

# Copyright in North Korea: Reality or Hoax?

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## ABSTRACT

The essay conducts a systematic examination of copyright law in North Korea. In deploying the examination, the essay discusses the history and background of North Korean copyright law and examines the law itself. Then, it addresses the effect of the law in practice; inter alia, it does so by way of evaluating its function in the special economic zones underscoring the genesis of the law. Further on, the essay explores various hindrances to the functioning of copyright law. In doing so, it delves into the legal system of North Korea and debates the cultural, economic and political hindrances to the function of the law. Finally, the essay makes projection into the future development and proposes the way forward for the proper functioning of copyright law in the country.

## INTRODUCTION

A recent incident received huge media attention in the UK. A London-based salon, M&M Hair Academy, displayed in its window a poster of the North Korean leader Kim Jong-un's enlarged portrait photograph with the following words written across the lower part of the portrait: "BAD HAIR DAY? 15% OFF ALL GENT CUTS THROUGH THE MONTH OF APRIL Tuesday-Thursday." Two officials from the North Korean embassy in London visited the salon and questioned why the photograph of their leader was used in the poster; they asked the owner of the salon to take it down as the use was disrespectful to their leader.<sup>1</sup> A row ensued and the salon owner reported it to the police, so did the North Korean embassy. Later on, a Metropolitan police spokesman issued the following statement, "I can confirm that the North Korean embassy have contacted us and that we are in liaison with them. Officers spoke to all parties. No offences have been disclosed."<sup>2</sup>

Whilst the news report focuses on the personage shown in the poster, the incident certainly raises the issue of infringement of copyright in the portrait photograph in the UK. Contrary to the belief that "the production of artists living in North Korea...is not protected by other countries because North Korea is not a party to any of the international treaties that establish reciprocal copyright protection,"<sup>3</sup> North Korea, officially known as the Democratic People's Republic of Korea ("the DPRK"), became a member of the Berne Convention for the

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<sup>1</sup> *North Korean officials visit salon over Kim Jong-un 'bad hair' advert*, BBC NEWS (April 15, 2014), <http://www.bbc.co.uk/news/uk-england-london-27038723>.

<sup>2</sup> Caroline Davies, *North Koreans complain to London hairdresser about Kim Jong-un poster*, THE GUARDIAN (April 15, 2014), <https://www.theguardian.com/world/2014/apr/15/north-koreans-complain-london-hairdresser-kim-jong-un>.

<sup>3</sup> SUSAN M. BIELSTEIN, *PERMISSIONS, A SURVIVAL GUIDE: BLUNT TALK ABOUT ART AS INTELLECTUAL PROPERTY* 104 (The Univ. of Chicago Press ed. 2006).

Protection of Literary and Artistic Works in 2003.<sup>4</sup> As such, works originating from North Korea enjoy national treatment in other member states of the Berne Convention including the UK being also a member of the Convention.<sup>5</sup> Admittedly, despite the Berne Convention, complexities may arise with respect to the protection of North Korean works in other Berne countries, which is to be discussed later. But the undoubted fact here is that copyright in the photograph as issued by North Korea enjoys national treatment in the UK. Thus, the salon may well have infringed the copyright in the photograph when the poster is made by reproducing the photograph.<sup>6</sup> Further, the moral rights especially the right against derogatory treatment of the photograph may also have been infringed; under the UK Copyright Act, i.e., the CDPA 1988, the right is infringed if the person in the course of a business exhibits in public a copy of a photograph which has, and which he knows or has reason to believe has, been subjected to derogatory treatment.<sup>7</sup> Moreover, contrary to the statement issued by the police, an offence is arguably committed by the salon when it shows the poster, an infringing copy of the photograph, in public. Under the CDPA 1988, “A person commits an offence who, without the licence of the copyright owner, in the course of a business, exhibits in public, an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work.”<sup>8</sup>

The above incident naturally prompts one to wonder about the situation concerning copyright in North Korea. Is copyright recognised or protected there and is there widespread infringement? Historically, there appears to be some limited recognition of copyright in North Korea’s relationship with its allies. For example, North Korea had translated and published Chairman Mao’s works there; Chairman Mao received remittance of royalties from the government of North Korea but instructed the money to be returned in the spirit of comradeship.<sup>9</sup> Copyright disputes could be traced back to the 1980s-1990s when the Soviet Union raised with North Korea the issue of the latter’s improper use of the results of the site survey for the nuclear plant carried out by the Soviet experts in the period, and the Soviet Union was frustrated over North Korea’s infringement of the intellectual property rights in the survey results.<sup>10</sup> More recently, infringement of copyright and indeed other intellectual property rights apparently occurs frequently. The state-run television of North Korea broadcast the Premier League football games, causing outrage to the Premier League which made it clear that “Nobody has the rights to broadcast Premier League football in North Korea so if this is happening then it is copyright theft, plain and simple.”<sup>11</sup> Then, there was

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<sup>4</sup> The Berne Convention for the Protection of Literary and Artistic Works, September 9, 1886, as revised at Paris on July 24, 1971 and as amended Sept. 28, 1979, 102 Stat. 2853, 1161 U.N.T.S. 3, <http://www.wipo.int/clea/docs/en/wo/wo001en.htm> [hereinafter Berne].

<sup>5</sup> See Berne, Art. 5.

<sup>6</sup> Copyright, Designs and Patent Act 1988 (c.48), UK CIPA 17 [hereinafter CDPA].

<sup>7</sup> CDPA, (c.83). See also (c.80).

<sup>8</sup> CDPA, (c.107(1)(d)(iii)).

<sup>9</sup> *Discovery: Royalty from overseas of Chairman Mao’s Works*, LIBERATION DAILY (July 17, 2009), [http://www.china.com.cn/culture/txt/2009-07/17/content\\_18154007.htm](http://www.china.com.cn/culture/txt/2009-07/17/content_18154007.htm).

<sup>10</sup> JAMES CLAY MOLTZ AND ALEXANDRE Y. MANSOUROV (eds), *THE NORTH KOREAN NUCLEAR PROGRAM: SECURITY, STRATEGY, AND NEW PERSPECTIVES FROM RUSSIA* 260 (Routledge ed. 2011).

<sup>11</sup> *KIM ON LADS! North Korea BREAKS THE LAW by showing British footie, CRAZED dictator Kim Jong-Un loves Wayne Rooney so much he has ordered state TV to illegally broadcast Premier League matches*. THE

the unlicensed use of Disney characters dancing around the leader of North Korea in a concert; the US State Department spokesman Patrick Ventrell chided North Korea for violating the copyright of Walt Disney and urged it to respect the US intellectual property rights.<sup>12</sup> There are other more serious instances of IP infringement in North Korea. As well as engaging in counterfeiting foreign currencies especially US dollars generating estimated annual revenues of \$15 million,<sup>13</sup> North Korea has been, so the US government long believes, involved in “the counterfeiting of intellectual property of [U.S.] persons.”<sup>14</sup> For years, counterfeit factories in North Korea have been producing counterfeit cigarettes of famous US, British and Japanese brands.<sup>15</sup> Taiwan authorities once seized 20 containers from a ship bound for North Korea containing counterfeit cigarette wrappers with the capacity of producing cigarettes worth \$1 billion street value.<sup>16</sup> Criminals smuggled North Korea-made counterfeit Marlboro cigarettes to the US.<sup>17</sup> Such counterfeits appeared at quite a number of retail shops in the US.<sup>18</sup> Counterfeit cigarettes of various famous brands from North Korea were also sold in Singapore, Japan and other Asian countries.<sup>19</sup>

Given the extent of the infringement and hence the economic interest at stake, a systematic examination of copyright in North Korea is warranted. This the essay aims to do. Following the introduction, the essay first addresses the question raised earlier with respect to the complexities of protection of copyright in works originating from North Korea in other Berne countries. Thereafter, it examines copyright law in North Korea. In deploying the debate, it first discusses the history and background of North Korean copyright law and examines the law itself. Then, it addresses the effect of the law in practice; it further evaluates the special economic zones and the functioning of the law there, given that the genesis of the law resides in the establishment of special economic zones. Further on, the essay explores various hindrances to the functioning of copyright law. In doing so, it delves into the legal system of North Korea and debates on the cultural, economic and political hindrances to the function of the law. Finally, the essay makes some projection into the future development and proposes the way forward for the proper functioning of copyright law in the country.

