“Shanzhai” Can Be a Kind of Creativity in Chinese Digital Lives

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**Statement of problem:**

“Shanzhai” refers to the activities and production relying on imitation and parody, and it recently becomes popular in Chinese society, it usually spreads in the fields of pirated brands and goods, especially electronics. It is generally believed that the rise and transmission of “Shanzhai” culture draw support from the development of Internet. As a subculture of the community, “Shanzhai” culture represents the desire of creation among hundreds and thousands of internet users. They hope to create some digital products and content through imitation, in the meantime, they input some innovative creativity into their products. However, lacking of the regulation of law and people’s misunderstanding about “Shanzhai” leads to the difficulty to identity this kind of creativity. Therefore, this project intends to explore that whether “Shanzhai” can be a kind of creativity in Chinese digital lives.

**Methodology:**

In our research, we would apply the qualitative methodology to analyze the data we collected. For the sake of a precise study, we will interview those who experiences “Shanzhai” culture and product on the internet, besides textual research through books, newspapers, internet and other sources.
1. Introduction about “Shanzhai” Culture

Since 2003, the cultural phenomenon of “Shanzhai” had emerged in a way of imitating mobile phones of some well-known brands in Shenzhen, China. Till to 2008, the term “Shanzhai” was officially used by different public media to describe the rampant phenomenon of imitation and parody in Chinese daily lives.

“Shanzhai” culture, derived from the influence of “Shanzhai”, it characterizes in copy from the original, and it broadly spreads in various fields among our life. Furthermore, public media, such as newspaper, television and internet, are treated as medium to propagate it. Another controversial feature of “Shanzhai” culture will be local innovation which is regarded as a representation of the creativity of the grass-root class (general public). A subculture is a group of people within a culture that differentiates themselves from the larger culture to which they belong (Nanda, 1994). From cultural studies perspectives, “Shanzhai” culture is considered as a widespread subculture among the grass-root class to against the mainstream culture which has been dominated by the elite culture. Therefore, seeking for recognition and satisfying general public’s interest as much as possible become the aim of “Shanzhai” culture.

However, why “Shanzhai” culture has been so popular and persistent in China? According to Malcolm Gladwell (2000), "Epidemics are sensitive to the conditions and circumstances of the times and places in which they occur." It simply refers that human behavior within a certain community is sensitive and strongly influenced by its environment. Unlike the United States, Chinese government has not instituted a series of statutes to prohibit the infringement of “Shanzhai” and to protect inventors’ intellectual property right, especially in the section of internet. Because of the absent supervision of the related law, it leads to the booming of “Shanzhai” behavior and weak awareness of protecting patent, trade mark and any intellectual property. Secondly, the rapid development of Chinese economy enlarges the gap between rich and poor. It is difficult for those less educated people to know and appreciate a real original product outside China. Even if they know, it is too hard for them to buy the
real products because of their low income. Therefore, it will create a market demand for those cheap “Shanzhai” products which can satisfy the grass-rooted class in price and their desire of pursuing fashion. In the meantime, “Shanzhai” products or culture are attached with some popular attributes, which help them become impressive and popular. For instance, those original products which are imitated by “Shanzhai” products are well-known and generally recognized by the society, and it is also a kind of visual shock through the comparison between the real one and the imitated one. Gradually, it has become an effective and low cost promotion method for the merchants, and a way for public entertainment, such as “Shanzhai” celebrity and “kuso”(恶搞). Last but not least, the rapid development of the communication technologies, such as the blossom of the internet, boosted up the propagation of “Shanzhai” culture in a short period of time. Hence, these elements have deeply affected the popularity of “Shanzhai” culture, and it has turned out to be an important subculture in China.

