

# CHINESE NATIONALISM AND THE MISHAPS THAT CLOSED THE SHOW ON GOOGLE MUSIC

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INTRODUCTION .....	245
I. BACKGROUND OF PIRACY IN CHINA.....	246
A. Piracy Today and the Increase in Internet Users.....	246
B. History of Piracy as an Acceptable Practice in Chinese Culture .....	248
II. THE DEVELOPMENT OF CHINA'S COPYRIGHT LAWS .....	249
A. The Pre-Cultural Revolution and Cultural Revolution Era: 835-1966 .....	249
B. The Post-Cultural Revolution and Modern Era: 1976- Current .....	250
III. THE RISE OF THE INTERNET AND GOVERNMENT CENSORSHIP .....	251
IV. GOOGLE IN CHINA .....	253
A. Here Comes Google .....	253
B. China's Response to Google and the Strength of Chinese Nationalism.....	254
C. Google's Innovative Music Product .....	257
D. The Real Reasons Behind Google Music's Failure .....	259
V. LESSONS LEARNED FROM GOOGLE.....	261
CONCLUSION.....	263

## INTRODUCTION

In 2009, Google partnered with major record labels and offered a music download search service in China. The service provided free licensed music downloads in an attempt to curb music piracy. Soon thereafter, Chinese online entertainment companies, such as Baidu and Youku, followed suit and started to clean up their intellectual property acts. Yet in September 2012, Google announced it was shutting down its music download search service in China. Why did Google's promising service fail? What could Google have done differently? Can market forces move Chinese entertainment websites towards legitimate uses of

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intellectual property?

This note proposes that Google's music product failure is attributable to China's cultural environment, which does not value individual property rights, and to Chinese society's preference for promoting national companies over foreign companies. China's strong nationalism creates an environment where businesses must adhere to Chinese societal values and laws in order to be successful. When businesses either ignore these cultural influences or attempt to apply a business model that does not account for the unique characteristics of the Chinese market, even the most successful businesses are vulnerable to failure in China.

Part I outlines the history of piracy in Chinese culture and explores piracy's impact on China's early education system. Part I also looks at the current role piracy plays in the Chinese marketplace. Part II details the rise of intellectual property rights in Chinese society as well as China's transition from a regime that promoted piracy to one that protects intellectual property rights. Part III details the rise of the Internet and government censorship. Part IV addresses Google's tumultuous relationship with China since it entered the Chinese market in 2006 and suggests that while China's history of accepting piracy played a role in Google's music service failure, the product's flop is mostly due to strong nationalist sentiments that were exacerbated when Google circumvented China's Internet censorship system. Part V concludes with a few of the key lessons learned from Google's mishaps, a discussion of how Google's music service did succeed in paving the way for other companies to address their intellectual property violations, and a guide for companies to better position themselves to prevent failure in China.

## I. BACKGROUND OF PIRACY IN CHINA

### A. *Piracy Today and the Increase in Internet Users*

The word "piracy" is often associated with China generally. After all, "no country contributes more to the piracy problem" than China.<sup>1</sup> For example, the recording industry estimates that while physical music piracy rates are around 90%, online music piracy rates are approaching 99%.<sup>2</sup> These extremely high rates of music piracy have drastic economic consequences. The United States International Trade Commission estimates that U.S. companies lost approximately \$48.2 billion in sales,

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1. Eric Priest, *The Future of Music and Film Piracy in China*, 21 BERKELEY TECH. L.J. 795, 796 (2006).

2. 2012 Special 301 Report on Copyright Protection and Enforcement, 2012 INT. INTELL. PROP. ALLIANCE 32, available at <http://www.iipa.com/rbc/2012/2012SPEC301CHINA.PDF> [hereinafter IIPA Report].

royalties, or license fees due to intellectual property rights violations in China.<sup>3</sup> Improvements in enforcing China's intellectual property rights to levels that match those in the United States could lead to a \$107 billion gain in U.S. exports and sales as well as the creation of over 922,500 new U.S. jobs.<sup>4</sup>

Internet-based piracy continues to increase with improvements in technology and access to mobile devices.<sup>5</sup> According to a report from the government-run China Internet Network Information Center, as of the end of 2011, there were 513 million Internet users in China.<sup>6</sup> This is a drastic increase from China's 298 million users at the end of 2008.<sup>7</sup> In contrast, the U.S. had 220 million Internet users as of November 2011.<sup>8</sup> Roughly 69.3% of China's Internet users can access the Internet through mobile devices.<sup>9</sup> In 2011, 75.2% of China's Internet users used the Internet for music, 63% used the Internet for gaming, and 63% used the Internet for videos.<sup>10</sup> China's Internet users are increasingly using the Internet to access entertainment content, and mobile devices allow more users to access this content anywhere.

However, despite the increase in China's Internet users, legitimate sales for music amounted to only \$64.3 million in 2010. In comparison, legitimate sales for music totaled \$68.9 million in Thailand, which is a country with less than 5% of China's population and nearly equivalent per-capita GDP.<sup>11</sup> If Chinese sales were to match Thailand's on a per-capita basis, music sales in China should be around \$1.4 billion.<sup>12</sup>

These studies and reports illustrate the prevalence of music piracy in China and the huge economic toll piracy takes. Rampant music piracy in China results in a significant loss of revenue for record companies. The increased access to Internet has only exacerbated the problem,<sup>13</sup> as it allows easy access for those willing to engage in piracy. But why do so many Chinese engage in piracy, and why is it such a problem in China

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3. U.S. INT'L TRADE COMM'N, CHINA: EFFECTS OF INTELLECTUAL PROPERTY INFRINGEMENT AND INDIGENOUS INNOVATION POLICIES ON THE U.S. ECONOMY, at 3-1, (May 2011), <http://www.usitc.gov/publications/332/pub4226.pdf>.

