law); see also Hu, *supra* note 25, at 109-11. For information relevant to Mexico, see *id.* at 178-82 (noting language in the Mexican Code which falls short of international agreement dictates; see also Marrero & Renert, *supra* note 25, at 77-78.

27. For a discussion of Mexico, see 1998 SPECIAL 301 SUBMISSION, *supra* note 13, at 166-67, 175; see also Friedland, *supra* note 2, at D3. For a discussion of China, see *id.* at 66; see also Jenckes, *supra* note 16, at 560-62.

28. For China, see 1998 SPECIAL 301 SUBMISSION, *supra* note 6 at 65-67. For Mexico, see *id.* at 166-67.

lars in revenues from pirated product sales during the past decade.²⁹ Yet, with large markets potentially exploitable by United States industries,³⁰ China and Mexico continue to attract United States investors—optimistic about the potential for these countries to develop adequate copyright law systems.³¹ United States copyright owners continue to create ways to protect their copyright interests in China and Mexico.

To address inadequate copyright laws and enforcement in countries around the world, the United States government implemented “Special 301”.³² This law empowers a United States Trade Representative (“U.S.T.R.”) to: (1) monitor international piracy and (2) to impose sanctions or to bring international disciplinary proceedings against countries that fail to implement and enforce copyright laws in accordance with international agreements.³³ Despite implementation of Special 301, rampant piracy in China and Mexico continues to thrive.³⁴ The United States has threatened sanctions or disciplinary proceedings against both china and Mex-

29. See 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 65-79, 166-182.

30. See *Market access set to be the central issue in majors' approach to China*, MUSIC & COPYRIGHT, May 10, 1995 at 8 (noting that in 1995, China was the sixth largest consumer in the CD market). *But see Chinese publish timetable for action on piracy*, MUSIC & COPYRIGHT, May 15, 1995, at 1 (commenting that “no adequate research methods exist to measure the size of the [Chinese music purchasing] market.”); see also *Comment*, MUSIC BUSINESS INTERNATIONAL, Oct. 1, 1997, at 1 (explaining that the Latin American markets are [similarly] hard to quantify).

31. See James Cox, *U.S. Firms: Piracy Thrives in China*, USA TODAY, Aug. 23, 1995, at 2B; Douglas Harbecht, et al., *The U.S. A Chance to Forge Closer Ties*, BUS. WEEK, Nov. 14, 1994 at 52; Lee M. Sands & Deborah M. Lehr, *Expanding Trade & Opening Markets in China*, CHINA BUSINESS REVIEW, July 1993, at 10. (noting that “China [is] one the fastest growing economies in the world.”).

For a discussion of Mexico, see Rep. Ileana Ros-Lehtinam, et al., *Hearing of International Economic Policy & Trade Subcommittee of the House International Relations Committee*, FEDERAL NEWS SERVICE, May 21, 1998, at 1-2 (noting that foreign investment and profit, affect copyright piracy).

32. See 19 U.S.C.A. § 2411 (West Supp. 1999), Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, §§ 1301-03, 102 Stat. 1107, 1164-76 (1988) (amending the Trade Act of 1974, Pub. L. No. 93-618, §§ 302(b), 182 (1974)) (codified as amended 19 U.S.C.A. § 2411) [hereinafter Special 301]; see also Garcia, *supra* note 17, at 716-718.

33. See 19 U.S.C.A. § 2411 (West Supp. 1999); see also Garcia, *supra* note 17, at 716-718.

34. See 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 65-79, 166-82.

ico, but has never actually imposed them against either country.³⁵ This is partly because the U.S.T.R. lacks meaningful authority under international law to force China and Mexico to comply with international agreements to which they and the United States adhere.

Special 301 is well-intentioned but ineffective to remedy China's and Mexico's failures to pass and enforce adequate copyright laws. Sanctions or even threatened sanctions will not cause China and Mexico to improve their copyright laws or to work harder to punish piracy. Indeed, the idea that sanctions could extract such results fails to consider many complex issues confronting the Civil Law Systems of China and Mexico.

This Note argues that Special 301 fails to meaningfully address special economic, political, and cultural factors which, combined with ideology underpinning the Civil Law tradition, stunt strong copyright law development in China and Mexico. Moreover, Special 301's predominately punitive nature encourages resistance to anti-piracy efforts more than it causes the passage and enforcement of stronger copyright laws. Part I discusses the ineffectiveness of Special 301 in monitoring and reducing piracy in China and Mexico. Part II describes the Civil Law Systems of China and Mexico and highlights factors common to these legal systems that hinder adequate copyright law promulgation and anti-piracy efforts. Part III proffers alternatives to Special 301 which consider the political, economic, and cultural issues as they affect legal change under the Civil Law Systems of China and Mexico. This Note concludes that United States investors should employ alternatives to Special 301 when seeking to procure adequate copyright law promulgation and enforcement in China and Mexico.

35. See Eric M. Griffin, *Stop Relying on Uncle Sam!—A Proactive Approach to Copyright protection in the People's Republic of China*, 6 TEX. INTELL. PROP. L.J. 169, 174 (1998).

I. SPECIAL 301: A UNITED STATES ATTEMPT TO CONVERT
INTERNATIONAL LAW OBLIGATIONS INTO DOMESTIC LAW
REALITIES IN CHINA AND MEXICO

Arguably, piracy persists in Mexico and China because copyright laws are either inadequate or not enforced. To remedy this situation,³⁶ on several occasions, the United States has threatened sanctions, or similar disciplinary action, against other countries under Special 301.³⁷ Despite these threats, China and Mexico continue to fall short of their obligations to establish viable copyright systems.³⁸ Therefore, Special 301 has failed to cause China and Mexico to establish adequate copyright laws and enforcement measures.³⁹

Special 301 evaluates the copyright laws of countries around the world by comparing the mandates of international agreements with the actual state of copyright law in each country.⁴⁰ Special 301 is effective to the extent that it highlights the strengths and the weaknesses of the copyright systems of China and Mexico.⁴¹ However, Special 301 sanctions do not change many of the complex factors that fuel piracy in China and Mexico.⁴² Therefore, Special 301's sanctions render Special 301 ineffective to cause significant improvements in the copyright law systems of these

36. *See id.*

37. *See id.*

38. *See id.*

39. *See id.*

40. *See* 19 U.S.C.A. § 2411(c)(1) (West Supp. 1999).

41. For China, *see* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 65-79; *see* INTERNATIONAL INTELLECTUAL PROPERTY ASSOCIATION, 1997 SPECIAL 301 SUBMISSION 40 (1997) ["1997 SPECIAL 301 SUBMISSION"], at 32-58. For Mexico, *see* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 166-82; *see also* 1997 SPECIAL 301 SUBMISSION, *supra* at 59-77. For both China and Mexico, this evaluation occurs annually.

42. For China, *see* Griffin, *supra* note 35, at 180-187, 196-97. Factors include history, culture, economics & politics and Special 301 threats do not cause the current situation to change. For Mexico, *see* Marrero & Renert, *supra* note 25, at 77-79 (noting Mexico faces similar historical economic, cultural and political issues which affect its copyright law regime); *see also* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 168-69 (indicating the United States' displeasure with Mexico's copyright laws and emphasizing that threats by the United States to cite Mexico as a problem country have not produced significant improvements in Mexico's copyright law.)

countries.⁴³

Special 301 flaws subsist under similar circumstances in China and Mexico. China and Mexico face comparable challenges as they endeavor to promulgate strong intellectual property laws. Similar economic, politic, and culture circumstances complicate legal development under the Civil Law Systems of China and Mexico. The flow of power, money, and cultural perceptions about the legitimacy of intellectual property laws affects the extent to which that country's copyright system succeeds or fails.⁴⁴ Consequently, Special 301's purely punitive response to inadequate copyright laws in China and Mexico will not cause either country to pass better copyright laws or increase enforcement.⁴⁵ To prompt this kind of change under the laws of China and Mexico, Special 301 must consider the barriers to copyright enforcement as they interact with the Civil Law Systems of these developing countries.

This next Section considers the international agreements that set the standards for copyright law in China and Mexico. It also examines the Civil Law Systems in China and Mexico and the way copyright law operates thereunder. Finally, it discusses how the United States has used Special 301 sanctions in vain to try and convert international obligations into stronger copyright laws in China and Mexico.

A. *International Obligations of China and Mexico*

China and Mexico have committed to international agreements that require them to establish viable copyright laws.⁴⁶ While both countries have agreed to develop modern systems of copyright law because of increasing activity in the global marketplace,⁴⁷ the relatively rapid transformation from virtually no copyright law to a

43. For China, *see* Griffin, *supra* note 35, at 180-187, 196-97. For Mexico, *see* Marrero & Renert, *supra* note 25, at 77-79.

44. For China, *See* Griffin, *supra* note 35, at 180-187, 196-97. For Mexico, *see* Marrero & Renert, *supra* note 25, at 77-79.

45. For China, *See* Griffin, *supra* note 35, 180-187, 196-97. For Mexico, *see* Marrero & Renert, *supra* note 25, at 77-79.

46. For a discussion of China, *see infra* Part I.A.1. For a discussion of Mexico, *see infra* Part I.A.2.

47. For China, *see* Jenckes, *supra* note 16, at 553; *see also supra* note 11. For Mexico, *see* Marrero & Renert, *supra* note 25, at 83; *see also supra* note 10.

substantial body of copyright law has partly caused the current inadequacies in each country's copyright laws.⁴⁸ The following represent an overview of the main dictates of international agreements affecting copyright law in China and Mexico.

1. International Obligations of China

China is a party to several international agreements that address copyright laws. Among those that affect the United States are the World Intellectual Property Organization (commonly referred to as "WIPO"),⁴⁹ the Berne Convention,⁵⁰ the Universal Copyright Convention,⁵¹ and the Geneva Phonograms Convention.⁵² Currently, China is attempting to make its laws compatible with the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPs").⁵³

48. For China, see Jenckes, *supra* note 16, at 553; see also *supra* note 11. For Mexico, see Marrero & Renert, *supra* note 25, at 83; see also *supra* note 10.

49. See WIPO Treaty, *supra* note 11. WIPO, an international organization, fosters the development of international intellectual property protections among member countries. China became a signatory of this treaty. *Monthly Review of the World Intellectual Property Organization*, INDUS. PROP., Jan. 1992 at 3.

50. See Berne Convention, *supra* note 11. The Berne Convention requires a minimal of national treatment to foreign works. That is, foreign works are promised at least the same level of protection as Chinese national works. See Susan Tiefenbrun, *Piracy of Intellectual Property in China and the Former Soviet Union and its Effects Upon International Trade: A Comparison*, 46 BUFFALO L. REV. 1, 23 (1998).