1.1 “Shanzhai” is subversive

“Shanzhai” has been a kind of subversive activities in many perspectives of our lives in China. Initially, the products and activities of “Shanzhai” constantly challenge and endanger the legal status and development of the products and industries under the guidance of intellectual property right. Chinese government tried to draw lessons from Intellectual Property Law in United States, but it caused less effect around China, due to the various formats of “Shanzhai” activities and to what extent it can cause infringement. “Shanzhai” jeopardizes the development of every single industry from the perspective of competitive creativity, because the existence of “Shanzhai” largely dilutes and weakens the positive effect generated by this kind of creativity. Hence, the popularity of “Shanzhai” gradually blurs our understanding between imitation and creativity.
On the other hand, the popularity of “Shanzhai” culture represents a cultural counter attack from the grass-root culture to the elite culture. The grass-root group expresses their interest, discontent of life and the alienation from the mainstream through different kinds of imitations, parody and “kuso” on the internet. To obtain mutual understanding and respect is one of the most important reasons that grass-root group supports “Shanzhai” culture. However, the content of “Shanzhai” culture is generally considered as low technical skills and vulgar. When these contents gradually penetrate into the mainstream culture, it will disturb the original value system of the elite culture, and lead to a sense of antipathy and disagreement, which cannot shorten the distance between these two groups of people, but negatively reinforce the sense of alienation and sense of class antagonisms.

2. Theoretical Framework

In China, “Shanzhai” has always been negatively considered as a kind of simple imitation and parody, because people get used to relate all of the “Shanzhai” products they meet to infringement. Actually, not all “Shanzhai” products are violating the intellectual property right of the prototype. Hence, to distinguish what kinds of “Shanzhai” products are infringement and protect those “Shanzhai” with innovative creativity are two of the significant determinants that whether “Shanzhai” can become a kind of creativity.

Within this part, we will apply the Lessig (2005)’s four modalities regulation of Law, Norms, Market and Architecture to analyze “Shanzhai” products as the target of regulation.

In order to refute the opinion of Jack Valenti, a longtime president of the Motion Picture Association of America, he pointed out that “Creative property owners must be accorded the same rights and protection resident in all other property owners in the nation. (Lessig, 2005)” Lessig used this modal to examine that law is not the one to
affect or control the freedom of others to build up creativity, but technologies does under the discourse of American free culture. To what he found out through this modal I cannot agree more, but if we change the cultural background, the results will be different.

“At the center of the picture is a regulated dot: the individual or group that is the target of regulation, or the holder of a right. The ovals represent four ways in which the individual or group might be regulated, either constrained or, alternatively, enabled. Law is the most obvious constraint. It constrains by threatening punishments after the fact if the rules set in advanced are violated...While these four modalities are analytically independent, law has a special role in affecting the three. The law sometimes operates to increase or decrease the constraint of a particular modality (Lessig, 2005).” As we can see from the picture, the dot is maintaining balance from the regulation of these four modalities, but the real condition in China presents an unbalanced situation because of the weakness of law.

Firstly, the developing progress of property law in China is slow, and there are some leaks within this law. People Republic of China was established in 1949, but the first law about property right was announced in 1984. Meanwhile, most of the statues within this law are the western property right for references. Till 2005, Chinese
government started to construct a series of polices to reinforce the regulation of intellectual property. The leak of intellectual property law in China caused many infringement cases in “Shanzhai” products. For example, Hong Chuantian is the inventor of multiple SIM-cards of bidirectional transceiver mobile phones. He applied the patent right of the phone and found a company to start produce this kind of mobile phones in 2003. Before the launch of his product, he found out a company called YuLong has launched a similar mobile phones, so Hong Chuantian sued this company for infringement. Whereas, YuLong claimed that these two types of mobile phone were just similar but not the same, and provided some evidence to support their claim, but Hong insisted they had harmed his patent. Because the patent law did not clarify the extent of infringement, it led to this case still worked in progress.

Secondly, the weak regulation of norm leads to weak awareness of protection of intellectual property. Even if the government repeatedly emphasized in the public advertisements that “Shanzhai” products and “Shanzhai” culture jeopardize the development of Socialist market and culture. However, social norm has not been an effective regulation to target product. Among the general public, it is common believed that “Shanzhai” products are low quality, cheap price and vulgar design, which symbolizes low taste within the mainstream culture. Sometimes, “Shanzhai” products will be treated as an indication of different cultural groups. One is the “grass-root” group, and the other is the elite one. However, people are still willing to experience this kind of products for the reasons of cheap price and relatively complete functions. They much more focus on the symbolic meaning on this one single perspective of cultural identity, but rather than take it as a symbol which hinders the development of our nation’s creativity. Therefore, a social norm should be advocated that we should protect the intellectual right through resist purchasing “Shanzhai” products because they impede the development of our creativity.
In addition, huge demand boosts up the entire market of “Shanzhai” products, and the demand are not only from domestic, but also from those developing countries overseas. According to relevant data in 2007, the whole “Shanzhai” market has generated total revenue of one hundred million RMB for the economy of China, and it showed an upward trend in the following years. Such a big market share is mainly occupied by the consumption of “Shanzhai” electronic products, like “Shanzhai” mobile phones. Most of the consumers from this market are workers with low income and less educated group. As we mentioned above, the advantages of low price and complete functions becomes two crucial incentives for them to purchase “Shanzhai” mobile phones. For example, the general price of a real iPhone 4s (16G) is up to 4490 HKD, but an imitation or “Shanzhai” iPhone 4s (16G) is only sold at 400 RMB in Shenzhen. Driven by economic profit, thousands of factories take the risk of being prosecuted under the crime of infringement, and attempt to produce “Shanzhai” mobile phones. Furthermore, “Shanzhai” products have been a kind of important merchandise for the export trade to some developing countries in Africa. Those “Shanzhai” products can be sold at a higher price when they become a kind of imported goods in Africa. Hence, the pursuit of generated economic revenue has become the most important reason why “Shanzhai” products become so persistent in China.