## **COPYRIGHT PROTECTION OF NORTH KOREAN WORKS OVERSEAS**

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DAILY STAR (Aug. 28, 2014), <http://www.dailystar.co.uk/news/latest-news/396698/Korea-TV-ordered-to-screen-Prem-games>.

<sup>12</sup> *US chides North Korea over unauthorised Disney display*, ASSOCIATED PRESS (July 11, 2012),

<http://www.ndtv.com/article/world/us-chides-north-korea-over-unauthorised-disney-display-241989>.

<sup>13</sup> MARCUS NOLAND, AVOIDING THE APOCALYPSE: THE FUTURE OF THE TWO KOREAS 121 (add publishing info).

<sup>14</sup> The North Korea Sanctions Enforcement Act of 2014, H.R. 1771, 113<sup>TH</sup> Cong. Sec. 2(3) (2014).

<sup>15</sup> Paul Rexton Kan, *Criminal Sovereignty: Understanding North Korea's illicit international activities*, STRATEGIC STUDIES INST. 15 (2010).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 16.

<sup>18</sup> Elizabeth D. Ferill, *Clearing the Swamp for Intellectual Property Harmonization: Understanding and Appreciating the Barriers to Full TRIPS Compliance for Industrializing and Non-Industrialized Countries*, UNIV. OF BALTIMORE INTEL. PROP. LAW JOUR. 144 (2007).

<sup>19</sup> Kan, at 16 (2010).

As said before, North Korea joined the Berne Convention in 2003. As such, under Berne, works of authors of North Korea enjoy copyright protection in the form of national treatment in other Berne countries.<sup>20</sup> Given that North Korea does not give copyright adequate protection and indeed as is to be seen later many of its copyright provisions contravene Berne,<sup>21</sup> can other Berne member states restrict or even refuse copyright protection to the works of North Korea?

Berne does not explicitly provide for the case where a Berne country fails to give adequate protection to the works of the authors of another Berne country.<sup>22</sup> It only provides for the case in relation to a non-Berne country. Under Berne, if the author of a work is not a national or a habitual resident of one of the countries of the Union, he may enjoy copyright protection there if his work is first published in one of the said countries. Berne permits the country of first publication to restrict the copyright protection for his work if his country as a country outside the Union fails to protect the works of the nationals of the Berne country adequately.<sup>23</sup> Berne, however, does not provide for the case with respect to a Berne country for its lack of adequate protection for the works of nationals of other Berne member states. Apparently, that would be a case of breach of the Berne Convention which can be settled under the Convention itself to oblige the breaching country to provide adequate protection, or possibly more effectively resolved through the Dispute Settlement Body under the TRIPS Agreement if that country is also a member of the WTO.<sup>24</sup>

As far as North Korea is concerned, it is not a member of the WTO and hence any effective resolution is practically impossible for its lack of protection of works of authors of other Berne countries. Coming to our initial question, as a defensive or retaliatory measure, can other Berne members restrict or even refuse the protection of the works of authors of North Korea?

As just said, Berne does not make such explicit provision. It appears that it is a matter left open for the discretion of the member state. As far as the UK is concerned, such restriction is possible. In the UK, under the Copyright, Designs and Patents Act 1988 (“the CDPA 1988”), Her Majesty is empowered by Order in Council to make provision denying copyright protection to works of citizens of a foreign country if British authors are not adequately protected in the foreign country concerned.<sup>25</sup> This is regardless of whether the foreign country is a member of Berne or not. But Her Majesty has never issued any Order in Council with respect to North Korea. That leaves no doubt that works from North Korea receive national treatment in the UK under English copyright law. This is evident from the case of

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<sup>20</sup> See Berne, Art. 5.

<sup>21</sup> See Berne, Art. 5 Sec. 2.

<sup>22</sup> Article 5(2) of Berne provides that the enjoyment and the exercise of copyright “shall be independent of the existence of protection in the country of origin of the work.” This conflict of laws requirement means that domestic law applies, but it does not provide for the case where the law of the country of origin of the work is not so enforced as not to give adequate protection of copyright there.

<sup>23</sup> Berne, Art. 6, Sec. 1.

<sup>24</sup> See *Dispute Settlement*, the WTO, [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm).

<sup>25</sup> CDPA, (c.160).

Cuba which is a Berne member but provides doubtful protection to British authors there. In *Peer International Corporation & Ors v Termidor Music Publishers Ltd. & Ors*, the dispute concerns agreements signed in Cuba assigning English copyright in certain Cuban musical works. The English copyright as granted to those works originating from Cuba is simply not disputed; rather, the court ruled on the pertaining issue under the explicit assumption that the relevant Cuban musical works are protected as copyright under English copyright law in the UK.<sup>26</sup> The national treatment of North Korean works in the UK is further evident from the treatment of works originating from China. Historically, China had not protected British authors at all; even after it joined Berne China had not adequately protected copyright for a long time. But still works of Chinese authors had simply been protected by first publication in a Berne country before China's accession to Berne or have ever since been protected by default after its accession.

In a wider context, the issue of protecting works of North Korea in another Berne state can become more complex. Other jurisdictions may treat North Korean works differently. As between Berne members where one does not recognise the other as a state, it is contentious whether the non-recognising state is obliged to protect the works of the non-recognised state under the Berne Convention. In a case involving a dispute between North Korea and Japan, the claimants, an administrative organ under the umbrella of the Ministry of Culture of North Korea and its exclusive licensee, sued Japanese companies in Japan for copyright infringement for their unauthorised broadcasts of part of the film produced in North Korea.<sup>27</sup> The claimants sought an injunction and damages, claiming that, as the film was the work of nationals of North Korea, it was protected by art 6 (iii) of the Japanese Copyright Act that provides that copyright protection applies to “works ...with respect to which Japan has the obligation to grant protection under an international treaty.” Article 3(1)(a) of the Berne Convention provides that protection applies to “authors who are nationals of one of the countries of the Union, for their works, whether published or not.”

The Japanese Supreme Court ruled that Japan has no obligations to protect works of North Korea under the Berne Convention because Japan does not recognise North Korea as a state. According to the Supreme Court, Berne only requires its signatories to protect works of nationals of other signatories; works of nationals of non-Berne members are not protected within the Union unless they are first published in a Berne state. Thus, “the Convention aims to ensure protection of works on the basis of the framework of States in the capacity of the countries of the Union, and it does not intend to require the countries of the Union to assume any obligation under general international law which has universal value.”<sup>28</sup> Henceforth, such an obligation does not extend to a signatory which Japan does not recognise as a state. Furthermore, Japan does not give a public announcement that Berne takes effect in relation to North Korea when the country joins Berne. It is also the view of the Ministry of Foreign Affairs and the Ministry of Education, Culture, Sports, Science and Technology that Japan

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<sup>26</sup> [2003] EWCA Civ 1156.