4. *Id.*

5. See IIPA Report, *supra* note 2.

6. Leslie Horn, *Number of Chinese Internet Users Climbs to 513 Million*, PC MAG (Jan. 17, 2012, 9:53 AM), <http://www.pcmag.com/article2/0,2817,2398956,00.asp>.

7. See *Chinese 'Net Users Soar*, PC MAG (Jan. 14, 2009, 9:29 AM), <http://www.pcmag.com/article2/0,2817,2338924,00.asp>.

8. Amir Efrati & Loretta Chao, *Google Softens Tone on China*, WALL ST. J. (Jan. 12, 2012), <http://online.wsj.com/article/SB10001424052970203436904577155003097277514.html>.

9. See *id.*

10. IIPA Report, *supra* note 2.

11. *Id.* at 33.

12. *Id.*

13. See *id.* at 32.

specifically?

*B. History of Piracy as an Acceptable Practice in Chinese Culture*

A closer look at China's Confucian-influenced history helps explain why piracy is so prevalent in Chinese society.<sup>14</sup> The imperial Chinese did not consider copying or imitating a "moral offense."<sup>15</sup> On the contrary, the Chinese considered copying or imitating a noble art, a way to pay respect to their ancestors.<sup>16</sup> In fact, having one's work copied was the greatest compliment an author could receive.<sup>17</sup> Thus, from an early age, Chinese children were taught to copy classics and histories, and, combined with their education focusing solely on relaying information from the past, they would grow up to become scholarly compilers rather than composers of their own creative works.<sup>18</sup> According to scholar Peter Yu, the practice of what would be considered plagiarism today was an "acceptable, legitimate, or even necessary" aspect of imperial China.<sup>19</sup> Yu even states that Confucius himself proudly declared in the Analects that he was only conveying what was taught to him.<sup>20</sup>

Furthermore, the Confucian ideals of family and society emphasized the familial unit and collective rights to the exclusion of individual rights.<sup>21</sup> For over two thousand years, Confucian teachings deeply influenced the Chinese and its principles laid the foundation for Chinese cultural and societal values.<sup>22</sup> According to the Confucian view of civilization, the family unit is considered the basic unit of community.<sup>23</sup> Instead of valuing an individual's innovations, creative works were considered to be a collective benefit for the family and the greater community.<sup>24</sup> The deeply rooted influence of Confucian values encouraged copying and promoted the idea of a collective right to creative works. Thus, the concept of individual rights did not exist in early Chinese society and is not a part of traditional Chinese culture.

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14. See, e.g., WILLIAM P. ALFORD, *TO STEAL A BOOK IS AN ELEGANT OFFENSE: INTELLECTUAL PROPERTY LAW IN CHINESE CIVILIZATION* (1997); Peter K. Yu, *Causes of Piracy and Counterfeiting in China*, *GUANXI: THE CHINA LETTER* (2007), <http://www.peteryu.com/guanxi.pdf>; Kenneth Rapoza, *In China, Why Piracy is Here to Stay*, *FORBES* (July 22, 2012, 9:47 PM), <http://www.forbes.com/sites/kenrapoza/2012/07/22/in-china-why-piracy-is-here-to-stay/>.

15. Yu, *supra* note 14, at 1.

16. *Id.*

17. Kristie Kachuriak, *Chinese Copyright Piracy: Analysis of the Problem and Suggestions for Protection of U.S. Copyrights*, 13 *DICK. J. INT'L L.* 599, 605 (1995).

18. Yu, *supra* note 14, at 1.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*; see Rapoza, *supra* note 14, at 1.

In addition to the strong emphasis on the collective right, Confucian teachings disapproved of creating works for profit.<sup>25</sup> Yu attributes this idea to the fact that merchants were considered the lowest amongst the social classes in traditional Chinese society to Confucianism's general disdain for commerce and profit-seeking motives.<sup>26</sup> Confucianism's distaste for merchants and commerce coupled with the emphasis on familial and community values demonstrate that individual and intellectual property, "where the spoils go to one entity or one person," historically, is not a Chinese cultural value.<sup>27</sup> Thus, it is illuminating to see how China eventually developed an intellectual property rights regime despite having these deeply embedded Confucian values and an established culture of piracy.

## II. THE DEVELOPMENT OF CHINA'S COPYRIGHT LAWS

### A. *The Pre-Cultural Revolution and Cultural Revolution Era: 835-1966*

China's earliest efforts to regulate the notion of intellectual property rights developed out of a motivation to sustain imperial power rather than a desire to foster the growth of creative works.<sup>28</sup> In 835 A.D., Emperor Wenzong of the Tang Dynasty issued an edict that regulated the reproduction of publications.<sup>29</sup> At the time, the edict was designed to protect against the unauthorized publication of any materials that would undermine the emperor's power or predict the dynasty's downfall.<sup>30</sup> By the end of the Tang dynasty, the edict was expanded and subsequently used as a way to sustain power rather than to promote creative works.<sup>31</sup> Successive dynasties expanded on these restrictions by simultaneously restricting the use of emblems associated with the imperial family and promulgating codes to control the use and publication of materials.<sup>32</sup> Despite these edicts and regulations, which seemingly attempted to protect the unauthorized reproduction of creative works, a formalized regime of intellectual property rights failed to come to fruition.<sup>33</sup> Perhaps this is because the narrow scope of the edicts prevented the expansion of intellectual property rights.

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25. Yu, *supra* note 14.

26. *Id.*

27. Rapoza, *supra* note 14.

28. Peter K. Yu, *Piracy, Prejudice, and Perspectives: An Attempt to Use Shakespeare to Reconfigure the U.S.-China Intellectual Property Debate*, 19 B.U. INT'L L.J. 1, 4 (2001).

29. *Id.* at 3.

30. *Id.* at 4.

31. *Id.*

32. *See id.*; Alford, *supra* note 14, at 15.