Lastly, the rapid development of communication technology helps to propagate “Shanzhai” culturally and technologically. Currently, the total internet users of China are up to three hundred million, in the meantime, most of them are from “grass-root” class. Internet has been an effective tool for them to express their feelings and creativity. Besides, when “Shanzhai” has become a way of public entertainment and become prevalent on the internet, it is not difficult to find out internet helps to magnify and propagate this kind of subculture. On the other hand, the emergence of smart phones with many advanced functions facilitates the spread of “Shanzhai” mobile devices on the perspective of architecture. The imitation of the advanced
functions of the well-known smart phone brand is the daily routine of “Shanzhai” mobile phones. No matter from the outlook to the operating system, “Shanzhai” mobile phones are available to imitate as much as they can. Of course, they will use cheap materials to lower their production cost, and limited technological capability leads to the instability and vulgar design of the operating system. They will invest as much as they can to produce an imitation which helps the consumers feel very similar to the real one, because this is the main competency of “Shanzhai” products. Basically, available to call, send messages and use some applications are some old functions of “Shanzhai” mobile phones, but taking photos, connect to the internet and using different kinds of applications, which basically like what we can do with a real branding smart phone, has become the new functions of a “Shanzhai” smart phone.

After the analysis from the perspectives of Law, Norms, Market and Architecture within the market of “Shanzhai” products in China, we can see that “Shanzhai” products are not being regulated evenly from the four perspectives. On the contrary, the development of “Shanzhai” products is driven by the incentives of market and architecture. The increasing development of “Shanzhai” products causes the decline of the national creativity of China. Therefore, Law has to be strengthened and reinforced in order to constrain the dominant effect brought from market and architecture. The reason why we come out a different result unlike Lessig had in his article is that the dominant culture in China is not free culture, while it is dominated by hierarchy culture. Meanwhile, manipulation is a necessary method to maintain coherence with this culture, and then law is the way to input this kind of manipulation within the nation. Hence, law has to be reinforced to protect the creativity and intellectual property right in China.
3. Case Analysis

Within this part, three different cases about “Shanzhai” and creativity will be presented to further distinguish and identify what “Shanzhai” is.

Case 1

In previous month, Lofter, the blog service from Netease found a mass of their original user generated content were stolen by Qing, which is a blog service offered by Sina.

Qing copied a mountain of work from Lofter without any changes, including pictures, articles, special targets, even their original Home to You (首頁交給你) part.

Below is the comparison of Lofter and Qing.

1. The target Home to You and the pictures were entirely copied.
2. A same author’s two articles were copied by two different IDs from Qing.
3. The special target “5447” was copied.
4. A music festival (熱浪音樂節) organized by Lofter was stolen without any digestion.

This behavior caused dissatisfaction of many users, even on the Sina Weibo.

Lofter required Qing stop the infringement immediately, respect user’s right and delete the copied content. Lofter also claimed that they will consider to solve the problem via legal means.

This is a serious and violent act of plagiarism, which can date back to May, 2012. Qing copied the content from Lofter without any changes. They just moved them to their own website. Then they used other IDs publish those content and pushed them to users through their Weibo. After the event exposed and Lofter claimed the condemnatory statement, Qing gives no respond or apology. However, they deleted those copied content stealthily to destroy evidence.
This kind of plagiarism is the simplest way but cannot be accepted by the public, as it copied everything from the original source, which is too obvious. This is an infringing act, as well.