<sup>27</sup> Case to seek an injunction against copyright infringement, etc. 2009 (Ju) No. 602, 603, Minshu Vol. 65, No. 9, 2011.12.08 at II.2.[http://www.ip.courts.go.jp/app/files/hanrei\\_en/674/001674.pdf](http://www.ip.courts.go.jp/app/files/hanrei_en/674/001674.pdf).

<sup>28</sup> *Id.*

does not have the obligation to protect works of North Korea. Taking all of the above into consideration, the Court held that Japan “has no relationship with North Korea, a country not recognized as a State, in terms of rights and obligations under the Berne Convention, irrespective of whether North Korea has acceded to the Convention or not,” hence Japan has no obligation to protect works of North Korea.<sup>29</sup>

As from the above, a country may choose to provide specifically with respect to the works of North Korea. Also, a Berne country may refuse to extend protection on other bases such as that of Japan. However, it is unclear to what extent the approach of Japan is sustainable, especially in relation to its interpretation of international law.<sup>30</sup> Furthermore, it is not clear, either, whether it would be a viable option for a Berne country to take the matter into its own hand by refusing protection to North Korean works other than through the Berne Convention itself or indeed more effectively if possible through the TRIPS Agreement. Despite having such an option in its legislation, the UK government has never exercised it; rather, it simply extends protection as it does works originating from other Berne countries.

With the protection of works originating from North Korea in other countries addressed, the copyright situation within North Korea is to be systematically examined in the ensuing debate. The debate is so structured that it first looks at the history and background of copyright as private property in North Korea, next delves into the law and evaluate its effect, and then examines the various hurdles to the function of the law and project its future path of development.

## **HISTORY AND BACKGROUND**

Historically, private property was not recognised in North Korea, nor was and indeed could be copyright as private property. It is believed that in countries such as China and North Korea which adopt the Socialist law inhere the entrenched bias against private ownership because the law is based on the Communist Manifesto which supports communal rights of property rather than individual property rights and which aims to transform the society ultimately to a communist state where the law is not needed for the functioning of the society.<sup>31</sup> Such belief needs fundamental adjustment, though. It would be simplistic to assume that North Korea’s political system is solely based on the model of the Soviet Union and hence Marxism-Leninism dominates. It is true that the regime of North Korea was ever modelled on Marxism-Leninism due to its occupation by the Soviet Union between 1945 and 1948.<sup>32</sup> However, Marxism-Leninism, if not completely abolished, showed waning influence after 1958 following Kim Il Sung’s formulation of Chech’e.<sup>33</sup> The political system of North Korea is, in effect, “a mixture of Marxism-Leninism, Korean Nationalism and indigenous

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<sup>29</sup> *Id.*

<sup>30</sup> For critique of the decision, see DAI YOKOMIZO, JAPAN IN TOSHIYUKI KONOP (ED), INTELLECTUAL PROPERTY AND PRIVATE INTERNATIONAL LAW: COMPARATIVE PERSPECTIVES 790, 791 (2012).

<sup>31</sup> Darrel Collier, *Protecting Intellectual Property Globally*,

<http://www.internationalmarketsolutions.com/ttsna/1031ProtectingIntellectualProperty.pdf>.

<sup>32</sup> SUNG YOON CHO, LAW AND LEGAL LITERATURE OF NORTH KOREA: A GUIDE 17 (1988).

<sup>33</sup> *Id.*

political culture.”<sup>34</sup> The concept of Chuch’e (also Juche, self-reliance) underscores “the basic ideology of the regime.”<sup>35</sup> It is explained in the publication entitled “On the Socialist Constitution of the DPRK” promulgated by the DPRK to elucidate the Constitution:

It forms the ideological, theoretical and methodological foundations of all the lines, policies and activities of the Republic and indicates the fundamental principles for the most correct solution of all the problems arising in the revolutionary struggle and construction work. At the same time, it serves as a sure guarantee for the thorough maintenance of the revolutionary principles of independence, self-sustenance, and self-defence in all realms of politics, economy, and military affairs of the Republic.<sup>36</sup>

Chuch’e essentially means “burying Marxism-Leninism” and “keeping all foreigners at arm’s length”<sup>37</sup>; that is, “doing things his [Kim Il Sung’s] way, being independent, not following foreign examples or advice but rather his own idea of what was best for North Korea.”<sup>38</sup>

Marxism-Leninism was not included in the Constitution as amended in 1992.<sup>39</sup> When North Korea amended its constitution again in 1998, the Constitution recognises three forms of property, namely, state property, cooperative property and private property. Private property is treated as “property for personal consumption by the working people” and primarily includes “the products from the inhabitants’ supplementary husbandry, including those from small plots of cooperative farmers.”<sup>40</sup> The 1998 amendment also resulted in the allowance of private economic engagements by citizens.<sup>41</sup> It follows that “Individual citizens could now earn money from private economic activities, and the fruits of their economic activities—including a form of intellectual property rights—acquired legal protections.”<sup>42</sup> Intellectual property was protected by the Constitution for the first time.<sup>43</sup> The amended Constitution provides, “Citizens are free to engage in scientific, literary and artistic pursuits. The State shall grant benefits to inventors and innovators. Copyright and patent rights shall be protected by law.”<sup>44</sup>

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<sup>34</sup> BRUCE CUMINGS, HISTORICAL SETTING, ROBERT WORDEN, NORTH KOREA: A COUNTRY STUDY (5<sup>TH</sup> ED) 50 (2007). “Under socialism, each person is to work according to his abilities and receive compensation in accordance with that work. communist society in theory takes from each person in accordance with his abilities and gives in accordance with need, regardless of the nature of a person’s work contribution.” Sung Yoon Cho, Law and legal literature of North Korea: A Guide (1988) at p1.

<sup>35</sup> *Id.* at 51.

<sup>36</sup> As quoted by Cho, at 2 (1988).

<sup>37</sup> Bruce Cumings, Historical Setting, Robert Worden (ed), North Korea: A Country Study (5<sup>th</sup> ed) (2007) at p.51.

<sup>38</sup> Helen-Louise Hunter, The society and its environment, in Robert Worden (ed), North Korea: A Country Study (5<sup>th</sup> ed) (2007) at p.71.

<sup>39</sup> Robert Worden (ed), North Korea: A Country Study (5<sup>th</sup> ed) (2007), Introduction at xxxiii.

<sup>40</sup> Art. 22; *see also* Cho, at 130 (1988).

<sup>41</sup> Yoon Hee Kim, *Analysis of the North Korean Invention Act*, 5 J. KOREAN L. 145, 166 (2005).

<sup>42</sup> *Id.* at 144. *See also* Darren C Zook, *Law Politics, and the Market Economy* 48 (1) STANFORD JOURNAL OF INTERNATIONAL LAW 162 (2012).

<sup>43</sup> Kim, at 143 (2005).

<sup>44</sup> SOCIALIST CONSTITUTION OF THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA 1998, art. 74.

