

**June 7, 2006**

**Hon. Patricia S. Schroeder**

**President and Chief Executive Officer  
Association of American Publishers, Inc.**

**Before the  
U.S.-China Economic and Security Review Commission**

**Hearing on**

**Intellectual Property Rights Issues and Dangers of Counterfeited Goods Imported into the  
United States**

The Association of American Publishers (AAP) thanks Commissioners C. Richard D'Amato and Kerri Houston and the U.S.-China Economic and Security Review Commission for the opportunity to participate in the public hearing of June 7-8, 2006, concerning protection of intellectual property rights in China. The pervasive problem of piracy and counterfeiting in China, exacerbated further by restrictions on market access, are some of the most important issues facing China and the U.S. today.

#### **About AAP**

The Association of American Publishers is the national trade association of the U.S. book and journal publishing industry—an industry with 2005 sales exceeding \$25 billion. AAP's more than 300 members include most of the major commercial book publishers in the United States, as well as smaller and non-profit publishers, university presses and scholarly societies. AAP members publish hardcover and paperback books in every field, educational materials for the elementary, secondary, postsecondary, and professional markets, scholarly journals, computer software, and electronic products and services. The protection of intellectual property rights in all media, the defense of the freedom to read and the freedom to publish at home and abroad, and the promotion of reading and literacy are among the Association's highest priorities.

#### **Introduction to Book and Journal Piracy in China**

In 2005, AAP conservatively estimated losses to U.S. publishers in China at \$52 million, not including losses due to piracy on the internet. Visits to China and discussions with our member publishers reveal a staggering amount of book piracy plaguing this most promising of markets.

Book piracy manifests itself in a number of different forms in China. Illegal commercial scale photocopying of academic materials is the industry's most immediate concern. Print piracy (unauthorized reprints approximating the quality and appearance of the original) and illegal translations have profound effects on the market as well. Internet piracy in the form of sites offering illegally scanned books for download, peer to peer trading and unauthorized access to

electronic journals and other database compilations, is growing by leaps and bounds. Furthermore, trademark counterfeiting, especially with regard to books produced by university presses, misleads Chinese consumers. All of this is exacerbated by market access barriers that deny foreign publishers the ability to freely import into the Chinese market, distribute their own materials, obtain local Chinese book publication numbers or print for the local market.

- *Commercial photocopying*

One of the most destructive forms of book and journal piracy is the type of commercial-scale illegal photocopying of academic materials that takes place on and near schools and universities all over the world. The mechanisms differ slightly from place to place. In some cases, most of the photocopying takes place at small copyshops lining the campuses. These shops often appear to be minute, independent operations, but in reality are frequently linked in ownership and highly organized. On-campus facilities are often used by individuals or organized groups to make illegal copies as well, including library books and copy machines, copiers in student centers and academic buildings and commercial operations leasing space on the premises of the institutions.

In China, this is taken one step further. Almost every Chinese university has at least one “textbook center” on campus, run by the university itself and charged with distributing textbooks to students at the start of each term. In some cases, these textbook centers are distributing legitimate texts, legally printed or imported for the use of the students. In the vast majority of cases, however, AAP representatives have found that these centers are distributing photocopied texts in large quantities. These copies are invariably made on the premises of the textbook center, presumably at the request of the university authorities or the lecturers adopting the books. It is in some cases a highly organized practice, complete with stock lists, storage warehouse, bar codes and colorful covers bearing the name of the university or department, or the university crest.

It is important to note two things when discussing these textbook center practices. First, being mindful of the notion of “fair use” or “fair dealing” in academic materials—legal provisions stipulating that a certain amount of copying is permissible for purposes of private study or research—it is important to note that the copying taking place at these textbook centers far exceeds the possible bounds of fair dealing. Routinely, books are copied in their entirety. Large portions of books or journals included in “compilations” go well beyond “fair use” as well. AAP respects the balance reflected in the fair use provisions contained in international agreements. These practices, however, disrespect that balance greatly. Second, it is important to emphasize that these textbook centers hurt Chinese publishers just as much as foreign publishers. Many of the illegally copied books found in textbook centers are Chinese language, Chinese published books. This results in massive losses to a local industry that is trying to establish itself in an international marketplace.

The practices of these textbook centers, undertaken with either the tacit or active consent of the universities themselves, are destroying the market for English and Chinese-produced textbooks alike. AAP and its sister association in the U.K. have brought this matter to the attention of the relevant authorities in China, asking them to monitor this practice—rampant in all major universities, as well as primary and secondary schools—and use its authority through the

Ministry of Education and other pertinent agencies to compel use of legitimate products on campuses.