33. *See* Alford, *supra* note 14, at 17-18.

The Qing dynasty eventually ratified China's first copyright statute in 1910, and it was amended in 1915 and 1928 by subsequent governments.<sup>34</sup> However, with the rise of the Chinese Communist Party and its leader, Mao Zedong, in 1949, the copyright law was repealed—under the Marxist-Leninist system of beliefs, all artistic, scientific, and literary works were considered expressions of state ideology and were not considered personal property.<sup>35</sup> Instead, "property" was owned by the state.<sup>36</sup> Despite the Communist government's policies, there was a system of informal regulations and administrative orders that controlled plagiarism until 1966, when these regulations were abolished during the Cultural Revolution.<sup>37</sup>

### B. *The Post-Cultural Revolution and Modern Era: 1976-Current*

The death of Mao in 1976 led to new party leadership and the reopening of China in the 1980s, collectively known as the Open Door Policy reforms.<sup>38</sup> Under these new policies, the need for copyright law was recognized, but such laws were not enacted until 1990.<sup>39</sup> The copyright law that passed in 1990 was heavily influenced by pressures from the U.S. and Japan to harmonize China's copyright scheme to meet western standards.<sup>40</sup> The Standing Committee of the National People's Congress revised the Copyright Law of the People's Republic of China in 2010, and as it currently stands, the law provides protection for a broad range of works in arts, literature, and sciences, and it specifically enumerates the rights included in a copyright grant.<sup>41</sup>

This brief overview of the development of China's intellectual

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34. June Cohan Lazar, Note, *Protecting Ideas and Ideals: Copyright Law in the People's Republic of China*, 27 LAW & POL'Y INT'L BUS. 1185, 1186 (1996).

35. Kachuriak, *supra* note 17, at 603.

36. *Id.*

37. Lazar, *supra* note 34, at 1186.

38. *Id.* at 1187.

39. Kachuriak, *supra* note 17, at 604.

40. See Lazar, *supra* note 34, at 1188; Heidi Hansen Kalscheur, Note, *About "Face": Using Moral Rights to Increase Copyright Enforcement in China*, 39 HASTINGS CONST. L.Q. 513, 518 (2012).

41. See Kalscheur, *supra* note 40, at 519; Copyright Law of the People's Republic of China (promulgated by the 13th Standing Comm. of the 11th Nat'l People's Cong., Feb. 26, 2010) (China), ch. 2 art. 10 (copyrights include the rights to: (1) publication; (2) authorship; (3) revision; (4) integrity; (5) reproduction; (6) distribution; (7) rental; (8) exhibition; (9) performance; (10) presentation; (11) broadcasting; (12) communication through information networks; (13) cinematography; (14) adaptation; (15) translation; (16) compilation; and (17) other rights a copyright owner is to enjoy; ch. 1 art. 3 includes works to be copyrighted as "works of literature, art, natural sciences, social sciences, engineering, and technology, which are created in any of the following forms": (1) written works; (2) oral works; (3) musical, dramatic, quyi, choreographic and acrobatic works; (4) works of the fine arts and architecture; (5) photographic works; (6) cinematographic works; (7) graphic works; (8) computer software; and (10) other works as provided for in laws and administrative regulations).

property rights regime shows that the concept of protecting authorship and individual rights is relatively new to China. It was not until the Open Door Policy reforms that China accelerated the process of developing its intellectual property rights in order to promote economic growth and open China's market to the rest of the world.<sup>42</sup> In fact, while it took other countries decades to develop their intellectual property rights regimes, China put together its regime in "a little more than a dozen years."<sup>43</sup> Thus, despite the rapid developments and improvements in intellectual property rights over the last two decades, the Chinese may have only an elementary understanding and appreciation of intellectual property.<sup>44</sup>

It is difficult to shed a deeply engrained idea that copying someone's work is a "noble art," especially when a young, rapidly developed intellectual property rights regime has only emphasized these rights for the past few decades. Therefore, it may be unrealistic to expect China to have the level of appreciation for the need to protect creative works with copyright protections similar to that of western regimes with advanced intellectual property protections.<sup>45</sup> As the Chinese struggle to develop a robust intellectual property rights regime, the increase of Internet users has also created a host of new problems for the Chinese government to deal with, including Internet censorship.

### III. THE RISE OF THE INTERNET AND GOVERNMENT CENSORSHIP

For as long as there has been Internet in China, the Chinese government has monitored how its citizens use it and has controlled the content that is delivered through it.<sup>46</sup> This desire to monitor and control the Internet stems from the Cultural Revolution era when the government kept a tight control on the media.<sup>47</sup> During this era, the government not only restricted the number of media outlets, but it also controlled the content published, including the length and format.<sup>48</sup> Then, from the end of the Mao era to the mid-1990s, news media providers were funded either directly or indirectly through the government, which meant that the government had near total control of the information that was disseminated to its citizens.<sup>49</sup> When China's economy opened up in the

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42. Kachuriak, *supra* note 17, at 605.

43. *Id.* (attributing The White Paper, which was released by the information office of China's State Council and explains China's position regarding intellectual property).

44. *Id.*

45. *Id.*

46. Randy James, *Chinese Internet Censorship*, TIME (Mar. 18, 2009), <http://www.time.com/time/world/article/0,8599,1885961,00.html>.

47. Jonathan Hassid, *Controlling the Chinese Media: an Uncertain Business*, 48 ASIAN SURVEY NO. 3 414, 416 (June 30, 2008).