51. Universal Copyright Convention, Sept. 6, 1952, U.S.T. 2731, 216 U.N.T.S. 132, revised July 24, 1971, 25 U.S.T. 1341, 943 U.N.T.S. 194. See *New Regulations on Berne Accession*, ASIA L. & PRAC., Oct. 22, 1992, at 23; see also Fred M. Greguras et al., *Survey of International Legal Protection for Software*, IP ASIA, Apr. 22, 1991, at 12-13 n.4 (1993) (China acceded to the Berne Convention and the Universal Copyright Convention at the same time).

52. See World Intellectual Property Organization Performances and Phonograms Treaty, adopted by Diplomatic Conference at Geneva, Dec. 20, 1996, 36 I.L.M. 76 (1997) [hereinafter Phonogram Treaty].

53. See generally TRIPs, *supra* note 10; see also INTERNATIONAL INTELLECTUAL PROPERTY ASSOCIATION, 1997 SPECIAL 301 SUBMISSION 40 (1997) ["1997 SPECIAL 301 SUBMISSION"]. TRIPs requires: (a) substantive rules following international intellectual rules of the Berne Convention (b) effective judicial administration and enforcement, and (c) when neither of the former are present, an international settlement procedure would settle disputes. See TRIPs, *supra* note 10.

As of 1996, China was still negotiating to become a party to the TRIPs agreement. See generally Julia Cheng, *China's Copyright System: Rising to the Spirit of TRIPs Requires American Internal Focus and WTO Membership*, 21 FORDHAM INT'L L.J. 1941

Most of the obligations of these agreements overlap.⁵⁴ Of great import is the dictate that foreign works get national treatment, that is, at a minimum, the level of protection that China gives its nationals.⁵⁵ Additionally, China's legal system must offer copyright holders uncomplicated access to justice.⁵⁶ Finally, China must adopt laws that: effectively enforce copyright protections;⁵⁷ benefit copyright holders and eliminate trade barriers;⁵⁸ and provide for judiciary authority to assure proper interpretation and enforcement of the laws.⁵⁹ China's legal processes should be effective, efficient and provide for remedies that deter infringers.⁶⁰

An affiliation with the organizations from which these agreements stem reaps substantial trade benefits for China.⁶¹ By acceding to these agreements, China espouses its readiness to participate more actively in the global economy and its desire to attract foreign investment.⁶² However, because enforcement measures are weak under these agreements, they are ineffective at compelling China to comply with the agreement terms.⁶³ Therefore, United States investors in China often witness the effects of non-compliance—unchecked piracy, unclear copyright laws, legal procedures, and weak or non-existent enforcement measures.

(1998) (discussing China's efforts to comply with TRIPs requirements).

54. For example both TRIPs and WIPO promote "more adequate and effective protection of intellectual property." TRIPs, *supra* note 10; WIPO Treaty, *supra* note 11. TRIPs, one of a three agreements under the WTO, requires that its party become a members of the WTO and accede to all three agreements—TRIPs, GATT, and the WTO service related agreement. See Adrian Otten & Hannu Wager, *Compliance With TRIPs: The Emerging World View*, 29 VAND. J. TRANSNAT'L L. 391, 393-94, 410-11 (1996).

55. See Martin Perlberger & Michael Novicoff, *Recent Developments in International Entertainment Law*, 17 WHITTIER L. REV. 191, 196-99 (1995); see also Otten & Wager, *supra* note 54, at 402.

56. See Otten & Wager, *supra* note 54, at 402.

57. *Id.*

58. See *id.* at 404.

59. *Id.*

60. *Id.* at 404, 411 (highlighting the availability of dispute resolution mechanisms, where a country fails to meet its treaty obligations).

61. *Id.*

62. *Id.*

63. See Griffin, *supra* note 35, at 174.

2. International Obligations of Mexico

In 1991, Mexico became a party to the North American Free Trade Agreement (“NAFTA”).⁶⁴ Mexico’s legislative branch ratified the NAFTA in November 1993.⁶⁵ Prior to the NAFTA, a comprehensive enforcement scheme for intellectual property laws did not exist in Mexico.⁶⁶ After ratification, however, the NAFTA set international legal standards for copyright protection.

The NAFTA requires Mexico, Canada and the United States to offer national treatment in protecting copyright.⁶⁷ Mexico’s laws must protect “reproduction, importation, distribution, and rental” rights of sound recordings for fifty years.⁶⁸ As NAFTA and TRIPS are virtually identical in substance,⁶⁹ Mexico borrowed language from the TRIPS agreement when drafting its modern copyright laws.⁷⁰

64. See NAFTA, *supra* note 10. Parties to NAFTA must follow their own intellectual property obligations and to adhere to the following:

- (1) Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971 (Geneva Convention);
- (2) the Berne Convention for the Protection of Literary and Artistic Works, 1971 (Berne Convention);
- (3) the Paris Convention for the Protection of Industrial property, 1967 (Paris Convention) (among others).

Id. NAFTA binds its parties to the above treaties whether or not the parties are direct signatories to them.

65. See BARRY APPLETON, NAVIGATING NAFTA: A CONCISE USER’S GUIDE TO THE NORTH AMERICAN FREE TRADE AGREEMENT 14-15 (1994).

66. See *id.* at 123.

67. See NAFTA, *supra* note 64, at art. 1703. Mexico must offer foreign copyright owners at least the level of protection offered to its nationals.

68. See *id.* at arts. 1703, 1706. Because of some discrepancy between U.S. and Mexican copyright law, special provisions address producer and secondary performance rights. For example, Mexican law pre-NAFTA did not protect secondary rights except as per the performer. U.S. law protected the copyright holder (not necessarily the performer) in secondary usages. Under NAFTA national treatment protection only applies to primary use and producers or performers.

69. See Perlberger & Novicoff, *supra* note 55, at 408. On more than one occasion, Mexico has pledged to bring its intellectual property law within standards set by international agreement. For example, in 1986, (prior to joining NAFTA) Mexico joined GATT. See also Jorge De La Vega Dominguez, *Mexico and the Commercial Integration of North American*, in NORTH AMERICA WITHOUT BORDERS? INTEGRATING CANADA, THE UNITED STATES, AND MEXICO 13, 16 (1992).

70. See Steve Jones, *Mass Communication, Intellectual Property Rights, Interna-*

The NAFTA requires Mexico to provide for enforcement of copyrights via civil and criminal laws.⁷¹ Mexico must provide criminal remedies including but not limited to: a transparent criminal justice system that deters piracy with effective remedies;⁷² confidential criminal action filing procedures;⁷³ fixed time periods for prosecuting criminal complaints;⁷⁴ and reasonably prosecutable and affordable cases.⁷⁵

Similarly, the NAFTA mandates civil and administrative remedies. These Administrative remedies should be transparent, effective deterrent, and affordable.⁷⁶ Most importantly, Mexico should provide confidential process, clear evidentiary rules, and search warrant procedure.⁷⁷ Without these, corruption becomes a serious problem that negates the effects of NAFTA.⁷⁸

The NAFTA requires that countries provide for judiciary access to individuals affected by a breach of the NAFTA.⁷⁹ Independent, impartial judicial review must be available, where de-

tional Trade, and the Popular Music Industry, in MASS MEDIA AND FREE TRADE: NAFTA AND THE CULTURAL INDUSTRIES 344 (1996). See also Perlberger & Novicoff, *supra* note 55, at 194.

71. See NAFTA, *supra* note 64, at art. 1714.

72. See *id.* at arts. 1714, 1716, 1717; see also 1998 SPECIAL 301 SUBMISSION, *supra* note 13, at 64 (noting that under the current system, lack of confidential filing procedures and provisions for the preservation of evidence allow alleged infringers to destroy evidence of infringement as soon as they learn about the filing of a criminal complaint).

73. See *id.*

74. See NAFTA, *supra* note 64, at arts. 1714, 1716, 1717.

75. See *id.* at 1714.

76. See NAFTA, *supra* note 64, at arts. 1714, 1715; see also 1998 SPECIAL 301 SUBMISSION, *supra* note 13, at 70 (noting that injunctions and damages should be available for victims of infringement).

77. *Id.*

78. *Id.*

79. See NAFTA, *supra* note 64, at art. 1714. According to Article 1715:

(a) defendant's have the right to written notice that is timely and contains sufficient detail, including the basis of the claims; (b) parties in a proceeding are allowed to be represented by independent legal counsel; (c) the procedures do not include the imposition of overly burdensome requirements concerning mandatory personal appearances; (d) all parties in a proceeding are duly entitled to substantiate their claims and to present relevant evidence; and (e) the procedures include a means to identify and protect confidential information.

Id. at arts. 1715 and 1804. National governments, parties to the NAFTA, may seek dispute settlement under NAFTA. *Id.* at 1116-32, 2000-19.

sired.⁸⁰ The NAFTA mandates that decisions of tribunals adjudicating intellectual property rights be in writing and based on the evidence before the tribunal.⁸¹ Finally, the NAFTA requires that Mexican courts grant injunctive relief, a remedy that was previously uncommon to the Mexican Civil Law System.⁸²

B. *International Law Becomes Domestic Law Under the Civil Law Systems of China and Mexico*

As parties to international agreements that protect copyright, China and Mexico must pass domestic laws that comply with these agreements.⁸³ Both China⁸⁴ and Mexico⁸⁵ promulgate domestic laws under Civil Law Systems. While no two Civil Law Systems are the same, many aspects of China's and Mexico's legal systems are at least very similar.

Mexico⁸⁶ and China⁸⁷ create and maintain laws under the authority of a Constitution. Statutes, a judiciary, and administrative law agencies promulgate, interpret and enforce the laws of each country.⁸⁸ Courts must decide cases based squarely on statutory dictates.⁸⁹ Unlike the common law system, Civil Law courts may

80. *See id.*

81. *See* NAFTA, *supra* note 64, at art. 1714.

82. *See* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 129. Like Mexico, most Civil law systems lack provision for injunctions.

83. *See* 1998 SPECIAL 301 SUBMISSION, *supra* note 6 at 76-78. For Mexico, *see id.* at 175-182.

84. *See* JOHN H. MERRYMAN ET AL., THE CIVIL LAW TRADITION: EUROPE, LATIN AMERICA, AND EAST ASIA 405-416 (1994).

85. FRANCISCO A. AVALOS, INTRODUCTION TO THE MEXICAN LEGAL SYSTEM, 1, 13 (1992).

86. *See id.* at 3-12; *see also* MERRYMAN ET AL., *supra* note 84, at 618-25.

87. *See* Naigen Zhang, *Intellectual Property Law Enforcement in China: Trade Issues, Policies and Practices*, 8 FORDHAM INT'L L.J. 63, 76 n. 71.