- *Print piracy and translations*

Print piracy and unauthorized translations have a profound effect on the market as well. Bestsellers such as the Harry Potter® series, Dan Brown’s novels and political autobiographies are pirated in English and Chinese within days of their home country releases. These books—of varying quality—are readily available in retail markets and street stalls, apparently without fear by the vendors of any government action. Last September, an AAP staff member purchased a pirated Chinese language copy of the sixth Harry Potter® book from a street vendor immediately outside the Beijing International Book Fair venue! Clearly, the boldness of the pirates suggests that enforcement measures to date have not been effective.

Until about two years ago, print piracy of all books was the prevalent form of piracy in China. This was due, in part, to the high cost of photocopy paper and implements—it was more profitable to undertake an entire print run of a bestselling commercial or professional book. While photocopying has caught up and perhaps surpassed this problem in prevalence, the issue of print piracy remains significant. Print piracy’s effects are especially severely felt among publishers of high end technical books, reference books and English language teaching books, as well as commercial fiction.

Print piracy exists primarily in two forms. The first involves print overruns by an otherwise legitimate Chinese printer. This licensing issue is exacerbated by the market access restrictions in place (see below) that prevent U.S. publishers from engaging in direct contracts for printing for the Chinese market. Instead, U.S. publishers must partner with a Chinese publisher, who handles all contracts for book production. This lack of control over the contractual relationship means that U.S. publishers find it difficult to control licensees who violate the contract terms by printing more copies than licensed and selling the “rogue” copies for an extra profit. They then return the unsold legitimate copies to the publisher, who bears the full risk of estimating market demand under the industry’s “remainder” system. Foreign publishers will remain vulnerable to this practice until market access barriers as to printing are removed.

The second form is outright piracy by an entity that has no license to print the book at all. In some cases, book pirates target an English language book that they are able to replicate almost exactly, thus being able to print a book that is virtually indistinguishable from the original. In other cases, books are clearly pirated—the quality varies greatly. Most translation piracy involves print piracy of this type—often poor quality translations, bound at a printing press. This hurts not only the original foreign publisher, but also the Chinese publisher who was granted the legitimate translation rights.

Recent studies suggest that underground dealing of pirated bestsellers, especially at places such as the Beijing Book Market in Tianshuiyuan, is flourishing. AAP suspects that Tianshuiyuan is the primary source for pirated books sold in the street vendor network in Beijing.

- *Internet piracy*

The industry's fastest growing problem—a problem we share with many of our fellow copyright industries—is internet piracy. Just in the last six months, complaints from publishers about scanned books being traded online have increased significantly. Clearly, this is a problem that threatens to do more harm to our industry than all other problems combined.

Web sites offering free book downloads are thriving. These books in most cases do not originate in electronic form, but instead are scanned versions of hard cover books. Reports indicate that these scanned versions are, in turn, reprinted and bound for distribution by second hand bookstores, with the label “e-book.” Peer to peer trading of books online is growing by the day, and site operators of both types are using loopholes in the regulations governing internet infringement to affect the utility of notice and takedown mechanisms. For instance, AAP has tried for months to shut down sites such as [www.fixdown.com](http://www.fixdown.com), only to have it and other sites blossom.

In addition, electronic piracy is affecting publishers of academic and professional journals in a different way. These journals, originating this time in electronic form, are usually made available by publishers to institutional subscribers through use of passwords or similar “gateway” mechanisms. Increasingly, journals publishers are seeing evidence of these electronic “gateways” being left open or accessed by unauthorized users. Publishers have also reported evidence of abuse of “trial” samples of electronic goods sent to libraries through extensive unauthorized sharing of these samples among institutions.

- *Trademark counterfeiting*

While most book publishers are primarily focused on copyright piracy, trademark counterfeiting affects the industry as well. Counterfeiting is often incidental to copyright piracy, as pirates use the famous imprints of American publishers to get attention from readers. This is taken to a new level when well-known publishers' names are used on books that bear no content produced by that publisher at all! These books, available at mainstream bookstores in China, mislead consumers as to the origin of their content.

In addition, book publishers suffer from a sort of “passing off,” by which books bearing titles and fictional authors' names similar to bestsellers are marketed at the expense of the legitimate authors and publishers. By one example, former President Bill Clinton's book was marketed, before release in China. One version contained long excerpts of Senator Hillary Clinton's book in place of President Clinton's writings.