48. *Id.*

49. *See id.* at 416-17.

late 1970s, the news business also gradually shifted to a market-driven system based on advertisement revenue.<sup>50</sup> However, Chinese news media organizations were financially incentivized to engage in self-censorship and were punished when they did not self-censor or comply with the government's mandates.<sup>51</sup> It is against this backdrop that China's Internet monitoring system has developed to become one of the most sophisticated and effective systems in the world.<sup>52</sup>

The Internet monitoring technology, also known as "the Great Firewall," blocks websites that display sensitive topics,<sup>53</sup> while government monitors frequently check blogs, chat rooms, forums, and emails to make sure that China's Internet users are not challenging the country's "harmonious society."<sup>54</sup> In addition, there is a voluntary pledge system where citizens can monitor and report sites that contain prohibited information and content.<sup>55</sup> This complex system of monitoring and regulation is backed by some of the most advanced technology available in the market.<sup>56</sup>

Despite the heavy monitoring, most Chinese seem to be comfortable with some government control of the Internet.<sup>57</sup> According to a 2007 survey conducted by the Chinese Academy of Social Services, over 80% of participants believed that the Internet should be managed or controlled, with the government having the biggest role, followed by Internet companies and parents.<sup>58</sup> Forty-five percent of respondents agreed that politics should be controlled while around 30% thought that online chatting should be managed or controlled.<sup>59</sup> Interestingly, only around 30% of those surveyed believed that the Internet gives people

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50. *Id.*

51. Ashley Esarey & Xiao Qiang, *Digital Communication and Political Change in China*, 5 INT'L J. COMMUN. 298, 302 (2011).

52. Christopher Stevenson, Note, *Breaching the Great Firewall: China's Internet Censorship and the Quest for Freedom of Expression in a Connected World*, 30 B.C. INT'L & COMP. L. REV. 531, 537 (2007).

53. James, *supra* note 46. Such topics include the Tiananmen Square uprising, Taiwan, support for free Tibet, the Falungong Chinese religious movement, human rights issues, and pro-democracy commentary. Kristen Farrell, *The Big Mamas Are Watching: China's Censorship of the Internet and the Strain on Freedom of Expression*, 15 MICH. ST. J. INT'L L. 577, 587-88 (2007).

54. James, *supra* note 46.

55. Stevenson, *supra* note 52, at 540.

56. *Id.* at 541.

57. Yutian Ling, *Upholding Free Speech and Privacy Online: A Legal-Based and Market-Based Approach for Internet Companies in China*, 27 SANTA CLARA COMP. & HIGH TECH. L.J. 175, 185 (2010).

58. *Id.*; Guo Liang, *Surveying Internet Usage and its Impact in Seven Chinese Cities*, CHINESE ACAD. OF SOC. SERVS. 12-15 (2007), [http://www.worldinternetproject.com/\\_files/\\_Published/\\_oldis/\\_China%20Internet%20Project%20Survey%20Report%202007.pdf](http://www.worldinternetproject.com/_files/_Published/_oldis/_China%20Internet%20Project%20Survey%20Report%202007.pdf) [hereinafter Chinese Internet Survey].

59. Chinese Internet Survey, *supra* note 58, at 13-14.

"more political power."<sup>60</sup> These results indicate that Chinese attitudes toward the government's role in Internet censorship are generally positive and tend to receive public support. It was in this closely censored Internet environment that Google decided to enter the Chinese market.

#### IV. GOOGLE IN CHINA

##### A. *Here Comes Google*

Google launched Google.cn in 2006 with the belief that increasing access to information for the Chinese would offset the negative effects of having to censor some search results.<sup>61</sup> At the time, Google recognized the dilemma in complying with Chinese censorship and surveillance policies.<sup>62</sup> Despite these challenges, Google launched Google.cn fully aware that it would have to comply with government censorship and surveillance requirements, so long as it could state on search results pages that some results were unavailable due to censorship.<sup>63</sup>

From the start, China and Google had a difficult relationship. In December 2005, not long after Google received its operating license, the Chinese government declared the license invalid because it was uncertain if Google should be categorized as a news portal or as an Internet service.<sup>64</sup> Since foreigners were not allowed to operate news portals in China, the government decided to revoke the license until it could determine Google's status.<sup>65</sup> Google finally received its operating license again after more than a year of negotiations.<sup>66</sup>

In December 2009, Google and around twenty U.S. companies were targets of cyber attacks. Google publically suggested that the Chinese government was responsible for the attacks, which resulted in the email accounts of human rights activists being hacked.<sup>67</sup> Soon after, Google engaged in an intense battle with Beijing when it decided to stop censoring search results in China, even if that meant closing its China operations.<sup>68</sup> In March 2010, Google announced that it was redirecting all Google.cn visitors to its uncensored Hong Kong search site. A few months later, by way of a compromise, Google agreed to create a new

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60. *Id.* at 86.

61. Jon M. Garon, *Searching Inside Google: Cases, Controversies, and the Future of the World's Most Provocative Company*, 30 LOY. L.A. ENT. L. REV. 429, 469 (2010).

62. *Id.*

63. Ryan Singel, *Google Fights China; Will Yahoo and Microsoft Follow?*, WIRED (Jan. 14, 2010, 10:07 AM), <http://www.wired.com/business/2010/01/yahoo-microsoft-china/>.

64. Steven Levy, *Inside Google's China Misfortune*, CNN MONEY (Apr. 15, 2011, 5:00 AM), <http://tech.fortune.cnn.com/2011/04/15/googles-ordeal-in-china/>.