88. For a discussion of Mexico, *see* MERRYMAN ET AL., *supra* note 84, at 618-25. For a discussion of China, *see* Michael C. Davis, *Constitutionalism and Political Culture: The Debate over Human Rights and Asian Values*, 11 HARV. HUM. RTS. J. 109, 135-6 (1998); H.L. Fu & Richard Cullen, *Hong Kong and China: The 1997 Transition: National Security Law in China*, 34 COLUM. J. TRANSNAT'L L. 449, 449 (1996).

89. For China, *see* Zhang, *supra* note 87, at 81 (commenting that judicial legal reasoning is not usually part of the very fact specific legal judgments handed down in Chinese courts.) For Mexico, *see* MERRYMAN ET AL., *supra* note 84, at 966 n.4.

not make law.⁹⁰ Despite this important distinction between the Civil and common law systems, many Civil Law countries successfully promulgate and enforce copyright laws.⁹¹ However, because of the political, economic and cultural circumstances under which their Civil Law Systems evolved, Mexico and China have faced special difficulties with developing and enforcing adequate copyright laws.⁹²

1. China's Civil Law Structure

China operates under a constitution that evolved from a communist legal document to one that supports the country's current socialist transition.⁹³ A unique history of communism⁹⁴ and a protectionist economy⁹⁵ predated and molded the modern legal system. In 1992, China adopted an economy that resembled "socialist market economy."⁹⁶ Under this current system, China values sub-

90. For China, see Zhang, *supra* note 87, at 81; *but see id.* (noting that China has published some cases since 1985 which have functioned like precedent.) For Mexico, see MERRYMAN ET AL., *supra* note 84 at 966 n.4; *but see id.* at 620 (indicating that the Amparo Suit, in which an individual charges that a government official has violated his or her constitutional rights, is somewhat a deviation from the tradition of cases without precedential value.)

91. Germany, for example, has done so because of economic interests in protecting its copyright related revenues. See Ryan James, *Fourteenth International Symposium on Economic Crime Corruption: The Enemy Within*, 15 DICK. J. INT'L L. 565, 568 (1997). Also, Germany has developed its copyright over centuries, instead of rapidly within a short period of time. Unlike China and Mexico, Germany, France and other European countries developed copyright laws as technologies and their economies changed. See Endeshaw, *supra* note 11, at 300.

92. See, e.g., *Emerging from deep recession*, MUSIC BUSINESS INTERNATIONAL, October 1, 1997 (noting the depressed economy's detrimental affect on copyright enforcement in Mexico). For a similar discussion regarding China, see e.g. David B. Dreyfus, *Confucianism and Compact Discs: Alternative Dispute Resolution and Its Role in the Protection of the United States Intellectual Property Rights in China*, 13 OHIO ST. J. ON DISP. RESOL. 947, 949-950 (1998).

93. See Dreyfus, *supra* note 92, at 948-50.

94. See WILLIAM P. ALFORD, *TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION* 5 (1994). Unique moral and cultural customs pervade the society and the legal system. See *id.*

95. See generally Yiqiang Li, *Evaluation of the Sino-American Intellectual Property Agreements: A Judicial Approach to solving the Local Protectionism Problem*, 10 COLUM. J. ASIAN L. 391, 424 n.3 (1996)(discussing how the transition from protectionism to decentralization have complicated protection of intellectual property rights.)

96. See MERRYMAN ET AL., *supra* note 84, at 65 n.151 (1994).

stantial state intervention and control over the economy.⁹⁷ State intervention hinders copyright enforcement where enforcement conflicts with state interests and control.⁹⁸

The Chinese government is strong and operates under a centralized executive.⁹⁹ Local governments serve as arms of the executive.¹⁰⁰ Administrative agencies enforce most of the laws, occupying a more significant position than the judiciary in China.¹⁰¹

As a result of China's communist/socialist heritage, the government, politics, and economy reflect a cultural reverence for the community over the individual.¹⁰² Prior to the 1980s, the Chinese did not recognize nor espouse western intellectual property notions.¹⁰³ Communal property ownership was more important than individual ownership.¹⁰⁴ Although currently, China's Constitution does not explicitly protect copyright,¹⁰⁵ Article 20 of the Constitution of the People's Republic of China promotes the development and dissemination of science and technology.¹⁰⁶ Article 22 of the constitution encourages the development and promotion of literature, art, and the media.¹⁰⁷ These articles form the constitutional bases for China's copyright laws.

97. For centuries China's government was concerned with social order and stressed group ownership. See Gerardo Lara, *The Piracy of American Films in China: Why the U.S. Art Form is Not Protected by Copyright Laws in the People's Republic of China*, 2 UCLA J. INT'L L. & FOR. AFF. 343, 344-50 (1997-1998).

98. See generally Li, *supra* note 95, at 424 (discussing how the transition from protectionism to decentralization have complicated protection of intellectual property rights. New laws may conflict with old ones because a new philosophy underpins decentralization.)

99. See MERRYMAN ET AL., *supra* note 84, at 405-07, 413-15.

100. See *id.*

101. See Zhang, *supra* note 87, at 68-70.

102. See Li, *supra* note 95, at 350.

103. See Lara, *supra* note 97, at 347.

104. *Id.* at 350.

105. See Zhang, *supra* note 87, at 76 n.71.

106. See *id.*

107. See *id.* at 23.

2. Mexico's Civil Law Structure

The current Mexican Constitution, the "Political Constitution of the United Mexican States,"¹⁰⁸ is the source for all Mexican law.¹⁰⁹ It provides for economic rights for individuals.¹¹⁰ However, Mexico's current copyright laws derive from its industrial property laws.¹¹¹ While Mexico has recognized intellectual property laws since the late 1800s,¹¹² its current intellectual property law scheme is a dramatic reform of the old intellectual property law system.¹¹³ Largely in response to the NAFTA, Mexico has developed an extensive independent body of copyright law.¹¹⁴

The Constitution organizes Mexico into a federal, representative democracy.¹¹⁵ The structure looks very similar to that of the United States government. There are thirty-one states and a capital located in a federal district.¹¹⁶ Centralized federal and state governments share power.¹¹⁷ The Mexican Constitution divides government into executive, legislative and judicial branches.¹¹⁸ Ad-

108. See AVALOS, *supra* note 85, at 5.

109. See *id.*

110. See *id.* at 8.

111. See Marrero & Renert, *supra* note 25, at 83.

112. See Alejandro Lopez-Velarde, *Trademarks in Mexico: The Effects of the North American Free Trade Agreement*, 17 HOUS. J. INT'L L. 49, 53-54 (1994).

113. See Marrero & Renert, *supra* note 25, at 83. Mexico originally provided for a very restrictive industrial property law system because it desired to heavily regulate technological sales and development. See *id.*

114. See *id.* at 87.

115. See AVALOS, *supra* note 85, at 5-6.

116. See *id.* at 8-13. Mexico's structural government history is directly opposite to that of the United States. In Mexico, the federal government gave birth to states, whereas in the United States the states gave birth to the federal government. See also MERRYMAN ET AL., *supra* note 84, at 610-11. In Mexico, local governments function like agents for central government. Administrative agencies function like branches of the central government and further centralize government. See *id.*

117. See MERRYMAN ET AL., *supra* note 84, at 610-11.

118. See AVALOS, *supra* note 85, at 9-12. The executive branch has the most power. The President is elected to a six year term with no re-election and has very broad constitutional powers. For example, either the legislature or the President can initiate legislation. The President can also issue "reglamentos" or regulations that help facilitate effective implementation of the law. See *id.*

The executive branch of government in Mexico consists of the Presidents' cabinets and independent agencies. Friends, supporters, and clients of the President usually occupy

ministrative agencies are predominant law enforcers, while the judiciary plays a very non-political role in enforcing the laws of Mexico.¹¹⁹ Mexico is moving away from a protectionist past,¹²⁰ theoretically abandoning government controlled economy.¹²¹

Before the 1990s, Mexico did not maintain a detailed modernized system of copyright law.¹²² Then, in response to significant global economic changes, Mexico began to promulgate extensive copyright legislation.¹²³ Mexico has made substantial adjustments to its copyright law system since the passage of the NAFTA.¹²⁴

cabinet positions and remain connected and loyal to each other and the President. The Mexican Congress avoids confrontation, passing lots of legislation recommended by the President. *See* MERRYMAN ET AL., *supra* note 84, at 619-20.

The Mexican Supreme Court consists of twenty (26) justices (including a chief justice) appointed for life by the President with senate approval. The President can remove Supreme Court justices with approval of the legislative body. *See* MERRYMAN ET AL., *supra* note 84, at 622-23. The Supreme Court appoints Circuit and District Court judges to four (4) year terms. These federal courts have powers similar to the United States Federal Courts. *See id.*

119. *See* MERRYMAN ET AL., *supra* note 84, at 620.

120. *See* Garcia, *supra* note 17, at 704-05 (indicating that historically, Mexico's presidency was strong and that government was heavily involved in ownership of businesses).

121. *See* Marrero & Renert, *supra* note 25, at 77; *c.f.* J. Keith Russell, Comment, *The Time Is Now For Full Privatization Of Pemex*, 20 HOUS. J. INT'L L. 173, 203 (1997). Russel notes that:

In Mexico, there are no royalty payments and no private property right in . . . gas and oil mined by Pemex, a Mexican company. The Mexican citizens, who are poor, perceive that the oil "is all for foreigners [and] for the political bosses. Russell argues that privatization would be positive and that these poverty-stricken citizens would benefit from privatization, whereas now, they are somewhat outside observers to the economy as it functions under government control.

Id.

122. *See* Marrero & Renert, *supra* note 25, at 83, 87-89.

123. *See id.*

124. *See* BARRY APPLETON, *supra* note 65, at 14-15. "Of all the NAFTA parties, Mexico was under the greatest pressure to amend its laws to make them consistent with the NAFTA." *Id.*

3. China, Mexico and Commonalities of Copyright Law Enforcement Under Civil Law Systems

Mexico and China provide for law interpretation and enforcement in similar ways under their Civil Law Systems.¹²⁵ Under their Civil Law Systems, judges enforce law, and legal scholars interpret law.¹²⁶ Judges occupy a bureaucratic, mechanical law enforcement role.¹²⁷ Judges do not base their decisions on detailed analysis and case law analogy partly because civil law systems do not recognize *stare decisis*.¹²⁸ Civil Law judges traditionally render *ad hoc* decisions based squarely on code sections.¹²⁹ While many of the actors in are the same as those in the United States Common Law System, the Civil Law Systems of Mexico and China provide for interpretation and enforcement of laws differently than the United States Common Law System.¹³⁰

China and Mexico rely heavily on administrative law agencies for interpretation and enforcement of laws.¹³¹ Administrative agencies interpret statutes and function much like an *ad-hoc* judiciary.¹³² Under optimum circumstances, civil law countries promul-

125. *See supra* notes 89-91 and accompanying text.