- *Market access*

One will never effectively tackle a piracy problem without ensuring that legitimate product is available for the market in question. We cannot divorce the concept of market access from the question of piracy. As of right now, foreign publishers cannot print for the Chinese market without partnering with a Chinese publisher. Foreign publishers cannot obtain local book numbers allowing them to publish books, or import books into China without the aid of a State-

authorized import agency. They cannot distribute their own materials. AAP believes wholeheartedly that, in order for publishers to be able to tailor a product to the market—in substance and in price—foreign publishers have to have better access to the market than they do today.

Publishers understand the needs of a local government to exercise some degree of content control, and remain willing to abide by China’s censorship process. Yet, the censorship process should not be coupled with such severe restrictions on activities in the market. Lifting restrictions on printing books already available in the Chinese market would resolve some issues without compromising the Chinese government’s goals of control of content.

Market access issues affect the ever-growing market for online content as well as hard goods. Restrictions on, and high fees related to, access to foreign servers result in high costs to publishers of electronic materials (such as academic and professional journals) in making their products available in China, resulting in fewer, lower quality options available to Chinese scholars and students.

Restrictions on trading and distribution rights force publishers to import and disseminate books through licensed import agencies and government companies, resulting in price increases and delays. AAP believes that China has made a commitment to open up these activities to foreign entities and has asked for opportunities to examine the laws and regulations affecting these practices. China’s lack of transparency with regard to these laws and regulations must be improved. Certainly, there is nothing in the documents to which AAP has been granted access to suggest that these practices have been opened up. Indeed, we remain concerned that documents exist that may explicitly establish that these practices remain closed. AAP calls on China to increase its transparency with regard to all provisions pertaining to implementation of its obligations under international agreements.

### **Industry Efforts and Activities**

On May 19, 2006—just a few weeks ago—AAP partnered with the Publishers Association of China and the Publishers Association U.K. to bring a dialogue on book publishing and intellectual property rights protection in China to BookExpo America, the largest book publishing trade show in the United States. The program featured speakers from the General Administration of Press and Publication of China, the Chinese Institute of Publishing Science, the U.S. Patent and Trademark Office, the Office of the U.S. Trade Representative and many industry bodies from China, the U.S. and the U.K. This dialogue featured hopes and plans for bilateral engagements as well as recognition that piracy is a common problem affecting both economies and a host of book-related industries.

The May 19 program was an outflow of a groundbreaking event held at the Beijing International Book Fair in September 2005. Also cosponsored by the Chinese, British and U.S. publishing associations, the program was entitled “Intellectual Property in the Global Economy: China’s Place in the World Publishing Community” and featured speakers from the U.S. Embassy Beijing, the National Copyright Administration of China, the General Administration of Press and Publication of China, the Beijing Municipal Copyright Bureau, Renmin University, the

Chinese Academy of Social Sciences and several publishing associations and companies. Again, all came away with the clear conviction that there was a common goal to pursue.

AAP, along with its sister association in the U.K., has also taken its piracy and market access concerns directly to the Chinese government and has a number of administrative complaints pending concerning the illegal photocopying at the university textbook centers. AAP and its members also continue to combat web sites offering illegal content for download or trading, and we are ever gathering information about the market to inform us of next steps.

### **Conclusions and Industry Suggestions**

The industry is working hard to inform itself, inform the authorities and make a dent in this landscape of piracy. AAP and its members firmly feel, however, that government to government dialogue is essential in bringing about meaningful change in the Chinese market place. We encourage the Administration and Congress to keep engaging the Chinese government in a variety of venues, consistently emphasizing the need for strong intellectual property rights protection for China's local industry as well as foreign industry. China is a country that boasts millions upon millions of eager potential readers and scholars, and these readers are largely being supplied with illegal goods.

AAP asks that discussion of book piracy be stepped up in the Joint Commission on Commerce and Trade talks, with legitimization of textbook centers a priority in that process. AAP also joins its fellow copyright industries in asking that the U.S. government continue to pursue strong laws and regulations governing internet infringement, in hopes of saving the market from utter destruction by file-sharing and downloading sites. Third, AAP emphasizes the need for more effective enforcement against hard goods pirates, through the administrative, civil and criminal systems. Finally, AAP stresses that market access for foreign companies is imperative in the fight against spreading piracy, and that transparency of laws and regulations affecting both market access and intellectual property protection must be increased. AAP looks forward to working with all relevant parties to ensure that the market becomes increasingly viable for legitimate businesses.

Thank you.