65. *Id.*

66. *Id.*

67. Singel, *supra* note 63; Garon, *supra* note 61, at 470.

68. Singel, *supra* note 63.

Google.cn page with a link to the non-censored Hong Kong search site.<sup>69</sup>

Although Google pulled its web search site out of China, it says it never abandoned China completely as it still maintained an array of online services that did not require censorship.<sup>70</sup> Google's share of the Chinese search engine market fell to 7.2% in the third quarter of 2011 from 36% in the fourth quarter of 2009, which largely benefitted Baidu, China's largest search engine provider.<sup>71</sup> In 2012, Google renewed its push to expand its operations in China with hopes of growing its mobile devices operating system and online advertising and product-search services.<sup>72</sup> However, frequent disruptions in service due to the Chinese government's censorship system continue to trouble Google's services, such as Gmail and its Hong Kong search engine.<sup>73</sup>

### *B. China's Response to Google and the Strength of Chinese Nationalism*

Google's decision to pull its China-based search site and redirect users in Mainland China to Hong Kong had a polarizing effect. Amongst elite Internet user circles, comprised of tech-savvy netizens,<sup>74</sup> many have expressed grief at what they believe to be a setback in promoting Internet freedom.<sup>75</sup> There was a sense of frustration for Google's sudden departure and the general lack of access to uncensored information.<sup>76</sup>

However, many Chinese citizens and state media outlets had the opposite reaction and launched attacks against Google.<sup>77</sup> The state-run Xinhua News agency decried Google's decision to skirt Chinese censorship laws and stated that Google broke its promise to filter harmful content.<sup>78</sup> A China Daily op-editorial alleged that Google's departure was

69. Jacqui Cheng, *Google Stops Hong Kong Auto-Direct as China Plays Hardball*, ARS TECHNICA (June 29, 2010, 9:53 AM), <http://arstechnica.com/tech-policy/2010/06/google-tweaks-china-to-hong-kong-redirect-same-results/> (Google decided to make the change because it was applying to renew its Internet Content Provider license, and the Chinese officials found the redirect "unacceptable.").

70. Efrati & Chao, *supra* note 8.

71. *Id.*

72. *Id.* (according to Daniel Alegre, Google's top executive in Asia, Google hopes to "capitalize on its fast-growing Android operating system for mobile devices.").

73. *Id.*

74. Netizen is defined as an "active participant in the online community of the Internet". MERRIAM-WEBSTER, <http://www.merriam-webster.com/dictionary/netizen> (last visited Sept. 29, 2013).

75. See Lara Farrar, *Google.cn: R.I.P or Good Riddance?*, CNN (Mar. 26, 2010), <http://edition.cnn.com/2010/TECH/03/26/china.google.reaction/index.html>.

76. *Id.*

77. See Ben Blanchard & Melanie Lee, *WRAPUP 2-Chinese media launches new attack on Google*, REUTERS (Mar. 22, 2010, 9:07 AM), <http://www.reuters.com/article/2010/03/22/china-google-idUSTOE62L03V20100322?type=marketsNews>.

78. *Id.*

a foreign strategy tool for the Obama administration and that the search engine's exit from China was a "deliberate plot."<sup>79</sup> Furthermore, the article stated that Google's departure would leave "more room for China's homegrown search engines, such as Baidu, to improve and to benefit from its search technologies."<sup>80</sup>

Comments by and surveys of Chinese citizens seem to indicate a broader population base that does not support Google's actions. Robert Deng, an associate professor of new media at Fudan University, said, "I agree the Internet users should have freedom of speech, but Google raised this issue in a way that is unacceptable to the government and to the Chinese people."<sup>81</sup> In an online survey through the Global Times, 80% of the respondents said that they do not care about Google's departure.<sup>82</sup> One Chinese Internet user stated that "Google is too political and wants to try to force more human rights or democracy issues on China. . . [i]n this case, most Chinese won't like Google."<sup>83</sup>

These public sentiments reflect the backlash Google received in deciding to skirt Chinese censorship laws. Because the majority of Chinese Internet users agree that there should be some form of government censorship, Google's efforts to bypass China's censorship laws came off as a foreign corporation attempting to force China and its people to do things a certain way, namely, its way. Studies show that relatively minor incidents, such as China's capture of an American spy plane in 2001, provoke extreme public outrage and revive nationalist sentiments amongst the Chinese public.<sup>84</sup> Furthermore, the Chinese government is known to provoke nationalist responses to policy challenges from foreign entities.<sup>85</sup> Thus, Google's departure was welcomed by many Chinese who viewed Google's actions as anti-China. In addition, many saw Google's departure as an opportunity for China's own companies to grow and succeed.

Favoritism and preferential treatment for national brands and companies is not new to China. Historically, reputation was viewed as an individual's or enterprise's "most valuable asset."<sup>86</sup> A good reputation was considered more valuable and reliable than an official stamp or

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79. Ding Yifan, *Google's exit a deliberate plot*, CHINA DAILY (Mar. 25, 2010, 7:48 AM), [http://www.chinadaily.com.cn/opinion/2010-03/25/content\\_9638825.htm](http://www.chinadaily.com.cn/opinion/2010-03/25/content_9638825.htm).

80. *Id.*

81. Farrar, *supra* note 75.

82. Blanchard & Lee, *supra* note 77.

83. Farrar, *supra* note 75.

84. *See, e.g.*, Eric A. Posner & John Yoo, *International Law and the Rise of China*, 7 CHI. J. INT'L L. 1, 2 (2006).

85. *Id.*

86. Jonathan Low & Vincent Leung, *Brand and Reputation in China Following the Financial Crisis*, INTELL. ASSET MGMT. 63 (Mar./Apr. 2011), <http://www.iam-magazine.com/Issues/Article.ashx?g=eb292ffe-17e3-4ca2-891e-e1276a712520.pdf>.

signature.<sup>87</sup> During Mao's communist takeover in 1949, all property was nationalized, and brands and reputation were controlled and run for the benefit of the communist government.<sup>88</sup> When China opened up its economy during the economic reform era, Chinese consumers started to concern themselves with brand identity and reputation.<sup>89</sup> Initially, Chinese consumers preferred foreign brands to local ones not only because they perceived the quality to be superior, but also because ownership of foreign brands became a symbol of status and wealth.<sup>90</sup>

However, Chinese attitudes towards brands are beginning to shift as its economy and the prominence of domestic brands increase. On the government side, Chinese officials enacted policies and regulations to help develop domestic companies.<sup>91</sup> For example, Beijing insisted that only those foreign companies willing to transfer or share their intellectual capital with the Chinese would receive preferential trading licenses.<sup>92</sup> Similarly, government-backed subsidies and tax-breaks were crucial in developing and supporting domestic companies.<sup>93</sup>