126. *See id.*

127. *See AVALOS, supra* note 85, at 11-16.

128. *See id.* *Stare decisis* means “to stand by that which is decided. [It is the] [r]ule by which common law courts are reluctant to interfere with principles announced in former decisions and therefore rely upon judicial precedent as a compelling guide to decisions of cases raising issues similar to those in previous cases.” STEVEN H. GIFIS, *BARON’S DICTIONARY OF LEGAL TERMS: A SIMPLIFIED GUIDE TO THE LANGUAGE OF LAW* 48 (2d. ed. 1993).

129. *See id.*; *see also* Zhang, *supra* note 87, at 81-3.

130. For China, *see supra* notes 94-108 and accompanying text. For Mexico, *see supra* Part I.B.2. Both systems have actors like judges, administrative officials charged with interpretation and enforcement of laws. Both systems also have a court structure that resembles the United States Court System. However, the distribution of power among these actors occurs differently.

131. *See MERRYMAN ET AL., supra* note 84, at 623. In deciding cases, Mexican judges begin with the Civil Code. *See id.* Then, they more look to scholarly treatises. *See id.* Thirdly, they look for Supreme Court decisions and possible jurisprudence. *See id.* at 22-23. The third step may prove difficult because most case decisions lack detailed statements of fact or analysis. *See id.* Also, sources that publish case law are hard to find. *See id.*

132. *See AVALOS, supra* note 85, at 11-16.

gate clear statutes that address all potential legal issues that might erupt.¹³³ Therefore, unambiguous laws are crucial to those seeking protection of copyrights under China's and Mexico's laws.¹³⁴

4. Special 301 and Agreements Thereunder Between the United States and China

The international treaties under which China, Mexico and the United States operate encourage these countries to monitor each others' compliance.¹³⁵ In the event of non-compliance, parties to these agreements can impanel a committee to hear complaints and render disciplinary action.¹³⁶ However, no country fears this process because enforcement of any disciplinary action is virtually impossible.¹³⁷ The United States uses the Special 301 process to address China's non-compliance with treaty obligations in addition to any theoretical monitoring and disciplinary mechanisms available under the international agreements described above.¹³⁸

Annually, the United States evaluates China's progress and again usually China in its Special 301 Submission for failure to enforce anti-piracy laws in compliance with international law. In the latest "1996 Agreement," China and the United States agreed again that China would increase copyright protections under its laws.¹³⁹ China had previously agreed in a 1995 IPR Agreement to meet certain requirements enumerated by it and the United States.¹⁴⁰ The 1996 Agreement was an attempt to compel China to meet the re-

133. See MERRYMAN ET AL., *supra* note 96, at 15-20.

134. See, e.g., 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 175 (noting failure "to clarify certain aspects of the new law" as a significant problem with Mexico's legal system).

135. See Otten & Wager, *supra* note 54, at 411 (discussing the TRIPs mandate, in Article 63, that countries monitor and report treaty violations to help the WTO monitor compliance).

136. See *id.*

137. See Griffin, *supra* note 35, at 174.

138. See Hu, *supra* note 25, at 81-85.

139. See Griffin, *supra* note 35, at 177.

140. Zhonghua Renmin Gongheguo Haiguan Zhishi Chanquan Baohu Tiaoli [Regulations for Customs Protection of Intellectual Property], FAGUI HUIBIAN 1995, [hereinafter Customs Regulations] (enacted pursuant to the Agreement Regarding Intellectual Property Rights, Feb. 26, 1995, U.S.-P.R.C., 34 I.L.M. 881 (1995) [hereinafter IPR Agreement]).

quirements of the 1995 agreement.¹⁴¹ Like most of the agreements prompted by Special 301 between the United States and China, the 1996 Agreement was reached after United States threatened trade sanctions against China and China countered with threats of retaliatory sanctions. In December 1997, China promulgated additional regulations to protect copyright¹⁴² and reported significant developments in the fight against piracy.¹⁴³ China halted production in several pirating factories,¹⁴⁴ and as of October 1, 1997, China had amended its Criminal Law to criminalize certain acts of copyright infringement.¹⁴⁵

China has attempted to better enforcement of copyright laws by establishing separate an “intellectual property trial division.”¹⁴⁶ China has done so, even though other divisions of its judiciary have jurisdiction over some intellectual property disputes.¹⁴⁷ The government has established branches of the “intellectual property trial division” throughout the country.¹⁴⁸ This initiative addresses many of the concerns about China’s copyright system including educating people throughout the country about intellectual property laws and convincing people that intellectual property laws are legitimate.¹⁴⁹

China has also established an “Intellectual Property Rights Office.” This court affiliated entity employs at least one official who

141. See Li, *supra* note 95, at 424 n.3.

142. See 1998 SPECIAL 301 SUBMISSION, *supra* note 13, at 76-78.

143. See *id.* at 65. (noting that in response to the near trade war caused by China’s failure to adequately enforce copyright law in 1996, China took the following steps toward sanctioning piracy: “(1) [seizure of] 52 production lines in 33 CD factories, (2) [implementing] rewards of up to US\$36,000 for offers of information leading to shutdown of CD production lines, (3) [arresting] several people for smuggling pirated goods.”).

144. See *id.*

145. *Id.* (noting that the old process was less formal).

146. See Zhang, *supra* note 87 at 66.

147. See *id.* Zhang notes that the “economic trial division” adjudicates matters of industrial property which include patent, trademark, and unfair competition law. *Id.* Zhang also notes that the “administrative trial division: handles any intellectual property dispute which “aris[es] under administrative law”. See *id.*

148. See Zhang, *supra* note 87, at 66-68; see also James A. Forstner, *China: Specialized Courts Established for Intellectual Property Cases*, BNA PAT. TRADEMARK & COPYRIGHT DAILY, Mar. 17, 1994, at D3 (indicating that these courts were created on August 1993)

149. See *id.*

has experience working with Chinese intellectual property courts.¹⁵⁰ China claims that it is tailoring its legal structure in other ways so as to accommodate intellectual property law enforcement.¹⁵¹ Effective enforcement of copyright, however, requires clear, detailed statutes, a well-funded legal structure, as well as government cooperation and leadership in enforcing the laws.¹⁵²

Despite United States government pressures to compel China to improve its copyright system¹⁵³ and China's efforts to improve its copyright system, many problems remain. The Criminal Laws do not pose a significant threat to pirates.¹⁵⁴ When courts fine or grant judgments against pirates, the fines and judgments are low and lack any deterrent effect.¹⁵⁵ Courts often calculate damages in a manner that does not reflect illegal market value.¹⁵⁶ As a result, China's laws fail to deter piracy.

Seizures made pursuant to China's Criminal Law have not deterred pirate production.¹⁵⁷ Many of the seized lines quickly return to production¹⁵⁸ and continue to overproduce.¹⁵⁹ Threats under Special 301 have not addressed pirates' abilities to readily set up plants and produce pirated products.¹⁶⁰

Pirates have learned to outsmart members of the IIPA who in-

150. *See id.* at 67

151. *See id.*

152. *See James, supra* note 91, at 568; *see also Endeshaw, supra* note 11, at 300. Germany and other European countries prioritized development of their copyright enforcement system because they recognized a relationship with copyright protections and the prosperity of sectors of their economies.

153. For China, *see* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 65-79; *see* 1997 SPECIAL 301 SUBMISSION, *supra* note 41, at 32-58.

For Mexico, *see* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 166-82.; *see also* 1997 SPECIAL 301 SUBMISSION, *supra* note 41, at 59-77. For both China and Mexico, this evaluation occurs annually.

154. *See id.* (noting that the Criminal Law amendments, for example, provided for less deterrence by easing the penalties for the dissemination of pirated works).

155. *See id.*

156. *See Otten & Wager, supra* note 54, at 560-70.

157. *See id.* (commenting that after seizure, many illegal production lines resume production.) While evidence does not show that all lines continue pirating, the lines do resume with pirating capabilities.

158. *See id.*

159. *See id.*

160. *See id.*

investigate piracy on behalf of the United States Trade Representative.¹⁶¹ United States pressure has contributed to the dissemination of pirate production plants throughout the country.¹⁶² Previously, these plants existed in one centralized area.¹⁶³ In response to United States pressure, pirates have dispersed and further complicated the eradication of piracy.¹⁶⁴ Criminal enforcement officials must now work harder to locate factories, inspect them, and sanction those that violate copyright laws.¹⁶⁵ Thus, even where China attempts to enforce its copyright laws, pirates have learned to outsmart law enforcers.¹⁶⁶

China is aware of its piracy problems. The Special 301 Report has highlighted many specific problems which weaken copyright laws in China.¹⁶⁷ The laws lack clarity; enforcement is unpredictable, and legal process is not clear and affordable.¹⁶⁸ The Special 301 Report has similarly enumerated and criticized the inadequacies of Mexico's system of copyright law and enforcement.

5. Special 301 And Agreement Thereunder Between the United States and Mexico

Like China, Mexico is not in compliance with its international treaty obligations.¹⁶⁹ According to the Special 301 Report, Mexico has "a poor [copyright] enforcement system."¹⁷⁰ Mexico's laws lack clarity.¹⁷¹ Its judiciary processes are less than transparent; and corruption plagues its legal system.¹⁷² Beginning in 1989, the Spe-

161. See 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 65-66.

162. See *id.* at 32-34.

163. See *id.* Until recently, most pirate production plants were located in Guangdong Province.

164. See *id.*

165. See *id.*

166. See *id.* (noting that the Criminal Law amendments, for example, provided for less deterrence by easing the penalties for the dissemination of pirated works).

167. See *id.* at 65-66.

168. See *id.* at 65-79 (enumerating areas of concern and recommending changes.)

169. See *id.*

170. See *id.* at 166.

171. *Id.* The IIPA characterized Mexico's enforcement system as "one of the least effective . . . in the Hemisphere." *Id.*

172. See *id.*

cial 301 Report labeled Mexico a Priority Watch List country.¹⁷³ Although, Mexico has escaped the Priority Watch List for the past decade,¹⁷⁴ nevertheless, the United States government has threatened to bring a “NAFTA dispute settlement proceeding against Mexico” to force Mexico to fix problems with its copyright law.¹⁷⁵ Piracy remains a serious problem in Mexico, irrespective of Mexico’s Special 301 status.

