

## Copyright

### I. INTERNATIONAL

Both China and the United States are members of the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention).<sup>1</sup> The Berne Convention created a series of principles and standards to protect and promote “artistic expression,” in the form of copyrights.

Three basic principles arise from the Berne Convention.<sup>2</sup> First, works that originate in one of the member countries must be protected by all of the other member countries.<sup>3</sup> Next, the protection can not be conditioned on compliance with any formality.<sup>4</sup> Finally, if copyright protection ends in the country of origin, aka the country where the copyright was first registered, other countries in the Berne Convention may also end their protection.<sup>5</sup>

The Berne Convention also set out a minimum standard of protection for works. The protection extends to “every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression.”<sup>6</sup> The convention then listed out a set of exclusive rights including: the right to translate, the right to make adaptations, the right to perform, etc.<sup>7</sup> The Convention also provided for a “moral

right,” which allows an author to object to any modification that would negatively affect the author’s honor or reputation.<sup>8</sup> Finally, works are protected, at minimum, until 50 years after the death of the original author.<sup>9</sup> Applied art and photographic work last until 25 years after the death of the author.<sup>10</sup>

## II. COPYRIGHT LAW IN CHINA

### A. Basics

Copyright law in China is guided by the *Copyright Law of the People’s Republic of China*.<sup>11</sup> Chinese citizens, as well as foreigners covered by the Berne Convention, will receive protection for any artistic works, whether published or not.<sup>12</sup> This is done to encourage the “creation and dissemination” of works which would contribute to the socialist spiritual and material civilization.<sup>13</sup>

Chinese copyright law defines “works” to include literature, art, science, and technology which can be expressed in a specific set of forms.<sup>14</sup> Forms include written, oral, musical and photographic works.<sup>15</sup> However, China gives no copyright protection to laws, current affair news, formulas, or general use forms.<sup>16</sup> China will also offer no protection for works that are prohibited by law.<sup>17</sup>

Once a work is copyrighted, the owner (the original author or organization with legal authority) of the work will enjoy a large set of rights.<sup>18</sup> The rights associated with

Chinese copyright protection include the rights to publication, alteration, distribution, reproduction, performance, etc.<sup>19</sup>

### B. Time Span and Remedy

An author's copyright protection spans the life of the author plus 50 years after death.<sup>20</sup> For entities, the protection lasts 50 years after the original publication of the work as long as the work has been published within 50 years after creation.<sup>21</sup> However, a third party can use a copyrighted work without permission if the work is used for private study, is appropriately quoted, is translated for research purposes, or is copied from an outdoor public place.<sup>23</sup> Strong discretion is given to the courts to decide what can be used without permission or payment.

If a copyright has been unlawfully broken, civil liability is typically the remedy against the infringer.<sup>24</sup> The infringer will also need to cease their usage of the work, make an apology, and pay any damages that the court deems appropriate.<sup>25</sup>

## III. COPYRIGHT LAW IN THE UNITED STATES

The main goal of copyright law in the United States is to encourage new creations. In the United States copyright law provides the creator of a work the right to control the use of that work. A copyright is created automatically as soon as the author puts the creation in any tangible form.<sup>26</sup> However, it is still important to register a

copyrighted work at the U.S. Copyright Office after publication to gain more comprehensive protection.

#### A. Protection

Three major requirements are needed to create a copyrightable expression. First, the creation must have fixation, meaning that it must be fixed on a tangible medium.<sup>27</sup> Fixation is a very loose standard and almost any medium will suffice.<sup>28</sup> The actual ideas and facts behind a creation are not actually protected, only the tangible form in which they are expressed.<sup>29</sup> Next, the work must be original.<sup>30</sup> This merely requires that the work “owes its origin to the author.”<sup>31</sup> As long as the work is independently created, it can be copyrighted.<sup>32</sup> Finally, a minimal amount of creativity is necessary.<sup>33</sup> Something like a general form or telephone book cannot be copyrighted.

The length of copyright protection has expanded in the recent years. Currently, copyright protection from the original author lasts for 70 years past the death of the author.<sup>34</sup> If the work was created for an entity, the copyright will last 120 years after the work's creation or 95 years after publication, whichever is shorter.<sup>35</sup> Once the copyright protection is finished, the work becomes part of the public domain where anyone is free to use them without permission.<sup>36</sup>

For any works published after 1989, no notice requirement needs to be given.<sup>37</sup> However, notice allows a copyright owner to sue an infringing party for *willful* infringement, which nets a much greater amount of damages. Also, notice may have a

deterrent effect on potential infringers. Finally, there are some countries that have not adhered to the Berne Convention and thus notice will give protection in those countries.

Finally, copyright protection does not extend to any “fair use,” such as criticism, news, or teaching as long as the work is not diminished.<sup>38</sup>

## B. Registration

Copyright registration lists basic information about a copyrighted work to the general public. An owner must by fill out an application and pay an application fee in order for the trademark to be registered.<sup>39</sup> One good reason to copyright is that an author cannot sue for infringement until a copyright is registered. Therefore, early registration leads to an easier initiation of a lawsuit. Also, a copyright owner who files a timely registration can be given more extensive statutory monetary damages than if the author registered at the time of the suit.<sup>40</sup> For published works, a timely matter is considered within three months of the date of the first publication or before the infringing.<sup>41</sup> For unpublished work, a timely matter is anytime before the infringement.

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## IV. DIFFERENCES

The first major differences between the two countries copyright system is that in the United States copyrighted work must be on a tangible medium whereas in China the work needs only to be able to be reproduced in a tangible form.<sup>43</sup> Therefore, oral and

acrobatic works can be copyrighted easily in China, but not always in the United States. Also, the United States also has less provision on moral rights than China.<sup>44</sup> It is much harder for a copyright owner to argue that another use of their work is negative enough to warrant legal action in the United States than in China. As for rights, the United States has a right to display whereas China has a right of show and a right of exhibition.<sup>45</sup> The protection term also differs between the two countries with the United States having the longer term.<sup>46</sup>

## V. CONCLUSION

Both countries use copyright law to protect and encourage artistic protection. However, Chinese copyright law merely meets the international treaty requirements and does little to go above and beyond, unlike the United States. Recently, China has been in significant legal trouble over their copyright rules where the World Trade Organization has found “deficiencies” in the law. Therefore, the United States has a much more stringent and strong set of copyright laws than China.

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