On the consumer side, Chinese citizens are supporting their national brands while simultaneously expressing their discontent with foreign brands. Lenovo, Haier, and Huawei are the success stories of China and have developed a sterling reputation amongst Chinese consumers while also finding favor with international markets.<sup>94</sup> Despite recent issues regarding the quality of milk and children's toys, accusations of poor quality in Chinese products by western countries are often met with sharp criticism. In contrast, Chinese charges of western bias are met with sympathetic public support and nationalism.<sup>95</sup>

This favoritism of Chinese companies and brands is viewed as an obstacle for many international and foreign companies that want to or are doing business in China. According to the 2011 results of an annual survey conducted by the American Chamber of Commerce in Shanghai in which U.S. companies are asked to evaluate the business environment of China, one of the main grievances U.S. companies complained about was Chinese favoritism or protectionism.<sup>96</sup> Despite increasing profits, companies find that the Chinese government favors domestic companies

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87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* For example, according to LVMH Moët Hennessy, Chinese consumers are the largest purchasers of Louis Vuitton clothing and Hennessy cognac.

91. *See id.* at 66.

92. *Id.*

93. *Id.*

94. *See id.* at 64-66.

95. *See id.* at 62-64.

96. Chris Hogg, *Foreign firms complain of China favoritism*, BBC (Jan. 19, 2011, 8:10 AM), <http://www.bbc.co.uk/news/business-12225662>.

over foreign competitors, which leads to a challenging business environment.<sup>97</sup>

Furthermore, underestimating the role nationalism can have on business is becoming one of the crucial missteps for foreign companies that practice business in China. In a notorious case, a Chinese owner of a Mercedes publically smashed his car with a hammer to protest the quality problems and the unsatisfactory service he received from Mercedes.<sup>98</sup> Seventy-seven percent of Chinese that were surveyed believed that Mercedes discriminated against the Chinese and that Mercedes would have handled the complaint differently in another country.<sup>99</sup>

The favoritism of Chinese domestic companies coupled with a lack of transparency, inconsistency in regulations, and bureaucracy can make China a difficult place for foreign businesses to do work.<sup>100</sup> In addition, strong nationalist sentiments can easily sway public opinion. It was in this business environment that Google launched its free music download service in China.

### C. Google's Innovative Music Product

Google's decision to offer Chinese consumers a free music download service in 2009 came at a time when the music industry was struggling in the fight against illegal music downloads. At the time, China's entire music industry brought in only \$86 million in annual revenue compared to \$10 billion from the U.S. market<sup>101</sup> According to the International Federation of the Phonographic Industry ("IFPI"), over 70% of Internet users in China download songs, and of the songs that are downloaded, 99% are downloaded illegally.<sup>102</sup> Therefore, Google's music search service seemed promising—it worked with various record labels from around the world to offer links to free licensed music downloads.<sup>103</sup> Consumers were also able to save song playlists and download them.<sup>104</sup>

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97. *Id.*

98. Low & Leung, *supra* note 86, at 64.

99. *Id.* Also involving another Mercedes vehicle, when a Chinese Mercedes owner was involved in an accident, the airbags failed to deploy despite the severity of the car's damage. Unsatisfied with the answer Mercedes gave as to why the airbags did not deploy, the owner held a press conference soon after being released from the hospital to announce that he would only be purchasing domestic goods. Jonathon Ramsey, *Chinese man crashes Mercedes S350, vows to only drive Chinese-built cars*, AUTOBLOG (Jan. 1, 2008, 7:29 PM), <http://www.autoblog.com/2008/01/01/chinese-man-crashes-mercedes-s350-vows-to-only-drive-chinese-bu/>.

100. See Hogg, *supra* note 96.

101. Evan Hessel, *Google's Chinese Music Experiment*, FORBES (Apr. 1, 2009, 2:00 PM), <http://www.forbes.com/2009/04/01/google-music-china-business-media-google.html>.

102. *Id.*

103. See *id.*

104. See Melanie Lee, *Google shuts once-feted China music download service*, REUTERS

Since the service was free, it was thought to have appealed to Chinese consumers who were downloading music illegally and was a positive way to promote intellectual property rights in China.<sup>105</sup>

Google partnered with Google-funded Top100.cn, a Chinese online music provider, to offer the service.<sup>106</sup> By selling advertisements next to results delivered to users searching for certain artists, albums, or songs, the service was viewed as a way for music labels to receive some revenue, rather than none, in China.<sup>107</sup> Music labels were desperate to make some revenue from the Chinese music market and were willing to "turn over their catalogs in exchange for a share of such a measly new revenue stream," according to music and media analyst Sonal Gandhi.<sup>108</sup> The revenue derived from Google's music service was to be split between Google, Top100.cn, and the music labels.<sup>109</sup>

According to Top100.cn's CEO Gary Chen, Google and Top100.cn executives hoped to grow the service to around \$15 million in revenue within the first few years following the service's launch.<sup>110</sup> Google sought to develop a music search service that rivaled the popular music search engine provided by Baidu, a Chinese search engine service, which at the time provided copyright-infringing music links and illegal downloads.<sup>111</sup> Baidu's dominance in the Chinese search engine market had already been established—as of 2009, it controlled 62% of the search engine market compared to 28% for Google.<sup>112</sup> Some were even under the impression that Google would be willing to operate the Chinese music service at a loss just to cut into Baidu's market share for search engine traffic.<sup>113</sup>

Google was in a prime position to succeed in China. It launched a music service that offered legal downloads at a time when there was increasing pressure for China and its consumers to curb the rampant music piracy. The IFPI was in the midst of suing Baidu for facilitating illegal music downloads.<sup>114</sup> In addition, Google's service was free for

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(Sept. 21, 2012, 11:03 AM), <http://in.reuters.com/article/2012/09/21/net-us-google-china-music-idINBRE88K07120120921>.