Mexico has responded to threats of Special 301 citation by changing its laws and enforcement measures.¹⁷⁶ In 1991, Mexico passed a Copyright law as a precondition to commencement of NAFTA negotiations.¹⁷⁷ After the United States threats to bring dispute settlement proceedings, Mexico agreed to reorganize agencies charged with copyright law interpretation and enforcement.¹⁷⁸ However, the Mexico canceled its re-organization plans in 1996, causing “a three month hiatus in any [copyright] enforcement actions.”¹⁷⁹

Upon evaluation of Mexico’s progress in 1996, the IIPA recommended a plan to help Mexico meet its obligations under NAFTA to fight piracy.¹⁸⁰ Mexico promised to implement some of the strategies but failed to deliver.¹⁸¹ According to the IIPA, the criminal enforcement system needed to employ stronger enforcement of Mexico’s copyright laws.¹⁸² The IIPA posited that “this [could] only occur if the President of Mexico place[d] this responsibility in the hands of highly ranked, and trusted, official[s] who

173. *See id.* at 166-69.

174. *See id.* at 168-69.

175. *Id.* Piracy levels for “Sound Recordings and Musical Compositions” hovered around 50% from 1995 to 1997. For “Motion Pictures”, piracy levels remained steady at 55%. These figures represent from US\$55 million to US\$85 million.

176. *See* 1998 SPECIAL 301 REPORT, *supra* note 13 at 59.

177. *See id.*

178. *See id.*

179. *Id.*

180. *See id.* 166-69. The “Ten Point Emergency Action Plan” presented steps with a plan for fighting piracy. *Id.*

181. *See id.* at 169. The IIPA pushed for legislative change that focused on enforcement. Mexico, however, made marginal changes to its laws and ignored enforcement, passing laws in late 1996. These new laws were positive in some respects and negative in others. For example, they decriminalized piracy of sound recording. In response to United States pressure, Mexico amended these amendments to Mexican law.

182. *Id.* at 170.

could intermediate between industry and the private sector, ensure that the proper coordination occur[ed], and be held directly responsible for any failures that occur[ed].”¹⁸³

Mexico’s current criminal code fails to adequately deter piracy.¹⁸⁴ Criminal penalties are non-threatening.¹⁸⁵ Current criminal law offers stricter fines than prior criminal law, but jail terms remain optional and non-threatening.¹⁸⁶ The criminal law fails to penalize cover some acts that facilitate piracy.¹⁸⁷ It also excludes “unauthorized public communication” and “unauthorized possession or offering to sell or rent pirate copies of works” from punishable offenses.¹⁸⁸ The IIPA urges the USTR to elevate Mexico to “Priority Watch” status and to bring “a NAFTA dispute settlement action” if no significant change occurs.¹⁸⁹

Mexico has amended its copyright laws, attempting to comport with international agreement dictates.¹⁹⁰ However, enforcement of copyright laws is the more pervasive problem in Mexico.¹⁹¹ Promulgation of copyright law without adequate enforcement leaves Mexico’s copyright law system in a confused state.¹⁹² While Mexico has improved its copyright systems in some respect, it has fallen short of its international obligations to adequately implement and enforce copyright laws.

183. *See id.* at 166-70.

184. *Id.* at 180-81.

185. *Id.*

186. *Id.*

187. *Id.* For example, Article 424 (IV) of Mexico’s Penal Code as amended effective May 1997, failed to criminalize the “circumvention of technology used to protect against the unauthorized reproduction and viewing of copyrighted products.” subject to “electronic protection devices.” *Id.* at 182.

188. *Id.* at 181.

189. *Id.* at 182.

190. *See* 1998 SPECIAL 301 REPORT, *supra* note 6, at 175-82.

191. *See id.* at 166-67.

192. *See id.* at 175-80.

C. *Summary of International Obligations and Domestic Implementation*

China and Mexico are parties to international agreements that require them to provide for certain levels of copyright protection under their laws. Both countries have made changes to their domestic laws to this end.¹⁹³ However, they must do more to comply with these international agreements. Both nations must make their domestic laws more transparent, more predictable, more deterrent of piracy, less prone to corruption, and more accessible to copyright holders who desire judicial review.¹⁹⁴

The international agreements which dictate copyright standards for China and Mexico provide for dispute resolution and disciplinary action for party countries that fall short of the agreement obligations.¹⁹⁵ However, these procedures are ineffective because enforcement of disciplinary action under the agreements is unrealistic and thus not an incentive for China and Mexico to comply with agreement obligations.¹⁹⁶ As international agreements alone fail to compel the creation of viable copyright systems in China and Mex-

193. *See id.*

194. For Mexico, *see* NAFTA, *supra* note 10, at arts. 1714-1717. For China, *see* Otten & Wager, *supra* note 54, at 402-04.

195. For Mexico, *see* David Lopez, *Dispute Resolution Under NAFTA: Lessons From the Early Experience*, 32 TEX. INT'L L.J. 163, 208 (1997) (noting dispute resolution between NAFTA countries which serve to ensure that countries adhere to the NAFTA's dictates); *see also* *Dispute Resolution Center for NAFTA*, 51 MAR DISP. RESOL. J. 4, 4 (1996) (discussing another kind of dispute resolution offered "for the settlement of private commercial disputes among contracting parties in NAFTA countries").

For China, *see* Myles Getlan, Comment, *TRIPS and the Future of Section 301: A Comparative Study in Trade Dispute Resolution*, 34 COLUM. J. TRANSNAT'L L. 173, 217-18 (1994) (indicating that no one, not even the United States adheres to the exact dictates of the international agreements which control trade relations between the United States and China. For example, the Special 301 sanction process is a violation of international law and oversteps the dispute resolution bounds.); *see also* C. O'Neal Taylor, *The Limits of Economic Power: Section 301 and the World Trade Organization Dispute Settlement System*, 30 VAND. J. TRANSNAT'L L. 209, 289-99, 314-16 (1997).

196. For Mexico, *see* David Lopez, *Dispute Resolution Under NAFTA: Lessons From the Early Experience*, 32 TEX. INT'L L.J. 163, 208 (1997); *see also* *Dispute Resolution Center for NAFTA*, *supra* note 195, at 4.

For China, *see* Getlan, *supra* note 195, at 217-18; *see also* Taylor, *supra* note 195, at 314-16.

ico, each country is left to its economic, political and cultural will and its legal system to create an adequate system of copyright laws.¹⁹⁷

II. ECONOMIC, POLITICAL, AND CULTURAL FACTORS HINDER COPYRIGHT LAW DEVELOPMENT UNDER THE CIVIL LAW SYSTEMS OF CHINA AND MEXICO

Several economic, political, and cultural factors hinder the creation of adequate copyright law systems in China and Mexico. The Civil Law Systems of these countries exacerbates many of these factors, making promulgation and enforcement of viable copyright laws more difficult. These issues render Special 301 powerless to cause China and Mexico to improve their copyright systems.

The United States, via Special 301, has cited many factors that plague the copyright systems of China and Mexico. These factors include: (1) copyright laws ambiguous language with insignificant penalties; (2) inefficient and unclear judicial process; (3) government and law enforcement corruption; (4) notions of property ownership that conflict with copyright law premises; (5) lack of awareness by the general population regarding copyright laws.¹⁹⁸

A. *Copyright Laws with Ambiguous Language and Insignificant Penalties*

Unclear legislation is a barrier to effective copyright law enforcement, particularly under the Civil Law System.¹⁹⁹ Under civil law systems, judges must decide cases based squarely on statutory authority. When statutes are unclear, judges are unable to decide cases consistently—thus leaving the state of copyright law unpre-

197. For China, *see* Griffin, *supra* note 35, at 180-7, 196-7. For Mexico, *see* Marrero & Renert, *supra* note 25, at 77-79 (noting Mexico faces similar historical economic, cultural and political issues which affect its copyright law regime); *see also* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 168-69 (indicating the United States' displeasure with Mexico's copyright laws and emphasizing that threats by the United States to cite Mexico as a problem country have not produced significant improvements in Mexico's copyright law).

198. *See* 1998 SPECIAL 301 REPORT, *supra* note 6, at 65-79, 166-82.

199. *See* MERRYMAN ET AL., *supra* note 84, at 1000.

dictable in both China and Mexico.²⁰⁰

China and Mexico have passed extensive copyright laws within the past decade. As they learn about dissatisfaction with their laws, they pass new legislation or amend the old legislation.²⁰¹ As a result, domestic copyright laws in both China and Mexico change so frequently that the state of copyright law remains uncertain in each country.²⁰² Unclear and ever-changing statutes prevent development of an adequate predictable body of copyright law in China and Mexico where statutes control.²⁰³

Inadequate copyright laws affect criminal and civil copyright laws. Copyright owners concerned with the expenditure of time and money may prefer to rely on criminal enforcement,²⁰⁴ because criminal law enforcers incur the costs of investigating and prosecuting violators.²⁰⁵ To be sure, most copyright enforcement in China and Mexico occurs through criminal law.²⁰⁶ As a result, the United States pays close attention to weakness in Mexico and China's criminal laws.

Both China and Mexico suffer with criminal law systems that fail to meet the mandates of international intellectual property law. Unclear criminal copyright statutes are a major problem in both countries.²⁰⁷ Neither country maintains a criminal law system that clearly defines piracy.²⁰⁸ Neither country clearly articulates and enforces penalties strong enough to deter piracy. While both countries suffer the risk of corruption in criminal enforcement of piracy laws and often give wavering priority to copyright enforcement,

200. See 1998 SPECIAL 301 REPORT, *supra* note 6, at 175.

201. See *id.* at 65-79, 166-182.

202. See *id.*

203. For a discussion of Mexico, see *id.* at 175-9. For a discussion of China, see *id.* at 65, 76-9.

204. See Friedland, *supra* note 2, at D3 (noting the Mexican Attorney General's opinion that "companies aren't interested in spending the time or money necessary to push cases through Mexico's sluggish judicial system).

205. See, e.g., 1997 SPECIAL 301 SUBMISSION, *supra* note 41, at 65 (discussing how "resources devoted to anti-piracy enforcement are . . . [in]sufficient to control piracy.").

206. In Mexico, high profile criminal raids are conducted to gain the attention of U.S. investors concerned with copyright piracy in Mexico. See Marrero & Renert, *supra* note 25, at 89. For China, see Jenckes, *supra* note 16, at 560-62.