Case 2

On April 3, 2013, China Mobile released the Fetion public platform to compete with Wechat. However, the main function and UI design are very similar to the Wechat public platform. Even the realm name is like the Wechat public platform. Nevertheless, there are many shortcomings.

1. Compare to the Wechat public platform, the access speed is too slow that influence the user experience.

2. A tedious process of registration. One phone number can only occupy one account. Moreover, authentication is extremely hard, and it only focus on institutions, which ignores personal users.

3. No integration that you need a random password that Fetion gives you every time you access the public platform.

4. The text message and pictures are separated when mass texting.

The Fetion public platform is just a product that has no spirit. It imitated the appearance of the Wechat public platform, but did not focus on user experience. This rough-and-ready product did not care much about the inner design. People will not use it because of the bad user experience.
Case 3

Tencent now is a big company, and people are familiar with its copy skills. It is a company that started with copy. Its first product QQ was copied from ICQ, entering the IM market at the right time. Then, its plagiarism gene never changed. Almost every service and product on the internet can find a similar product produced by Tencent.

However, Tencent is a successful company. Tencent does not copy the product, but the model and idea. And focuses much on the user experience and makes some tiny innovation to build its products more suitable for the market.

Wechat is one of its most successful products, which is also not a pioneer. There are many similar products before Wechat, such as Kik, Whatsapp, Talkbox and Michat. However, Wechat is the most successful one in China. The first mocking object of Wechat is Kik. Then it began to mock Color, which is a social application focus on strangers. Wechat did some small innovation to help strangers get to know each other, such as Shake, Look Around, Drift Bottle, etc., which increased a large number of users in a high speed.

The execution ability of Tencent is not less than those early startups, as well. Tencent released the iPhone version Wechat on Jan 24, 2011, the Android version on 27, and the Symbian version on 29. The Wechat updated 44 versions in one year.

Wechat also focus much on user experience. The design starts from users demand, focusing on details. For example, a new version Wechat decreased one pixel of the height of the dialog box, which is the detail of the UI design. Thus, Wechat becomes increasingly user friendly and easy to use.

To elaborate why Wechat succeed among many similar products, we make a comparison among three kinds of cases.
<table>
<thead>
<tr>
<th>Case 1</th>
<th>Case 2</th>
<th>Case 3</th>
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<tbody>
<tr>
<td>Copy entire content of the origin</td>
<td>Copy the design and function</td>
<td>Copy the operating model and idea</td>
</tr>
<tr>
<td>Very easy and simple to copy</td>
<td>Easy to copy</td>
<td>Need original innovation</td>
</tr>
<tr>
<td>Copy the design</td>
<td>Focus on the release speed</td>
<td>Focus on the user experience</td>
</tr>
<tr>
<td>Infringement</td>
<td>Obvious plagiarism</td>
<td>Obscure imitation</td>
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<tr>
<td>Blamed by the public</td>
<td>Criticized by the public</td>
<td>Accepted by users</td>
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According to the analysis of three cases, we can conclude that “Shanzhai” does not simply mean copy. And different kinds of “Shanzhai” can lead to different consequence.

It is infringement to take other people’s fruits of labor, which will be blamed by the society and cause negative effects of the company. This act may even cause legal dispute. Copy the design of other products is easy to be realized by the public. When compared with the prototype, people will find how similar are the two products, and not accept this act of imitation. However, according to the case of Wechat, we can find that copy the model or idea can be accepted by the market. Because the idea has no patent and it is hard to identify the copy act through the same idea. People may value their experience more than if it is pioneered. Once a product with other company’s idea generates a good design and modifies the user experience, it may be more successful than the prototype. Thus, the creativity and revolution are very important, and some tiny innovation based on existing products cannot be ignored, either.
Conclusion

Through the analysis of different cases, we find out that some of the “Shanzhai” products are infringing products which are imitating the outlook and content of the original. While some of the products take advantage of design idea of the original, and then combine with their own innovation and unique user’s experience, which turns their products to a creative work. In terms of this kind of meaning, “Shanzhai” can be a kind of creativity. Usually, people get used to judge a product whether it is a “Shanzhai” product or not from the appearance and the similarity of function. Therefore, it is important for the government to help consumers to distinguish the infringing “Shanzhai” products through new policies, and constitute new law to ban this kind of product in order to maintain the balance of the market and protect the core creativity of those “ideally Shanzhai” products.
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