With the Constitution recognising copyright, the DPRK joined the Berne Convention for the Protection of Literary and Artistic Works, Paris Act (1971) in 2003.<sup>45</sup> Prior to that, the DPRK had protected copyright through bilateral treaties with some former socialist countries; the collapse of the socialist countries in East Europe had prompted the country to seek to join the Berne Convention.<sup>46</sup> In paving the way for accession to the Convention, a new copyright law was adopted in 2001 and the regulation of the copyright law was passed in 2002.<sup>47</sup> It had earlier joined the Paris Convention for the Protection of Industrial Property in 1980<sup>48</sup> and some other WIPO-administered treaties such as the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure in 2002.<sup>49</sup>

Copyright law along with two other economic laws, namely, the law on processing trade and the law on Lock Gate, was adopted at the 4<sup>th</sup> session of the tenth DPRK Supreme People's Assembly. Those laws were passed to address economic issues and to promote the country's goal in opening up its markets.<sup>50</sup> Copyright law was to afford protection to foreign works and procure equal protection of its works abroad.<sup>51</sup> Meanwhile, copyright law also aimed to serve other purposes including the resolution of legal disputes over copyright materials such as music and films between North Korea and South Korea following increased social and cultural exchange between them.<sup>52</sup>

## **NORTH KOREAN COPYRIGHT LAW 2006**

Having discussed the history and background of the copyright law of the DPRK, now let us examine the law in detail.<sup>53</sup> North Korean copyright law somewhat exhaustively lists the subject matter for copyright. It explicitly provides protection to “works such as scientific treatises, novels and poems; works of music; works of theatrical art such as opera, drama, acrobatics and dance; works of visual art such as film and television programme; works of fine arts such as painting, sculpture, industrial arts, calligraphy and design; works of photography; works of graphic art such as map, chart, blueprint, sketch and model; and computer programs.”<sup>54</sup> Adapted works, i.e., works adapted from another work by “rewriting, arrangement, dramatization, embellishment, adaptation and translation” shall be protected as

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<sup>45</sup> See generally Berne.

<sup>46</sup> Interview by The People's Korea with Jang Chol Sun, director of the Publication Bureau of the DPRK, [http://www1.korea-np.co.jp/pk/192nd\\_issue/2003053106.htm](http://www1.korea-np.co.jp/pk/192nd_issue/2003053106.htm).

<sup>47</sup> *Id.*

<sup>48</sup> See generally Berne.

<sup>49</sup> See [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=7](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=7); It signed the Patent Law Treaty on 2 June 2000, but it does not appear that the Treaty has become in force in the DPRK (see [http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty\\_id=4](http://www.wipo.int/treaties/en/ShowResults.jsp?lang=en&treaty_id=4)).

<sup>50</sup> HEUNG-KOOK PAK, NORTH KOREA HANDBOOK 222 (Seoul: Yonhap News Agency 2003).

<sup>51</sup> *Id.* at 223.

<sup>52</sup> *Id.* But despite the copyright act, the reality is that South Korean TV shows and music are prohibited in the DPRK and North Koreans gain perception into the outside world by file sharing those shows and music such as MP3/4 players or DVDs.

<sup>53</sup> The Copyright Law of the Democratic People's Republic of Korea (as amended by Decree No. 1532 of February 1, 2006, of the Supreme People's Assembly), [hereinafter CLDPRK].

<sup>54</sup> Art. 9, CLDPRK (2006).

independent copyright works.<sup>55</sup> Further, modernized versions of national classics are regarded as adapted works and hence a subject matter for protection.<sup>56</sup> Buildings are not specifically mentioned but they could be indirectly protected through blueprint as works of graphic art. It is also possible that buildings are protected as works of fine arts on the ground that they are analogous to sculpture as specifically provided for in the copyright act. It is noteworthy that it is the institutions concerned rather than the courts that define and determine the subject matter of copyright and that they do so “on the principles of scientific accuracy, objectivity and realism.”<sup>57</sup>

There is generally no requirement of originality or creativity unless the subject matter is a compiled work such as a dictionary and anthology. For the compilation to be copyright, selecting and arranging the raw materials must be creative.<sup>58</sup> It does not define what qualifies as “creative”.

The author of the work is the first owner of copyright.<sup>59</sup> Copyright in the commissioned work is owned by the creator, the commissioned party. Where the work is commissioned by an institution, enterprise or organisation, they may use it on a preferential basis.<sup>60</sup> Copyright in the work created for an institution, enterprise or organisation is owned by those entities.<sup>61</sup> A work created by more than one author shall be jointly owned by them.<sup>62</sup> The law does not specify whether, to be a work of joint authorship, the work must be created through the collaboration of those authors and the contribution of each author to the work is not distinct from that of the other authors.<sup>63</sup> Furthermore, the law does not provide for the work of co-authorship.<sup>64</sup> Copyright in film and television programme and other works of visual art is owned by the producer.<sup>65</sup> Copyright in the underlying works shall not be prejudiced.<sup>66</sup>

Copyright includes both property rights (i.e., economic rights) and moral rights.<sup>67</sup> The property rights include the right of reproduction, the performing right, the broadcasting right, the right to exhibit or disseminate the work or its copy, the rights of dramatisation, adaptation, rearrangement, embellishment and translation, and the right of compilation.<sup>68</sup> The law provides for the rights broadly without distinguishing works, hence it would appear that the act of exhibiting an artistic work such as a painting would be covered by copyright. In

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<sup>55</sup> Art. 10, CLDPRK (2006).

<sup>56</sup> Art. 10, CLDPRK (2006).

<sup>57</sup> Art. 8, CLDPRK (2006).

<sup>58</sup> Art. 11, CLDPRK (2006).

<sup>59</sup> Art. 13, CLDPRK (2006).

<sup>60</sup> Art. 28, CLDPRK (2006).

<sup>61</sup> Art. 16, CLDPRK (2006).

<sup>62</sup> Art. 17, CLDPRK (2006).

<sup>63</sup> See such requirements under English law, (c.11(1)), CDPA (1988).

<sup>64</sup> *Id.* (“work of co-authorship” means a work produced by the collaboration of the author of a musical work and the author of a literary work where the two works are created in order to be used together.”).

<sup>65</sup> Art. 18, CLDPRK (2006).

<sup>66</sup> Art. 18, CLDPRK (2006).

<sup>67</sup> Art. 13, CLDPRK (2006).

<sup>68</sup> Art. 15, CLDPRK (2006).

contrast, in English law, such an act does not infringe copyright in the work as artistic copyright does not encompass the right to exhibit the work in public.<sup>69</sup>

The law does not provide for secondary infringement. Hence, it is unclear whether importing infringing copies from overseas or dealing with infringing copies would infringe. But as is to be seen, importing works from overseas per se, infringing or otherwise, is heavily regulated by criminal law in North Korea.

The property rights are transmissible, i.e., they can be “transferred or inherited,” by the copyright owner.<sup>70</sup> However, where the property rights are to be transferred to foreign companies or individuals, the transaction needs to be authorised by the institution concerned.<sup>71</sup> Obviously, if not authorised, the transaction would be null and void; in such a situation, it is unclear whether the title remains with the owner, or whether the state confiscates it.

The property rights come into being as from the time of the publication of the work and last for 50 years after the death of the author.<sup>72</sup> Under North Korea law, publication is a pre-requisite for copyright protection; unless and until publication takes place, there is no copyright. Strictly speaking, it is not life plus 50 years. Article 7 of the Berne Convention provides that the term of protection “shall be the life of the author and fifty years after his death,”<sup>73</sup> which indicates that publication is not required for copyright to come into being. Indeed, Article 3(1)(a) of the Berne Convention makes it clear that copyright protection does not depend on whether the work is published or not. In this light, North Korean copyright law apparently contravenes Berne.

Under North Korean copyright law, where copyright is owned by an institution, enterprise or organisation, the term is 50 years from the time of publication.<sup>74</sup> So where a work is created by an employee and its copyright is owned by his employer, the term is not tied to the life of the employee; rather, it remains 50 years from its publication. Berne merely provides for exception to the term of 50 years pma for cinematographic works and photographic works and works of applied art in so far as they are protected as artistic works.<sup>75</sup> It hence can be objected that the encompassing nature of the term of employee works in North Korean copyright law contravenes Berne.

