Thanks to a grant from the East Asian Legal Studies Center, I was able to spend my winter break of 2004 in China where I conducted research on the enforcement of copyright laws. My research was specifically focused on the sale of counterfeit U.S. produced motion picture DVD’s in the cities of Beijing, Shanghai, Nanjing and Guangzhou.

I have studied Chinese for about one year, however my language ability was not at a level at which I could conduct interviews with the people who were selling DVD’s. Fortunately I had a couple of English speaking friends in China that were willing to help me out with my research and act as translators so I could interview some of the people that were selling the counterfeit DVD’s. I was able to learn more and get a different perspective regarding current copyright laws and enforcement by meeting with some international lawyers who specialize in intellectual property rights protection in Beijing and Shanghai.

I had been to China twice before this and had purchased many counterfeit DVD’s for about US$1 each, however I had little or no idea about what the laws in China were prohibiting such actions and how or if they were enforced. After researching the Chinese laws and interviewing and speaking with members of the general public, Chinese copyright lawyers, and the people who were selling the DVD’s I now know that China has adequate copyright protection laws; but the sale of counterfeit DVD’s is rampant.

I was able to purchase counterfeit DVD’s in all of the cities that I visited in locations ranging from markets, to street vendors on sidewalks, in the subways, restaurants, bedrooms in private residences, hidden rooms in the back of retail stores, video rental stores, CD/DVD shops, even in DVD storefronts within five blocks of Tiananmen Square.

Before leaving for China I researched the Chinese laws on copyright protection and was able to get a good understanding of the issues and problems that counterfeit DVD’s sales presented from the perspective of the U.S. motion picture companies and the Motion Picture Association of America: counterfeit DVD production and sales in China results in U.S. companies losing billions of dollars each year, that producing counterfeit DVD’s is illegal, wrong and stealing, that the Chinese copyright protection laws are useless unless they are effectively enforced and that the Chinese government is not doing enough to effectively enforce its laws.

While in China I was able to get a better understanding of the perspective of the Chinese government and people. Publicly China states that it is prosecuting over 1000 copyright infringements per year. They are running large ad campaigns to dissuade people from purchasing counterfeit products, they publicize raids of counterfeiting operations and make media events out of publicly destroying large quantities of seized counterfeit DVD’s. They claim that they are making significant ground in effectively enforcing copyright laws, but even so it is not possible to completely destroy an underground organized network of counterfeit DVD production. China has set up a legal system to protect intellectual property interests, if a company wants to they can take a violator to court and enforce their rights as provided under the law. However, the perspective of many people in the general public and possibly the view of many government officials, although not publicly stated, is quite different. China is still a developing country and the general public can not afford to enjoy such luxuries as purchasing name brand products and American copyrighted films and music. Everyone in China benefits from counterfeiting foreign products; jobs are created from production and sales and the general public can enjoy what they otherwise wouldn’t be able to. It is not hurting anyone because if the cheap counterfeit products weren’t available the people simply wouldn’t buy the copyrighted products because they can’t afford them. Even if there is some financial loss to some U.S. companies most people don’t see a problem with being able enjoy some of the first world luxuries at the expense of depriving multimillion dollar American media companies of a few dollars. China has a large established counterfeit industry which employs millions of
people. Effective enforcement would eliminate jobs and raise unemployment. Local protectionism also has a lot to do with it. There are villages where most people are just getting by, making their living by producing counterfeit products and the local enforcer has no interest in enforcing some foreign company’s rights and putting the entire village out of jobs, these people may be his family and friends.

Even with many incentives to not disrupt the current industry, China has to take some action in light of its WHO requirements and pressure from the U.S. and it does. I have spoken to many people who sell counterfeit DVD’s from the guy on the corner of the street selling out of his suitcase to the lady who rents a retail store front and has the shelves lined with hundreds of DVD’s. Many of these salespeople have been “busted” by enforcement authorities and have received punishments in the form of confiscation of their illegal products to small fines. But when a salesperson can occasionally have their stock confiscated or receive a small fine and continue to run a profitable business it is difficult to stop the sale of counterfeit DVD’s.

The counterfeiting industry in China, including the counterfeiting of U.S. produced motion picture DVD’s, is and will continue into the near future to be a big business in China.

Overall I had a great time going to China and doing this research and am thankful for the opportunity from the East Asian Legal Research Center. I was able to gain a better understanding of the laws and Chinese legal system, continue to work on my Chinese, make new friends and learn from meeting with U.S. international lawyers what limitations and advantages they are presented with in practicing law as a foreigner in China.

-John H. Bradley
(Research done as a 1L)