207. See 1998 SPECIAL 301 REPORT, *supra* note 13, at 65-79, 166-82.

208. See *id.*

unclear criminal statutes often render officials unable to consistently sanction and otherwise suppress piracy.²⁰⁹ The state of the criminal law is an example of how voluntary resistance and involuntary inability combine to exacerbate piracy. At times, China and Mexico fail to pass clear laws because they are resistant to certain aspects of strong copyright laws.²¹⁰ However, passing unambiguous copyright laws may be a challenge for China and Mexico, since extensive copyright laws are relatively new in each country.²¹¹

Special 301's solution to this problem is to sanction China and Mexico.²¹² Sanctions (or threats to sanction) fail to consider that the unclear legislation problem involves voluntary resistance and involuntary inability.²¹³ Whereas education and economic incentives may help to solve this problem, sanctions will likely reinforce resistance by China and Mexico to creating unambiguous laws.

B. *Weak and Confusing Judicial Process*

China and Mexico fail to provide copyright holders with a judiciary that offers transparent, expeditious legal process. Civil litigation sometimes yields positive results for United States victims.²¹⁴ However, for many potential plaintiffs, civil litigation is a

209. *See id.*

210. For China, *see* Li, *supra* note 95, at 424 (discussing how the philosophy of protectionism differs from the philosophy underpinning decentralization and concluding that the transition from the former to the latter may take a significant amount of time, as a result). For Mexico, *see* Garcia, *supra* note 17, at 704-5.

211. *See* Jenckes, *supra* note 16, at 721-9.

212. *See generally* U.S. Announces Special 301 Sanctions against China, MUSIC & COPYRIGHT, July 6, 1994, at 1 (discussing the aftermath of threatened sanctions.)

213. For China, *see* Griffin, *supra* note 35, at 180-187, 196-97. Factors include history, culture, economics & politics and Special 301 threats do not cause the current situation to change. For Mexico, *see* Marrero & Renert, *supra* note 25, at 77-79 (noting Mexico faces similar historical economic, cultural and political issues which affect its copyright law regime); *see also* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 168-69 (indicating the United States' displeasure with Mexico's copyright laws and emphasizing that threats by the United States to cite Mexico as a problem country have not produced significant improvements in Mexico's copyright law).

214. *See* Jenckes, *supra* note 16, at 559-60; *see also* Hu, *supra* note 25, at 96-8 (discussing the Walt Disney Co. copyright infringement case where Walt Disney Co prevailed against a Chinese publisher who published pirated books featuring Disney characters.)

less than desirable option.²¹⁵ Under any legal system, clear legal process is important. However, for United States plaintiff who are usually not familiar with trying cases in civil law courts, transparent legal process is imperative to the fair litigation of a claim.²¹⁶ When tainted by politics, economy, and culture, the civil law system becomes unpredictable.

United States parties to litigation in Mexico and China encounter several issues that complicate litigation of intellectual property cases.²¹⁷ The absence of *stare decisis*; the ad hoc judicial and administrative decisions; the absence of injunctions and punitive damages; slow judicial process; and, corruption all frustrate the litigation process.²¹⁸ Most of these conditions are solely attributable to the Civil Law tradition. Other conditions like corruption are due to culture, economy, and political phenomena.²¹⁹

The absence of injunctions and punitive damages render the courts powerless to grant meaningful relief to plaintiffs.²²⁰ Slow judicial process and corruption generally occur together, thus rendering judicial process unclear and inefficient.²²¹ For example, where the criminal process is excessively slow, cases may not ever reach the sentencing phase.²²² In this respect, the criminal process does not adequately deter piracy.

Another problem for judiciaries in Civil Law countries, is the paucity of case law publications.²²³ Mexico and China do not

215. For a discussion of China, *see* Jenckes, *supra* note 16, at 560-62; For a discussion of Mexico, *see* 1997 SPECIAL 301 SUBMISSION, *supra* note 41, at 69 (discussing how judges are unfamiliar, statutes are unclear, and indicating that procedures are unclear and costly.)

216. *See* NAFTA art. 1714 (mandating clear legal process in member countries' legal systems).

217. For China, *see* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 65-6, 76-9; *see also* Zhang, *supra* note 87 at 81. For Mexico, *see* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 166-7, 175-82.

218. For China, *see* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 65-6, 76-9; *see also* Zhang, *supra* note 87, at 81. For Mexico, *see* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 166-7, 175-82.

219. *See* MERRYMAN ET AL., *supra* note 96, at 1000.

220. *See* Hu, *supra* note 25, at 95-98.

221. *Id.*

222. *Id.*

223. *See* MERRYMAN ET AL., *supra* note 96, at 966. Excerpts are not very detailed.

published cases as extensively as common law countries.²²⁴ They publish court decisions selectively.²²⁵ Published decisions contain very little analysis or other information.²²⁶ Usually, judges do not use digest systems, massive citations to encyclopedias, treatises, or annotations. There is no equivalent to the United States shepardization process whereby the current value of case authority is revealed.²²⁷ Traditionally, Civil Law judges have not relied on these kinds of resources when they decide cases.²²⁸ Rather, they have relied on statutes as their primary legal resources.

In at least a minor way, economics affects this issue. Mexico and China operate under developing economies, and, therefore, may not prioritize extensive case law publication, nor encourage private companies to do so.²²⁹ Without these resources and the tradition of allowing judges to rely on them when deciding cases, the judiciaries of China and Mexico may not develop viable systems of copyright law.²³⁰ Now that international agreements require promulgation of new and better copyright laws, judiciaries in China and Mexico are beginning to increasingly interpret copyright law.²³¹ However, this new mode of judicial operation is in a somewhat experimental phase.²³²

Here again, voluntary resistance combines with involuntary inability to stifle the evolution of systems of copyright law. The Civil Law tradition of little or no *stare decisis* poses a tremendous barrier to the development of copyright law in China and Mexico.

They include parties' names, an abstract, and are usually in the form of headnote-type statements. *See id.*

224. *See id.*

225. *Id.*

226. *Id.*

227. *Id.*

228. *Id.*

229. *See Garcia, supra* note 17, at 708-12.

230. For Mexico, *see* 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 166-82. For China, *see id.* at 66-79.

231. *See Zhang, supra* note 87, at 66-8, 81-2; *see also* Peter G. Stein, *Judge and Jurist in the Civil Law: A Historical Perspective*, 4 LA. L. REV. 241, 241-2, 257 (1985)(noting a trend toward case law publication in some civil law systems and the merits of same).

232. *See MERRYMAN ET AL., supra* note 96, at 966. Merryman notes that technological advances may reduce the cost of case publication as Civil Law countries desire to publish cases more extensively.

This is an involuntary barrier to a viable system of copyright law.

Voluntary resistance may exacerbate this problem. For example, the governments of China and Mexico can effect the extent to which their judiciaries change to accommodate new copy right laws. Any effective remedy to problems that plague the judiciary in the realm of copyright enforcement must consider how much of the problem is voluntary and how much is involuntary.

Special 301 contemplates that changes in this realm will occur if sanctions are applied. In reality, changes in this realm will require some changes in Civil Law tradition in China and Mexico.²³³ The United States should not expect such deeply rooted tradition to transform rapidly.²³⁴ Indeed, instead of sanctions, alternative initiatives may better achieve the results that United States copyright holders desire in this realm.²³⁵

C. *Government and Politics Hinder Copyright Law Enforcement*

The civil law systems of China and Mexico allow central governments to maintain significant amounts of power over the legal process.²³⁶ Attitudes and agendas of the governments of these countries directly affect the success or failure of copyright enforcement.²³⁷ Although economic problems and other factors prevent adequate copyright enforcement to a point, the Mexican and Chinese governments maintain substantial control over copyright law enforcement and, therefore, somewhat—determine the extent to which the people of those countries respect those laws.²³⁸

To some extent, the governments can not forge rapid change in enforcement of copyright laws because of their evolving econo-

233. See *International Dispute Settlement and Domestic Enforcement Measures: Hearings on U.S. Trade Agreements Compliance before Senate Comm. on Finance*, 106th Cong. 3 (statement of Susan G. Esserman, General Counsel Office of the U.S. Trade Representative).

234. See *supra* note 25 and accompanying text.

235. See Griffin, *supra* note 35, at 184-6 (noting that training judges and officials may be an effective way of achieving an adequate copyright system.)

236. For information regarding China, see Hu, *supra* note 25, at 95-105. For information about Mexico, see Marrero & Renert, *supra* note 25, at 77-82.

237. See *id.*

238. See *id.*

mies.²³⁹ In Mexico and China, the administrative agencies, law enforcement officials, and the judiciary require money to rise to the challenge of combating piracy.²⁴⁰ Governments require significant amounts of money to staff and equip these parts of the legal system.²⁴¹ Both China and Mexico suffer with developing economies and therefore are either unable or unwilling to adequately fund law enforcement agencies and tribunals.²⁴²

Additionally, neither China nor Mexico has extensive economic producers that rely on copyright law protections.²⁴³ Therefore, the governments of these countries may not perceive creating strong copyright regimes as a priority. For example, neither country has a highly developed recording industry.²⁴⁴ In the midst of a wavering economy, where a government can not foresee that adequate copyright enforcement will reap a monetary benefit for the industries of its country, that country has little economic incentive to pass and enforce strong copyright laws.²⁴⁵ As long as piracy continues to be a viable source for jobs and money in the domestic economy, the governments of China and Mexico will not seriously advocate strong copyright regimes.²⁴⁶

Also, strong copyright laws may threaten the governments of China and Mexico. For example, in China, politically orthodox central government may consider strong copyright law a threat to socialism.²⁴⁷ Strong copyright law promotes individual creativity;

239. See *supra* note 25 and accompanying text.

240. For information regarding China, see Hu, *supra* note 25, at 95-105. For information about Mexico, see Marrero & Renert, *supra* note 25, at 88-89.

241. See, e.g., Ken Gormley, *An Original Model of the Independent Counsel Statute*, 97 MICH. L. REV. 601, 674 (1998) (noting that the United States Justice Department consists of "115,667 employees, thousands of lawyers, and a budget of \$18.6 billion.").

242. See *id.*

243. See Sands & Lehr, *supra* note 31, at 1 (indicating that high levels foreign investment in the music and software industries and pirating in those industries thwart development of those industries in China).