Apart from property rights, the law also recognises moral rights.<sup>76</sup> The law provides for three moral rights, viz., the right of publication, the right of attribution and the right of integrity.<sup>77</sup> Inter alia, the right of integrity is defined as “the right to keep unchanged the title, content,

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<sup>69</sup> CDPA, (c.19).

<sup>70</sup> Art. 21, CLDPRK (2006).

<sup>71</sup> Art. 21, CLDPRK (2006).

<sup>72</sup> Art. 23, CLDPRK (2006).

<sup>73</sup> Berne, Art. 7(1).

<sup>74</sup> Art. 24, CLDPRK (2006).

<sup>75</sup> Berne, Art. 7(2)&(4).

<sup>76</sup> Art. 13, CLDPRK (2006).

<sup>77</sup> Art. 14, CLDPRK (2006).

form and so on of the works.”<sup>78</sup> Moral rights are owned by the author.<sup>79</sup> Thus, the moral rights for works created by an employee are owned by the employee author, even though copyright is owned by the employer. Moral rights are not assignable or transmissible, nor can they be inherited. They enjoy perpetual protection.<sup>80</sup> However, the law fails to provide who is to enforce the rights after the author’s death. Then, the law does not appear to carve out any exceptions to the moral rights. It is noteworthy that the right of integrity appears to be narrow, restricting to cases of change being carried out. However, under the criminal law of North Korea, it is made an offence if one “makes an incorrect assessment of writings” punishable for short term labour for less than two years or reform through labour for less than three years.<sup>81</sup> Apart from the above three moral rights, the law does not recognise the right against false attribution. As with before, under criminal law, one is subject to short term labour for less than two years or reform through labour for less than three years if he falsely attributes another’s writings as his own for personal gain.<sup>82</sup>

The copyright owner does not need permission to exploit his work, but his permission is required when others use his copyright work.<sup>83</sup> As such, it appears that the right is absolute property right as under English law. Lord Hope says in *Fisher v Brooker* with respect to English copyright: “There is no concept in our law that is more absolute than a right of property. Where it exists, it is for the owner to exercise it as he pleases. He does not need the permission of the court, nor is it subject to the exercise of the court's discretion.”<sup>84</sup> However, North Korea copyright law proceeds to provide that where copyright is licensed, the amount of royalty to be paid shall be determined by the price-fixing institution,<sup>85</sup> rather than determined by the copyright owner or agreed by the parties. That means that the exercise of the property right is qualified, which in turn may throw doubt on whether copyright is absolute property right in North Korean law. Moreover, as discussed before, though copyright is assignable, the copyright owner need authorisation from the institution concerned where the copyright is assigned to a foreign person or entity. Restriction of the sort certainly puts copyright beyond the scope of absolute property right.<sup>86</sup> It is also contravening the Berne requiring for lack of formality for the enjoyment and exercise of the rights incident to copyright.<sup>87</sup>

If a work is prohibited from publication, issuance, performance, broadcasting, showing and exhibition, its copyright is not protected.<sup>88</sup> Ordinances, news and bulletins are not copyright.<sup>89</sup> **There** are exceptions to copyright infringement. The following instances do not

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<sup>78</sup> Art. 14, CLDPRK (2006).

<sup>79</sup> Art. 20, CLDPRK (2006).

<sup>80</sup> Art. 20, CLDPRK (2006).

<sup>81</sup> Art. 199, *The Criminal Law of the Democratic People's Republic of Korea*, CITIZENS’ ALLIANCE FOR NORTH KOREAN HUMAN RIGHTS (2009).

<sup>82</sup> Art. 200, *The Criminal Law of the Democratic People's Republic of Korea* (2009).

<sup>83</sup> Arts. 27&31, CLDPRK (2006).

<sup>84</sup> *Fisher v Brooker and another* [2009] 1 W.L.R. 1764 at para 8.

<sup>85</sup> Arts. 27&31, CLDPRK (2006).

<sup>86</sup> Art 21, CLDPRK (2006).

<sup>87</sup> Berne, Art. 5.

<sup>88</sup> Art. 6, CLDPRK (2006).

<sup>89</sup> Art. 12, CLDPRK (2006).

infringe copyright: private copying; reproducing for depositing, displaying, reading or lending in such places as libraries, archives, museums or memorial halls; copying, broadcasting or adapting for education use; performing a copyright work free of charge; or making a sound recording of a work for or copying a work in Braille for the blind people.<sup>90</sup> Further, where a work situated in public places is copied, there is no infringement.<sup>91</sup> That would include sculpture or building situated in public places, or murals in public places. The State enjoys immunity from infringement where copying, broadcasting or compiling a work is carried out for state management.<sup>92</sup> Moreover, broadcasting or printing a work in newspapers or periodicals for the purpose of introducing the work does not infringe copyright laws.<sup>93</sup>

Apart from copyright, North Korean copyright law also provides for related rights which are given to performers and those persons recording or broadcasting a copyright work.<sup>94</sup> The owners of related rights can carry out performances, recordings, and broadcasts without infringing copyrights in the underlying works. This significantly undermines the interest of the copyright owners of the underlying works.

Performers also enjoy the moral right of attribution.<sup>95</sup> Such moral rights are not available to other related right holders, rightly so, as all those other rights holders are generally not flesh-and-blood authors. Furthermore, moral rights are only available to such authors. It should be noted that unlike authors enjoying these moral rights, performers only enjoy the moral right of attribution.

The term of related rights is 50 years from the time of performance, recording or broadcasting, which is calculated as from the 1<sup>st</sup> of January of the following year.<sup>96</sup> The related rights are assignable as with property rights.<sup>97</sup> The performance, recording or broadcasting is subject to the same exceptions as is the case with copyright (the *mutatis mutandis* principle).<sup>98</sup>

North Korean copyright law provides for remedies for infringement of copyright and related rights. Damages are compensatory: they aim to compensate for the losses suffered by the copyright owner, or the owner of the related rights.<sup>99</sup> An official of an institution or an individual shall be liable to criminal punishment or administrative punishment where the infringement is serious.<sup>100</sup> The copyright law does not proceed to provide for the details of the criminal or administrative punishment. Furthermore, whereas it explicitly provides for the

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<sup>90</sup> Art. 32, CLDPRK (2006).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> Art. 33, CLDPRK (2006).

<sup>95</sup> Art. 34, CLDPRK (2006).

<sup>96</sup> Art. 38, CLDPRK (2006).

<sup>97</sup> Art. 39, CLDPRK (2006).

<sup>98</sup> Art. 40, CLDPRK (2006).

<sup>99</sup> Art. 46, CLDPRK (2006).

<sup>100</sup> Art. 47, CLDPRK (2006).

cases of violation of patent, trademark, industrial design or country of origin, North Korean criminal law makes no analogous provision for infringement of copyright.<sup>101</sup>

The State and its institutions play the essential role for the protection of rights and the prevention of infringement. Control and guidance by the State are crucial for the implementation of copyright laws.<sup>102</sup> The leading institutions of publication, culture, science, technology, and the supervisory institutions concerned shall exercise supervision and control to prevent infringement of copyright,<sup>103</sup> and to establish a system for the protection of rights.<sup>104</sup> Where the copyright owner cannot be found, the institution concerned may authorize the use of the copyright work.<sup>105</sup> A copyright dispute shall be settled by negotiation, and if that fails, may be referred to arbitration or court.<sup>106</sup> However, it is unclear whether there is “collective management of rights” in North Korea.<sup>107</sup>

Under the Berne Convention, North Korea is obliged to protect works originating from another Berne country by granting them national treatment under its national law.<sup>108</sup> However, the copyright law of North Korea provides that “[t]he copyright of a corporate body or an individual whose country is a party to a convention to which the DPRK [is also a party] shall be protected by the convention.”<sup>109</sup> Though it is thought that this provision means that foreign works are not protected in North Korea under its national copyright law,<sup>110</sup> the better interpretation should be that such works are so protected, especially given that North Korean national law recognizes protection of such works by the convention, and the convention requires the works to receive national treatment under national law. Furthermore, as noted before, the aim of the enactment of North Korean copyright law is to attract foreign investment by protecting foreign works. Indeed, it explicitly provides for the protection of works originating from a country which is not party to the same convention to which the DPRK is party; their protection can be achieved by virtue of first publication in the DPRK.<sup>111</sup> Arguably, even such sort of foreign works are protected, let alone works originating from Berne countries. Admittedly, it is possible that in relation to other foreign works, they are protected in North Korea according to the provisions of the convention rather than those of North Korean copyright law. Thus, protected works may in fact receive better protection in North Korea under the provisions of the convention, than just recognized under North Korean copyright law.