105. See Hessel, *supra* note 101.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. Lee, *supra* note 104.

112. Hessel, *supra* note 101; Most recently in 2012, according to Beijing-based research firm Analysys International, Baidu's market share for search traffic was over 78% while Google's market share was just under 17%. Paul R. La Monica, *Baidu: Is China's Google better than Google?*, CNN MONEY (Feb. 13, 2012, 12:56 PM), <http://money.cnn.com/2012/02/13/technology/thebuzz/index.htm>.

113. Hessel, *supra* note 101.

114. *Id.*

Chinese consumers because the revenue model was parsed together as a compromise for the record labels. If all the elements for success were in place for Google's music product, then why did Google decide to pull the plug on its music service in China just three years later? What was Google missing?

#### *D. The Real Reasons Behind Google Music's Failure*

In September of 2012, Google announced that it was ending its Chinese music service.<sup>115</sup> The announcement came through a blog post from one of Google China's senior executives, Boon-Lock Yeo, who stated that Google was shutting down its music service in order to focus on offering other Google products and services.<sup>116</sup> The music service was pulled after three years on the market and only two years after Google announced it was no longer willing to comply with Chinese censorship laws.

Baidu's dominance in China and Chinese consumers' strong nationalist sentiments help explain why Google's music service failed. While Google had a great music service to offer to the Chinese market, the general backlash against Google's decision not to censor its search engine results contributed to the demise of Google's music service.

Historically and culturally, China does not value intellectual property rights and this influence is apparent in today's society. Copyright violations are widespread in China, especially when it comes to music piracy. However, Chinese consumers seem to be gradually shifting away from a culture that does not respect intellectual property rights towards one that does value the importance of protecting intellectual property rights.<sup>117</sup> There are indications that the Chinese are willing to pay for some music services, such as services related to mobile devices—China Mobile, China's largest cellular phone operator, earned \$3.1 billion in 2010 on digital music, which included purchases for background music that plays when someone calls a number.<sup>118</sup> But even if the mindset of Chinese consumers is a long way from making this type of revenue scheme a reality for record labels, free licensed music

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115. Michael Kan, *Google yanks free music service in China*, PC WORLD (Sept. 21, 2012, 6:54 AM), <http://www.pcworld.com/article/2010313/google-yanks-free-music-service-in-china.html>.

116. *Id.*

117. See Loretta Chao, *With Baidu Free Music Deal, Can Record Labels Tempt Chinese Users to Pay Up?*, WALL ST. J. (July 19, 2011, 8:28 PM), <http://blogs.wsj.com/chinarealtime/2011/07/19/with-baidu-free-music-deal-can-record-labels-tempt-chinese-users-to-pay-up/> (stating that as long as the music service or source is free, some Chinese consumers seem to show a preference for licensed music that can be downloaded legally).

118. *Id.*

services, such as the one Google offered, would seem to resonate with Chinese consumers who are increasingly concerned with intellectual property rights, but are unwilling to pay for a service they traditionally accessed for free.

Google's struggle in China also seems to have little correlation with its reputation regarding the quality of its services. In terms of the two search engine capabilities, while Baidu's incumbent status does provide some benefits, Google seems to offer comparable if not better search engine capabilities.<sup>119</sup> Baidu began its operations in 2000 while Google did not enter China until 2006.<sup>120</sup> However, technology analysts have stated that Google has adequately deciphered the difficulties and nuances of Mandarin.<sup>121</sup> Some Internet users are also critical of Baidu mixing organic search results with paid search results, which can lead to confusion for users.<sup>122</sup> According to some, this results in a high risk of scams for Internet users.<sup>123</sup> Thus, while Baidu attributes most of its success to knowing the Chinese user better than foreign rivals,<sup>124</sup> Google's service seems to match if not exceed its Chinese counterpart's quality when it comes to understanding the Chinese Internet user. Hence, Chinese users' preference for Baidu over Google must be attributed to factors that are not related to its reputation regarding the quality of its services.

Rather, it is more likely that the backlash Google encountered from its various missteps related to Internet censorship in China. This ultimately dissuaded Chinese consumers from using Google over Baidu, even when Google was offering a better product. First, Google failed to consider that a one-size-fits-all model would not work in China. Google did not expect that the majority of Chinese citizens supported the government's censorship of search results. Instead, Google attempted to import free speech and the democratization of ideas to China at a time when the Chinese did not seem ready to accept these values. This was a critical mishap for Google especially because it is a foreign entity. Technology journalist and blogger Ryan Singel believes that Google's dramatic response to the 2009 cyber attacks left "little room for the

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119. See Stephanie M. Metha, *Google v. Baidu: Which company will win China?*, CNN MONEY (Dec. 8, 2009, 8:06 AM), <http://tech.fortune.cnn.com/2009/12/28/google-v-baidu-which-company-will-win-china/>.

120. *Id.*

121. *Id.*

122. *Id.*

123. Jon Russell, *Sizing up Two Internet Giants: Google vs. Baidu in China*, THE NEXT WEB (Feb. 23, 2012, 2:45 AM), <http://thenextweb.com/asia/2012/02/23/sizing-up-two-internet-giants-google-vs-baidu-in-china-infographic/>.

124. Loretta Chao & Aaron Back, *China's Baidu Weighs Life After Google*, WALL ST. J. (Jan. 21, 2010, 12:01 AM), <http://online.wsj.com/article/SB10001424052748704423204575016791485282632.html>.

Chinese government to negotiate and save face."<sup>125</sup> Rather, if Google had navigated within the parameters of China's laws and remained sensitive to Chinese culture, perhaps there would have been a different outcome, and Google may have been a strong player in the legitimization of music downloads in China.