244. See *id.*

245. See Jenckes, *supra* note 16, at 565-66.

246. See *supra* note 25 and accompanying text.

247. See ALFORD, *supra* note 94, at 80, 88. In the 1980s and 1990s, publishers liberally produced foreign materials without authorization. See *id.* The government justified these breaches of copyright law explaining that the works were too sensitive to be in public good and therefore, were not copyright protected. See *id.* The government also operated several pirating bookstores. See *id.* It prohibited foreigner access to these stores and

and some officials may fear that individuals will create and disseminate works that promote anti-government sentiments.²⁴⁸ China's government may be less apt to enforce copyright laws, because it desires control over print media and education.²⁴⁹

Additionally, in China, moral law is very strong.²⁵⁰ Therefore, authorities may penalize piracy more aggressively when the pirated work violates moral law.²⁵¹ China prioritizes punishing piracy when piracy is connected with "another offense, like pornography or disturbing the public order."²⁵² Idiosyncrasies such as central government control and moral law affect the extent to which enforces copyright laws.²⁵³

In Mexico, the "Echeverrian Wall" has similarly thwarted the development of copyright law.²⁵⁴ The Echeverrian Wall was a series of laws aimed at "[shielding] Mexican industry from foreign competitors."²⁵⁵ Today Mexico's government espouses more liberal economic policies which aim to more extensively involve Mexico in the global economy.²⁵⁶ Nevertheless, the prior emphasis on extensive government involvement and protection of Mexican industry over foreign investors is recent enough in Mexico's history that foreign investors realize that a successful legal, cultural, economic and political transition may not occur all at once.²⁵⁷ Remnants of the Echeverrian Wall hinder development of Mexico's copyright law.

Courts in China and Mexico are not likely to make decisions

marked the books "internal circulation only". *Id.* at 87

248. *See supra* note 25 and accompanying text.

249. *See* ALFORD, *supra* note at 94, at 15. *See* Jenckes, *supra* note 47, at 565-66; *see also* ALFORD, *supra* note 94, at 77.

250. *See* Hu, *supra* note 25, at 104.

251. *See* 1998 SPECIAL 301 REPORT, *supra* note 13, at 65, 119.

252. *See generally* Lara, *supra* note 97 (discussing how cultural values, economic, politics, and law combine to exacerbate piracy).

253. *See* Griffin, *supra* note 35, at 181-2.

254. *See* Garcia, *supra* note 17, at 723-4. The Echeverrian Wall is composed of three elements: "(1) The Technology Transfer Law, (2) The Foreign Investment Law; and (3) the Patents and Trademark Law." *Id.* at 723-4.

255. *Id.* at 722.

256. *See id.*

257. *See id.* at 723.

against their governments.²⁵⁸ In China, where an illegal pirating plant was found to exist next door to government offices, no one pursued the government's possible involvement with that plant.²⁵⁹ Mexico is also notorious for extensive government corruption and officials connected with pirating activities.²⁶⁰ The governments of China and Mexico have tremendous power to influence enforcement of copyright laws, partly because the judiciary is so powerless and politically influenced.²⁶¹

Once again, voluntary resistance and involuntary inability come into play. Whereas a weak economy can render the government unable to better its copyright law system, the government maintains voluntary control over law enforcement priorities. As a result, a government can affect copyright enforcement by prioritizing it.²⁶² Before doing so, the government must become interested in doing so.

In Mexico, moral law is not a problem. However, the government's influence over the judiciary and legal process is significant. Mexican officials may sometimes perceive that United States copyright holders are attempting to exploit its legal system without dedicating the money or time required to properly litigate a claim under Mexican law.²⁶³ This perception is particularly important with regard to criminal enforcement of copyright laws where Mexico expends its resources conducting raids and prosecuting offenders, while United States copyright holders reap the financial benefits of copyright protection.²⁶⁴

This issue involves voluntary resistance—the political will to prioritize creation and the funding of a viable copyright system. It

258. See ALFORD, *supra* note 94, at 80-89.

259. See *id.* at 87-89.

260. See Laurie L. Levenson, *NAFTA: A Criminal Justice Impact Report, Symposium—Free Trade and Democratic Values: Nafta's Effect on Human Rights*, 27 U.C. DAVIS L. REV. 843, 848-51 (1994) (discussing corruption in the Mexican judiciary and by law enforcement officials and how the NAFTA may help to remedy this problem).

261. For Mexico, see MERRYMAN ET AL., *supra* note 96, at 620. For China, see Griffin, *supra* note 35, at 181-2; see also Zhang, *supra* note 87, at 81-2.

262. See Lara, *supra* note 97, at 352-353. Where China perceives its economic interests dictate, it will ignore piracy.

263. See Friedland, *supra* note 2, at D3; see also Garcia, *supra* note 14, at 708-10.

264. See Garcia, *supra* note 14, at 708-12.

also involves involuntary inability—as developing countries, China and Mexico may not be able to adequately fund the copyright law system. Special 301 sanctions will not resolve this issue. If anything, threatened sanctions evoke issues of a government's power and control and may prompt a government to retaliate with more resistance to prosecuting piracy.²⁶⁵ This has been the case with China, for example, when the United States has threatened sanctions against it.²⁶⁶

D. *Notions of Property Ownership*

China's laws evolved based upon cultural traditions espousing communal property ownership.²⁶⁷ While Mexican culture and law have historically provided for individual property ownership, the economic class disparities in Mexico have caused many poor Mexicans to lack appreciation for individual property rights.²⁶⁸ Where a significant portion of the population is poor or lacks awareness and is thereby unable to relate to individual property ownership, that part of the population may deem intellectual property laws insignificant or not relevant to them.²⁶⁹

Therefore, a significant hurdle in developing countries like China and Mexico involves educating people about individual property ownership. More importantly, even where people in developing countries adhere to ideas of individual property ownership, these countries must convince the masses that individual property ownership is desirable.²⁷⁰ Whereas China may have to recreate cultural notions about property ownership and sell intel-

265. See, e.g., Getlan, *supra* note 195, at 216-18.

266. *Id.*

267. See Lara, *supra* note 97, at 350.

268. See Richard E. Neff, *New Robin Hoods Rob The Poor*, J. OF COMMERCE, June 2, 1998, at 8A (noting that while some perceive intellectual property protections as taking from the poor and giving to the rich, those who pirate may actually be doing an injustice to the poor by denying the potential long term benefits associated with strong intellectual laws).

269. See Russell, *supra* note 121, at 203.

270. See Lara, *supra* note 97, at 350. In China, Confucianist and Communist ideologies still pervade society, despite progression in the direction of more open trade and laws modeled after western legislation. Garcia notes that in Mexico, “[n]ational welfare may diminish” because intellectual property laws seem to benefit industrialized countries at the expense of domestic consumers. See Garcia, *supra* note 14, at 708-709.

lectual property rights as economically beneficial to its citizenry, Mexico may have to focus on the latter point—that intellectual property laws cause economic prosperity for its citizens.²⁷¹

Remedies to this problem must address involuntary hurdles such as centuries of communal traditions in China. Special 301 sanctions do not address this problem in China and Mexico. Sanctioning an economically developing country will not help foster support for a strong copyright system.²⁷² In fact, citizens in China and Mexico will likely react to sanctions negatively, viewing sanctions as evidence of a United States attempt to profit at the expense of consumers in China and Mexico.²⁷³

E. *Lack of Awareness of Copyright Laws*

Another fundamental problem is that frequent amendment and promulgation of new copyright laws leaves citizens of China and Mexico without actual knowledge of copyright statutes.²⁷⁴ Assuming that people in China and Mexico accept copyright law as legitimate, officials must disseminate information about the laws as the laws evolve or enforcement will be difficult.²⁷⁵ Pressure from the United States to amend and change the laws of China and Mexico exacerbates this problem.

The dissemination of such information may not be easily accomplished in a Civil Law country.²⁷⁶ This is so, especially where case reporters are not widely published and where judicial precedent has not traditionally dictated the law.²⁷⁷ This is also a problem where China and Mexico do not have extensive industries that

271. See Garcia, *supra* note 14, at 708-10.

272. See, e.g., Getlan, *supra* note 195, at 216-18.

273. See Garcia, *supra* note 14, at 708-12; see also 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 166-82. Note that piracy levels have not dramatically increased even though the U.S.T.R. has come close to citing Mexico as a problem country on several occasions. In China, note that each time the U.S. has threatened sanctions against China, China has retaliated. See *id.* at 66-79.

274. *C.f.* Steve La Rue, *Cross-border Commuters warned they must Register Vehicles Here*, SAN DIEGO UNION-TRIBUNE, Mar. 31, 1999, at B-3:5. (stating that citizens must receive information about laws before they can comply with them).

275. *Id.*

276. See MERRYMAN ET AL., *supra* note 96, at 966 n.4.

277. *Id.*

exploit copyrights.²⁷⁸

While the Special 301 Report cites this as a problem, Special 301 sanctions fail to cause the dissemination of current copyright law to the masses in China and Mexico.²⁷⁹ Therefore, parties interested in protecting their copyrights in China and Mexico should not rely on Special 301 sanctions to remedy this obstacle.²⁸⁰

III. ALTERNATIVES TO SPECIAL 301

Special 301 is valuable to the extent that the Special 301 Report enumerates problems which hinder copyright law enforcement in countries that fail to adequately enforce copyright laws.²⁸¹ The Special 301 Report emphasizes problems with laws and enforcement and provides the United States with justification to sanction countries that inadequately promulgate and enforce copyright law.²⁸² Consistent threats of sanction by the United States government has not compelled dramatic progress by either China and Mexico toward compliance with international agreements addressing copyright.²⁸³ These threats merely indicate United States dissatisfaction with the status of copyright law in China and Mexico.

Special 301 does not contemplate how the Civil Law Systems of China and Mexico accommodate legal change in the midst of

278. See Garcia, *supra* note 14, at 708-12; see also Sands & Lehr, *supra* note 31, at 1.

279. See generally Griffin, *supra* note 35, at 180 (concluding that United States investors should not rely on Special 301 to protect their copyright investments in China).

280. See Griffin, *supra* note 35, at 196-97.

281. See, 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 188. Advocates for the passage of clearer laws and more effective enforcement of those laws. This entails pushing for changes in the judiciary and the dissemination of the new copyright laws. This change is often a point of heated contention because from the United States common law perspective, it seems not to be such a daunting task to pass new law, proliferate it, and to cause lawyers and judges to adequately enforce it. The Report points out that fines placed on pirates are based on pirate market prices and not the legitimate market. See *id.* at 189; see also Griffin, *supra* note 35, at 188-89.

282. Note how for political reasons, the United States has responded differently to similar inadequacies of copyright law in China and Mexico. Compare 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 168 (noting that Mexico should've been listed as a problem country) with *id.* at 67-68 (noting that China was recognized as a problem country for similar violation of international agreements governing copyright).

283. For China, see 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 65-79. For Mexico, see *id.* at 166-82.

political, economic, and cultural circumstances that hinder such change.²⁸⁴ Perhaps because China and Mexico appear to have legal systems with the structure and actors necessary to adequately promulgate and enforce copyright law, Special 301 assumes that punitive measures will force those in power to make the copyright system function properly.²⁸⁵ If the United States seriously desires meaningful changes under the copyright systems of China and Mexico, United States copyright, it must realize that the problem is more complex than voluntary resistance.²⁸⁶ Involuntary barriers mix with voluntary resistance to thwart change in China's and Mexico's copyright systems. Therefore, any viable solution must consider these barriers (many of which stem from the Civil Law tradition). Effective solutions must address voluntary resistance and involuntary hindrances to change under the copyright systems of China and Mexico.