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<sup>101</sup> Art. 113, CLDPRK (2006).

<sup>102</sup> Art. 41, CLDPRK (2006).

<sup>103</sup> Art. 45, CLDPRK (2006).

<sup>104</sup> Art. 43, CLDPRK (2006).

<sup>105</sup> Art. 27, CLDPRK (2006).

<sup>106</sup> Art. 48, CLDPRK (2006).

<sup>107</sup> Ang Kwee-Tiang, “Collective Management in Asia” in Daniel J. Gervais (ed), *Collective Management of Copyright and Related Rights* 454 (2010).

<sup>108</sup> Berne Convention for the Protection of Literary and Artistic Works art. 3, Jul. 24, 1971.

<sup>109</sup> Art. 5, CLDPRK (2006).

<sup>110</sup> Darren C. Zook, *Reforming North Korea: Law, Politics, and the Market Economy*, 48 *STAN. J. INT’L. L.* 131, 163 (2012).

<sup>111</sup> Art. 5, CLDPRK (2006).

It is worthy to note that, as discussed above, North Korean copyright law provides that where copyright is licensed, the amount of royalty to be paid shall be determined by the price-fixing institution.<sup>112</sup> Furthermore, where the property rights are to be transferred to foreign companies or individuals, the transaction needs to be authorized by the institution concerned.<sup>113</sup> In addition to contravening Berne barring any formality for the enjoyment and exercise of copyright,<sup>114</sup> such provisions, if used to govern a contract dealing with copyright of North Korean works in other countries, probably would not be given effect in other countries, which is at least the case in England either because English copyright as property is governed by English law or because the English court does not recognise or enforce such provisions which are confiscatory with extraterritorial effect.<sup>115</sup>

Despite issues with some provisions of North Korean copyright law, it overall reflects the spirit and fulfils most of the requirements of Berne. Indeed, it does not differ from the law of many countries in any significant way. With the law on the book, the next question is, is it effective in practice? We address this question next.

## **EFFECT OF NORTH KOREAN COPYRIGHT LAW**

Some observe that “North Korean intellectual property laws are worthless and are not respected by the regime in Pyongyang,” and that the State implements strict control and all copyright expressions serve none but “propagandistic purposes”.<sup>116</sup> Others argue that there is no copyright protection in practice, and the concept of individual ownership does not exist in North Korea as a socialist country.<sup>117</sup> Still others simply doubt whether the IP law works in practice.<sup>118</sup> Felix Abt and Michael Bassett reveal a different experience of life in North Korea than does the popular media.<sup>119</sup> They note the existence of the laws for the protection of copyright and other intellectual property rights, but they fail to reveal precisely how effective those laws are in practice.<sup>120</sup> They believe that the country was very serious in attracting foreign investment and cooperating with foreign companies.<sup>121</sup> But still that does not necessarily mean that copyright is seriously protected.

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<sup>112</sup> Art. 27, Art. 31, CLDPRK (2006).

<sup>113</sup> Art. 21, CLDPRK (2006).

<sup>114</sup> Berne Convention for the Protection of Literary and Artistic Works art. 5 (2), Jul. 24, 1971

<sup>115</sup> Peer Int'l. Corp. & Ors v Termidor Music Publishers Ltd. & Ors [2003] EWCA Civ 1156.

<sup>116</sup> Paul Lukacs, *Everything You've Ever Wanted To Know About the North Korean Copyright Act*, North Korean Economy Watch, (August 2, 2007), <http://www.nkeconwatch.com/2007/08/02/everything-youve-ever-wanted-to-know-about-the-north-korean-copyright-act/>.

<sup>117</sup> Heung-kook Park, North Korea Handbook 223 (2003).

<sup>118</sup> Digital Review of Asia Pacific 245 (3d ed. 2008).

<sup>119</sup> See B.J. Murphy, *Ruling the Rhetoric on North Korea: A Pedagogical Perspective*, Oct 2, 2013, The Lifeboat Foundation, (Oct. 2, 2013), <http://lifeboat.com/blog/2013/10/ruling-the-rhetoric-on-north-korea-a-pedagogical-perspective>.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

North Korea is apparently a sizeable market for copyright. The annual turnover of copyright licensing royalty in North Korea is believed to exceed 70 million US dollars.<sup>122</sup> Some countries show interest in the potential of the North Korean market. China Nationality Press, for example, struck a deal with the North Korean Printed Matter Import and Export Company over copyright for the exportation of two Chinese children's books in North Korea.<sup>123</sup> There are signs that North Korea makes efforts to protect intellectual property rights. On April 6-7th, 2011, North Korea hosted a seminar on the protection of copyright and other intellectual property rights in Pyongyang.<sup>124</sup> The relevant department of North Korea, and representatives from the WIPO, China and Malaysia participated in the seminar.<sup>125</sup> North Korea was also keen to learn how to protect intellectual property by sending delegations to China,<sup>126</sup> and the media in North Korea praised China for its achievement over the protection of intellectual property.<sup>127</sup> The delegations comprised officials from the North Korea Copyright Bureau, which undertakes the management and administration of copyright and the conciliation over dispute of copyright.<sup>128</sup> The deputy director of the North Korean Invention Bureau revealed that since 2013, North Korea has set out the research on its strategy for intellectual property. Furthermore, the Bureau was hoping to conduct further exchange with China over the formulation and implementation of such strategy.<sup>129</sup> The media in North Korea also indicates that the country is making efforts to educate its people about the importance of intellectual property.

Apart from its own efforts to learn to protect IP, North Korea also receives assistance from the World Intellectual Property Organisation (WIPO) of which it is a member. The WIPO provided technical assistance to North Korea's IP Office, and in 2011 supplied computers to the Office to "enhance the efficiency of patent processing operations".<sup>130</sup> Though there were some controversies over the above action of the WIPO, it was found that the WIPO did not violate the UN trade sanctions imposed on North Korea.<sup>131</sup> Then, assistance obviously also comes from China. Furthermore, North Korea in fact uses China as its strategic location;

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<sup>122</sup> *Gu Jianfen reveals the downside of the musical circle – copyright licensing fees are lower in China than in North Korea*, Guangzhou Daily, (Apr. 21, 2009), <http://www.chinanews.com/yl/ytcf/news/2009/04-21/1656546.shtml>.

<sup>123</sup> *Nationality Press reaches an agreement over exportation of copyright with North Korea printed matter import and export company*, Nationality Press, (Nov. 29, 2012), [http://www.seac.gov.cn/art/2012/11/29/art\\_3959\\_171894.html](http://www.seac.gov.cn/art/2012/11/29/art_3959_171894.html).