Baidu is another factor that contributed to the failure of Google's music service. Google's retreat to Hong Kong had already halted the growth in traffic for the music service that it offered in partnership with Top100.cn. Therefore, although Baidu's music search services provided access to illegal links, Chinese citizens may not have been willing to overlook Google's status as a foreigner to support its music product. Strong Chinese preferences for supporting domestic companies over foreign ones can play an important role in determining which entities fail and which ones succeed. This is also why Microsoft and Yahoo still struggle with gaining market share even though they have largely agreed to China's censorship pact.<sup>126</sup> On December 19, 2012, Yahoo followed in Google's footsteps when it announced its decision to shut down its Chinese music service as part of an adjustment to its product strategy.<sup>127</sup> Even though Yahoo partnered with Chinese e-commerce powerhouse, Alibaba,<sup>128</sup> it still faced difficulties penetrating the Chinese market. And Google was no better off partnering with lesser-known Top100.cn.

#### V. LESSONS LEARNED FROM GOOGLE

While Google's music service was short-lived, it paved the way for Chinese Internet entertainment providers to evaluate and overhaul their intellectual property acts. In 2011, Baidu inked a deal with record labels to offer Chinese Internet users licensed copies of songs from three major record labels—Sony, Universal, and Warner—for free.<sup>129</sup> Because of the deal, Baidu song downloaders can now access over 500,000 songs that are owned by those three music labels.<sup>130</sup> This is an expansion of the licensed music offerings from regional labels and EMI that Baidu users already had access to.<sup>131</sup> This deal is a way "to forge a commercial partnership with Baidu that respects the value of copyright," according to

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125. Singel, *supra* note 63.

126. *See id.* Yahoo came under criticism after it turned over the emails of activist Wang Xiaoning to government authorities who used the information to sentence Wang to a 10-year prison sentence. Microsoft has largely complied with Chinese censorship rules such as banning controversial terms in its blogging service.

127. Josh Ong, *Yahoo follows Google in shutting down music service in China*, THE NEXT WEB (Dec. 19, 2012, 3:04 AM), <http://thenextweb.com/asia/2012/12/19/yahoo-follows-google-in-shutting-down-music-service-in-china/>.

128. *Id.*

129. Chao, *supra* note 117.

130. *Id.*

131. *Id.*

Lachie Rutherford, a director of OneStop, which is the joint venture company created by Sony, Universal, and Warner to handle distribution agreements in China.<sup>132</sup>

Other Chinese companies like Youku, China's leading video sharing website, are also cleaning up their intellectual property acts. Youku is implementing several technologies, such as digital fingerprinting and a copyright screening system, to prevent digital copyright infringement.<sup>133</sup> While Youku started off with mostly unlicensed content, early last year, Youku inked a deal with Twentieth Century Fox to offer licensed films through its on-demand platform.<sup>134</sup> According to Youku, the number of users that pay for content has sharply increased in 2011, which is a positive step toward protecting intellectual property rights.<sup>135</sup>

While Google's music service was a failure by business standards, its failure sheds light on some important lessons regarding how a foreign company should navigate the Chinese market, especially when there is a domestic competitor. First, China is a country where intellectual property rights are not as developed as they are in western countries. Because China's copyright regime is relatively new, western counterparts should remain patient as the country experiences growing pains related to the protections it affords against copyright infringement. Eventually, as domestic companies expand and grow, the demand for better enforcement of intellectual property rights will likely continue as it did with Baidu and Youku.

Second, companies in China should be sensitive to Chinese nationalism and the cultural factors that motivate the population. Companies, especially foreign ones, should thoroughly consider how the Chinese market could perceive and react to its business decisions. For example, Google did not anticipate that acting against the government's censorship requirements would backfire and create public animosity rather than support. Complying with the government's laws and regulations is important and shows respect for China in the public's eyes.

Lastly, because China's government and the public are enthusiastic about supporting domestic companies, partnering with a domestic company and allowing it to be the face of a new project might increase the likelihood of success. Businesses should integrate and immerse as much as possible with the local markets to show less distinction between foreign and domestic entities. Identifying up-and-coming domestic

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132. *Id.*

133. Ke Steven Wan, *Managing Peer-to-Peer Traffic in Mainland China and Hong Kong*, 11 J. Marshall Rev. Intell. Prop. L. 548, 560 (2012).

134. Rick Martin, *Chinese Video Site Youku Makes Movie Deal With Twentieth Century Fox*, YAHOO! FINANCE (Jan. 11, 2012, 8:45 AM), <http://finance.yahoo.com/news/Chinese-Video-Site-Youku-paidcontent-2753412078.html>.

135. *Id.*

competitors and investing in them may be a good way to decrease the risk of encountering a Google-esque failure.

#### CONCLUSION

Google's decision to cancel its free music service in China after only being on the market for three years probably did not come as a surprise to many. When Google defied the Chinese government's policy regarding its Internet censorship laws, there was public backlash against Google's actions. The public viewed the situation as a foreign entity acting against China and challenging its autonomy. In addition, Baidu, a Chinese company in the search engine industry, offered a competing product that was better received by the Chinese public because of Chinese preferences for supporting domestic companies. Google's misunderstanding of unique Chinese cultural factors, including the public's general approval of government censorship and strong Chinese nationalist sentiments, helps explain why Google faltered in China after offering the music service for just three years.

Despite Google's business failure, its project fostered many important improvements in China's intellectual property rights regime and many lessons can be drawn from Google's mishaps. The launch of Google's music service encouraged Chinese online media and entertainment companies to improve their intellectual property schemes and promote the legitimate download and use of licensed content. Lastly, Google's failure demonstrates that foreign companies who are looking to enter China must take into account the unique characteristics of the Chinese market. How a company decides to navigate the cultural differences can determine whether or not it will succeed in China.