Because the United States government has not been effective at forging change with Special 301, United States copyright owners must create alternative initiatives to persuade China and Mexico that long-term economic benefits flow from the implementation and enforcement of adequate copyright laws.²⁸⁷ As China and Mexico begin to reap economic rewards from enforcing copyright laws, they will again incentives to improve their copyright laws and strengthen anti-piracy efforts.²⁸⁸ Until China and Mexico become greater producers of products and industries which rely on copyright protections, United States investors must craft ways outside of Special 301 to protect their copyrights in these countries.²⁸⁹ United States companies and other interested parties should establish programs to educate and persuade foreign governments, consumers, and industries of specific short and long-term economic

284. See Hu, *supra* note 25, at 104-09 (indicating that government enforcement is part of the problem, but culture and economy also contribute).

285. See, e.g., 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 166-68 (noting that sanctions follow a country's failure to comply with international agreements); see also Griffin, *supra* note 35, at 175-181 (discussing the agreements with China and the alternative of sanctions).

286. See generally Griffin, *supra* note 35, at 180-187 (arguing that Special 301 is inadequate to obtain compliance with international agreements affecting copyright laws).

287. See *id.* at 194-196.

288. See *id.* at 187-96.

289. See *id.*

advantages of enforcing and complying with copyright law.²⁹⁰ In so doing, they will address the economic, political, and cultural issues that taint the legal systems of China and Mexico and hinder copyright law development.

A. *Government-Targeted Initiatives Will Address Political and Economic Issues*

Strong centralized governments exist in developing countries like China and Mexico. Therefore, the cooperation of these governments will be key to the implementation and enforcement of adequate copyright laws. Government willingness to encourage promulgation and enforcement of copyright laws is crucial because the judicial branches of these countries are not independent.²⁹¹ While United States threats under Special 301 have created animosity and perhaps prompted the governments of China and Mexico to resist promulgation and enforcement of adequate copyright laws, United States companies, individual investors and industry-based groups must develop better relationships with these governments.²⁹² In doing so, they can develop programs to educate governments about the incentives of protecting copyrights. The goal of these United States investors should be to encourage China and Mexico to perceive the debate surrounding strong copyright laws as mutually beneficial and not as a one-sided attempt by the United States to exploit consumers in China and Mexico.²⁹³

For example, United States investors could work with China's government to help mold China's Intellectual Property Courts. Investors could coordinate meetings where judges from the Chinese Intellectual Property Courts would learn about copyright law enforcement from United States judges, lawyers, and legal scholars.²⁹⁴ This cooperative effort would benefit China and the United

290. *See id.* at 193-94. While Griffin proffers several solutions that involve changes to the legal system, this author argues that such efforts by companies will be futile and should be very low priorities. *See id.* at 188-90.

291. *See* MERRYMAN ET AL., *supra* note 96, at 620

292. *See* Griffin, *supra* note 35, at 192-96.

293. *See id.* at 187-96.

294. *See id.*

States.²⁹⁵ The same kind of initiative could benefit Mexico's judiciary.

Where cooperative efforts fail, United States investors should consider lawful self-help measures. For example, several companies have hired a private investigation team to monitor and report piracy to authorities in Mexico.²⁹⁶ Companies seeking to protect copyrights in Mexico should consider implementing this strategy whereby investigators conduct detailed firsthand research and cause Mexican authorities to raid and prosecute pirates.²⁹⁷ While dangerous at times, this hand-on approach leaves companies somewhat secure that piracy is not consuming the bulk of potential profits in Mexico.²⁹⁸

United States companies will prosper if foreign governments are clear and consistent in their promulgation and enforcement of copyright laws.²⁹⁹ Therefore, companies and other interested United States parties should research and implement other initiatives aimed at establishing relationships with the governments of Mexico and China.³⁰⁰ If strong centralized foreign governments understand copyright law, consider it legitimate, and consistently promote it, the people of their countries will more likely learn and follow those laws.³⁰¹

295. See 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 171-72 (noting that political will must exist before these kinds of cooperative efforts can be successful).

296. See Friedland, *supra* note 2, at D3.

297. See *id.*

298. See *id.*

299. See 1998 SPECIAL 301 SUBMISSION, *supra* note 6, at 191. In China, United States corporations have successfully lobbied Chinese agencies to pay for licenses to use software.

300. See Griffin, *supra* note 35, at 192-96.

301. See James Cox, *U.S. Firms: Piracy Thrives in China*, USA TODAY, Aug. 23, 1995, at 2B (emphasizing that China was harsh on street peddlers but not on those who manufactured pirated goods. This indicates that China perceives that peddling pirated goods is wrong but that pirate manufacturing is okay.)

B. *Consumer-Targeted Initiatives Will Address Cultural and Economic Issues*

Consumers comprise the markets from which United States investors to extract profits.³⁰² Therefore, companies should seriously consider developing projects which educate consumers about how consumers benefit from copyright enforcement.³⁰³ This kind of initiative will allay perception that copyright laws foster one-sided economic prosperity for United States producers.

Companies should emphasize the relationship between price and copyright protection. Companies should show consumers that copyrights convert ideas into income. United States investors should indicate how strong copyright law enforcement fosters greater foreign investment. These investors should demonstrate that consumers stand to gain from foreign investment: (1) because greater foreign investment can mean more competition and lower prices; and (2) foreign investment can otherwise improve the country's economy and thereby benefit consumers.³⁰⁴

Microsoft has undertaken new anti-piracy measures in China.³⁰⁵ The company has instituted a system of rewards that go to those who exploit Microsoft products and services, instead of pirated copies.³⁰⁶ One of Microsoft's selling points is the quality associated with legitimately acquired goods and services.³⁰⁷ This initiative is proving successful.³⁰⁸

Griffin suggests sending messages to consumers regarding criminal sanctions for piracy.³⁰⁹ For example, companies may use television and other media to communicate ideas about copyright piracy. While this is a good way to inform consumers about the importance of protecting copyright; the government must reinforce

302. See Griffin, *supra* note 35, at 192-3.

303. See *id.*

304. See *id.* at 192-6.

305. See Marcos C. Medina, *Microsoft Expands Presence in China*, YAHOO NEWS, Mar. 23, 1999, at 1-2.

306. See *id.*

307. See *id.*

308. See *id.*

309. See Griffin, *supra* note 35, at 192-94.

the message by adequately enforcing the law.³¹⁰ Similarly, in China and Mexico, where strong centralized governments closely monitor the media, United States companies in these countries must be prepared to involve governments in these kinds of initiatives.³¹¹

Another idea for consumer education is the Italian plan mentioned by Griffin.³¹² This plan involves encouraging consumers to promote local talent and simultaneously discourage piracy of recorded music. In countries like China and Mexico, which evolved from group property ownership traditions, consumers may be receptive to the idea that local artists (whose works are copyrighted) and hence the community can benefit from adequate copyright law enforcement.³¹³ If United States companies contemplate the problem with copyright enforcement in this manner, they could help to ease China's and Mexico's transitions to strong copyright laws.³¹⁴

C. *Industry-Targeted Initiatives Will Address Economic Issues*

United States companies should educate those who produce intellectual property about their industries' interests in adequate copyright enforcement. While some developing countries fear that strong intellectual property laws hurt local industry,³¹⁵ United States investors can work to debunk this view.³¹⁶ Particularly, United States investors should downplay the assumption that industries in developing countries must first copy technology in order to achieve a need for stronger intellectual property laws.³¹⁷ Ideas, like setting up video rental chains, for example, can impact change in copyright law by changing perceptions in China and Mexico about who can benefit from strong copyright laws.

310. *See id.*

311. *See id.*

312. *See id.* at 195.

313. *See id.*

314. *See id.*

315. *See Garcia, supra* note 17, at 712.

316. *See Griffin, supra* note 35, at 190-96 (discussing several things United States investors can do to protect copyrights and contribute to the evolution of adequate legal protections under China's copyright laws.)

317. *See id.*

D. *Joint-Ventures Will Address Cultural, Political and Economic Issues*

Many companies find that joint ventures are helping to alleviate or at least highlight many of the cultural, political and economic challenges to viable copyright systems in China and Mexico.³¹⁸ In joint ventures, United States investors work with local partners in foreign countries who gain “economic interest[s] in keeping the intellectual property safe from loss.”³¹⁹ These partnerships can protect foreign investors against loss “[i]n countries where political risk is high.”³²⁰ United States investors are able to “bridge cultural differences . . . and take advantage of the personal relationships that are essential to commercial success” in countries like China and Mexico.³²¹ United States investors must consider strategies like the joint venture to gain adequate copyright legislation and enforcement of copyright laws.

CONCLUSION

The United States aspires to evoke stronger copyright protection in countries around the world by using Special 301. As global trade increases and United States copyrights are exploited around the world, United States copyright holders will want to ensure that their copyrights are protected. Some copyright holders may look to the United States government and its use of Special 301 to gain assurance of protection of United States copyrights in countries around the world. However, United States copyright holders, should look beyond Special 301 to gain adequate copyright legislation and enforcement of copyright laws outside of the United States. Frustrations faced by the United States with Special 301 enforcement efforts in China and Mexico illustrate why United States copyright holders must look beyond Special 301 to gain strong copyright protections abroad. The history of Special 301 in China and Mexico also offers insight into ways outside of Special

318. See Frank Long, *Joint Ventures: Different Kind of Union Protection*, ARIZONA BUSINESS GAZETTE, Mar. 27, 1997, at 11 (explaining how “U.S. exporters use joint ventures to protect their technology, trademarks and trade secrets.”).

319. *Id.*

320. *Id.*

321. *Id.*

301 to gain adequate copyright legislation and enforcement in these countries. Analysis of this history reveals that some of the barriers to viable copyright systems in China are voluntary while others are involuntary.

Notwithstanding its shortcomings, Special 301 has been somewhat useful to the cause of achieving stronger copyright protections in China and Mexico. Special 301 has been successful in monitoring piracy and the flaws in the copyright laws of Mexico and China. However, Special 301 fails to adequately address these phenomena because its ultimate solution is to impose sanctions rather than to deal with the complex issues that contribute to the problem.

Many companies have developed creative ways outside of Special 301 to address copyright enforcement challenges in China and Mexico. United States copyright owners should follow these examples and look beyond Special 301 to procure adequate copyright legislation and enforcement. Strategies to evoke stronger copyright protections in China and Mexico must emphasize cooperative efforts to remedy factors that contribute to copyright piracy and de-emphasize sanctioning these countries for failing to completely and immediately eradicate piracy.