<sup>124</sup> *Pyongyang North Korea hosted copyright and intellectual property seminar*, The Xinhua News Agency, (Apr. 11, 2011).

<sup>125</sup> *Id.*

<sup>126</sup> *North Korea Copyright Bureau deputy chief Zhangzechun visited China copyright centre*, (Nov. 26, 2009), <http://bbs.qjy168.com/445923.html>

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Wang Lu, He Zhimin met with the deputy director of the North Korean Invention Bureau and his delegation in Beijing*, The Intellectual Property Periodical, (May 28, 2014), [http://www.sipo.gov.cn/jldzz/hzm/zyhd/201405/t20140528\\_956743.html](http://www.sipo.gov.cn/jldzz/hzm/zyhd/201405/t20140528_956743.html).

<sup>130</sup> *Decision of UN Sanctions Committee on WIPO's Technical Assistance to DPRK*, Geneva, the World Intellectual Property Organisation, September 24, 2012, PR/2012/720, [http://www.wipo.int/pressroom/en/articles/2012/article\\_0019.html](http://www.wipo.int/pressroom/en/articles/2012/article_0019.html).

<sup>131</sup> *Id.*

Pyongyang IP Centre set up an office in Beijing to undertake the task of registering and protecting IP and promoting its circulation.<sup>132</sup>

The realization of the value of copyright translates both into its endeavours in enforcing its copyright overseas and into its striving to generate earnings from copyright. As seen before, North Korea sued Japanese companies for copyright infringement for their unauthorized broadcasts of part of the film produced in North Korea.<sup>133</sup> Then, North Korea Daily sued DUEM, the internet portal of South Korea for infringement of copyright in the contents of North Korea Daily because contents were not deleted after having been stored for three months as mandated by the parties' agreement.<sup>134</sup> The extent to which copyright is or can be a lucrative business for the country remains to be seen, and that depends on how open the country and its corresponding economy wants to be. The film industry offers a good example. Pretty Pictures, a French film distribution company, bought the pan-European copyright of the North Korean film, *The Schoolgirl's Diary*, following its debut at the Pyongyang Film Festival in 2006.<sup>135</sup> Though it was the first North Korean film ever shown at the Cannes Film Festival in 2007, it was not well received in France with rather limited venues showing the film and making limited box income.<sup>136</sup> The movie, *Meet in Pyongyang*, was jointly produced by companies of China and North Korea, but solely financed by a Chinese company.<sup>137</sup> The North Koreans own copyright for North Korea; copyright for the rest of the world is owned by the Chinese. As with *The Schoolgirl's Diary*, the box income is quite poor in China.<sup>138</sup>

Despite the above, the actual effect of copyright law in North Korea is hard to evaluate. It is, however, quite unlikely that the law exerts any significant impact or indeed functions in any significant way. This can be appreciated from the failure of the special economic zones (SEZs) where copyright law originated. The special economic zones were established at a time when Kim Jong Il, the then country's leader realized the importance of economic development for the country. Though capitalism and profitability do not appear to fit with socialism, they are embraced for the purpose of economic development. Kim Jong Il instructed that "foreign trade should be conducted in accordance with the mechanism and principles of capitalism."<sup>139</sup> Kim Yong-nam, President of Supreme People's Assembly, stated that "we are reforming the economic system on the principle of profitability."<sup>140</sup> With those

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<sup>132</sup> *Id.*

<sup>133</sup> Case to seek an injunction against copyright infringement, etc. 2009 (Ju) No. 602, 603, Minshu Vol. 65, No. 9, 2011.12.08 at II.2. [http://www.ip.courts.go.jp/app/files/hanrei\\_en/674/001674.pdf](http://www.ip.courts.go.jp/app/files/hanrei_en/674/001674.pdf).

<sup>134</sup> *North Korea Daily sued "DAUM" for 1.0 billion yuan for infringement of copyright*, South Korea Copyright Information Net, (Oct. 8, 2008), [http://www.ipr.gov.cn/alxdarticle/alxd/alxdbq/alxdbqgj/200810/241693\\_1.html](http://www.ipr.gov.cn/alxdarticle/alxd/alxdbq/alxdbqgj/200810/241693_1.html).

<sup>135</sup> *North Korean Film Week*, *Jinghua Daily*, (Sept. 13, 2009), [http://paper.people.com.cn/jhsb/html/2009-09/13/content\\_341458.htm](http://paper.people.com.cn/jhsb/html/2009-09/13/content_341458.htm); see also Malte Herwig, *North Korea's Very Cautious Cinematic Thaw*, *N.Y. Times*, Nov. 21, 2008.

<sup>136</sup> James Person, *North Korean Film Screening: The Schoolgirl's Diary*, (Apr. 9, 2008), <http://www.wilsoncenter.org/event/north-korean-film-screening-i-the-schoolgirls-diary-i-english-subtitles>.

<sup>137</sup> *Meeting in Pyongyang: distance of two eras*, *Vista on The World*, Vol. 217, 22 (Aug. 2012) [http://www.21ccom.net/articles/qsw/qgq/article\\_2012090767154.html](http://www.21ccom.net/articles/qsw/qgq/article_2012090767154.html).

<sup>138</sup> *Id.*

<sup>139</sup> Robert Worden (ed.), *North Korea: A Country Study* 170 (5<sup>th</sup> ed. 2007).

<sup>140</sup> *Id.*

sort of overarching mentality, the country established several special economic zones to attract foreign investment and technology, develop its infrastructure, boost its employment and enhance its technological capabilities.<sup>141</sup> To ensure the success of the zones, relevant laws were put in place. Copyright law along with the processing trade law and Lock Gate Law was enacted in April 2001.<sup>142</sup> To the same end, the External Economic Legal Advice Office was set up in June 1999 to “settle legal issues with regard to international investment and trade relations”; the first private law firm was set up in August 2004.<sup>143</sup> Criminal law was revized in 2004, strengthening protection of private property and punishing violation of trade marks.<sup>144</sup> The same sort of protection is repeated throughout its subsequent revisions, and infringement of patent or trademark or industrial design made punishable for less than two years of short-term labor or less than three years of reform through labor contingent on the severity of the infringement.<sup>145</sup>

The question is: does the law function there and indeed do the SEZs succeed? Joongi holds the view that the law within the special economic zone can operate as “mini-constitution” and provide more effective legal protection within the zone than is the case without the zone in the country.<sup>146</sup> Others are less certain, believing that “it is unclear how they will operate in practice and how vigorously the government will enforce and implement them.”<sup>147</sup> Zook explicitly disagrees with Joongi. Zook argues that the law within the special economic zone such as the Raseon zone is not functional.<sup>148</sup> Unlike similar zones in China, the Raseon zone in North Korea is a failure. He attributes the dysfunction to the political control exerted over the zone by the government.<sup>149</sup> There are different legal regimes in operation, creating “contradictory principles and structures”; further, the practice of law is inconsistent.<sup>150</sup> Indeed, the legal environment in Raseon is far from certain and, as some argue, is “a worry” and is “irregular” with unlawful confiscations of assets and non-performance of contracts having no remedies.<sup>151</sup> Though some believe that Chinese enterprises may use their large involvement in infrastructure as the leverage over such irregular legal environment. This is unlikely to be the case with other investors who may well choose not to invest in the zone.<sup>152</sup>

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<sup>141</sup> *Id.* at 165.

<sup>142</sup> *Id.* at 164.

<sup>143</sup> *Id.* at 165.

<sup>144</sup> *Id.*

<sup>145</sup> The Criminal Law, 2009, art. 113 (D.P.R.K.).

<sup>146</sup> Joongi Kim, The Challenges of Attracting Foreign Investment into North Korea: The Legal Regimes of Sinuiju and Gaeseong, 27 *FORDHAM INT'L. L. J.* 1306, 1311 (2004).

<sup>147</sup> Worden, *supra* note 139 at 165.

<sup>148</sup> Darren C. Zook, Reforming North Korea: Law, Politics, and the Market Economy, 48 *STAN. J. INT'L. L.* 131, 165 (2012).

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> Andray Abrahamian, *A Convergence of Interests: Prospects for Rason Special Economic Zone*, Korea Economic Institute of America, (Feb. 24, 2012), <http://www.keia.org/publication/convergence-interests-prospects-rason-special-economic-zone>.

<sup>152</sup> *Id.*

The reality is that even Chinese enterprises experience confiscation, military force-out, and the legal uncertainty underpins discouragement to Chinese investment there.<sup>153</sup>

Sinuiju was a follow-up special economic zone. Unlike Raseon, it was granted “50 years of independent authority in almost all political and economic aspects, including legislation, administration, and judicial power . . . except diplomacy and national defense issues.”<sup>154</sup> Though the Sinuiju zone was set up to improve on the failure of the Raseon zone, the government retains the *de facto* control of the zone, resulting in its being a failure as well.<sup>155</sup> Then note that some attribute the failure largely to “difficulties over its administration and leadership.”<sup>156</sup> For the Shinuiju zone, the Shinuiju Basic Law was well designed, matching the Western standard.<sup>157</sup> However, as is the general wisdom with the laws of many countries, the law on book can often be different from the law in practice, which is particularly the case with the Shinuiju Basic Law. Prof Hong Chol-Hua from Pyongyang’s Academy of Social Sciences cited the existence of laws as proof for safeguarding foreign investment; as respects their application, he was evasive by stating that “Conflicts rarely arise in joint ventures”.<sup>158</sup>

There are other special economic zones whose success is also measured. Lee notes that “[p]eople in the West seem to be negative towards the SEZs of North Korea, because the current political situation is very unstable.”<sup>159</sup> In his opinion, the future of the special economic zones depends on many factors including “legal arrangements” and successful resolution of “nuclear crisis”.<sup>160</sup> Since Kim Jong Un came to power, he has made efforts to expand the special economic zones, and the Economic Development Zone Law was passed in May 2013 and a further 13 special economic zones were designated.<sup>161</sup> Again, doubt over their success is raised due to lack of trust and its nuclear program.<sup>162</sup>

As from the above, in attracting foreign investment, the government established the special economic zones; various economic laws including copyright law were enacted. At the very least, the success of the zones would boost the function of the law and confidence for its wider use in the whole country. However, the zones are not successful; copyright law does not function there and the benefit of copyright law has not shown. The use of the laws is rare if at all; in effect, however, the laws remain on the book. Though there are renewed efforts to enlarge the number of economic zones, their fate remains uncertain.

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<sup>153</sup> Jane Perlez, *China-Korea Tensions Rise After Failed Venture*, N.Y. Times, (Oct. 20, 2012), <http://www.nytimes.com/2012/10/21/world/asia/china-korea-tensions-rise-after-failed-venture.html>; see also Ian Jeffries, *North Korea, 2009-2012: A Guide to Economic and Political Developments* (2012).

<sup>154</sup> Worden, *supra* note 139 at 167.

<sup>155</sup> Zook, *supra* notes 148.

<sup>156</sup> Worden, *supra* note 139 at 167.

<sup>157</sup> Eric Yong-Joong Lee, *The Special Economic Zones and North Korean Economic Reformation with a Viewpoint of International Law*, 27 *Fordham Int'l L. J.* 1343 (2003).

<sup>158</sup> Tania Branigan, *Pyongyang is booming, but in North Korea all is not what it seems*, *The Guardian*, (Jan. 15, 2015), <https://www.theguardian.com/world/2015/jan/15/sp-pyongyang-north-korea-kim-jong-un>.

<sup>159</sup> Lee, *supra* note 157.

<sup>160</sup> *Id.*

<sup>161</sup> Kim Min Soo, *North Korean Economic Development Zones*, *Daily NK: Live from Seoul*, (Aug. 4, 2014), <http://www.dailynk.com/english/read.php?cataId=nk00400&num=12167>.

<sup>162</sup> *Id.*

Overall, the country realizes the importance of copyright in its development. However, copyright does not appear to exert any meaningful influence on its economic development and indeed, as is to be seen later, on the development of arts and literature. In the following section, we explore various factors hindering the functioning of copyright in North Korea.

## HINDRANCES TO COPYRIGHT

There are many hindrances to the functioning of copyright in North Korea. First, the judicial system is inimical rather than conducive to the functioning of law. Second, culture does not appear to favour copyright. Third, the political situation goes against copyright, so does the economic reality. We are to address each of the factors in turn below.

### (1) Legal system/court hierarchy

There are three levels of courts in North Korea. The highest court is the Central Court followed by twelve provincial courts for each of the 12 provinces serving as the highest appeal courts, and the lowest courts of the People's Courts at the county level.<sup>163</sup> The provincial courts are the intermediate courts between the Central Court and the People's Courts. In Namp'o, a special city under the direct authority of the central government, the provincial or municipal courts serve as the courts of first instance.<sup>164</sup> There are special courts of the Military Court and the Railroad Court; the former handles crimes committed by members of armed forces or the personnel of the Ministry of People's Security and the latter has jurisdiction over criminal cases involving rail and water transport workers.<sup>165</sup> Furthermore, maritime legal issues fall within the jurisdiction of the Korean Maritime Arbitration Committee.<sup>166</sup> Judges of the special courts are appointed by the Central Court.<sup>167</sup> Judges of the Central Court are elected by the People's Supreme Assembly and "the corresponding local people's assemblies elect judges and people's assessors, or lay judges."<sup>168</sup>

Parallel to the above hierarchy is the Central Procurators' Office. The procurators' job is to "oversee the fulfilment of laws by all institutions and individuals," to "lead the investigation and support the state accusations in court" and to ensure that "the courts correctly execute their judicial function."<sup>169</sup> The Office is empowered to protest the judgment of the Central Court by compelling the plenum of the Central Court to review the case in issue; the state's Chief Procurator sits as a statutory member of the plenum.<sup>170</sup>

There is no independence of judiciary; and law is not supreme in North Korea. Kim Il Sung gave law the "subordinate" status by treating it as "an important weapon for implementing

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<sup>163</sup>Zook, *supra* note 148.

<sup>164</sup> Worden, *supra* note 139 at 201.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> Art. 155, Constitution D.P.R.K (2009).; *see also* Worden, *supra* note 139 at 276.

<sup>168</sup> Worden, *supra* note 139 at 201.

<sup>169</sup> Philip Rudolph, North Korea's Political and Economic Structure 24 (New York, International Secretariat, Institute of Pacific Relations 1959).

<sup>170</sup> Worden, *supra* note 139; Worden, *supra* note 139 at 276.

the policies of our state.”<sup>171</sup> As the policies of the state are synonymous with “the policies of our party,” Kim insisted that “Law cannot exist by itself without a definite basis”; rather, as “a reflection of policy,” law is not to be “divorced” from policy but “must be subordinate to policy.”<sup>172</sup> According to Kim Il-sung, one may argue “on fine points of the law” but one is not allowed to “distort the basic spirit of the laws by interpreting them independently of political imperatives.”<sup>173</sup> The ideals of Korean Workers’ Party (KWP) guide the state, as embodied in the Constitution of North Korea.<sup>174</sup> The KWP plays a key role in the judicial system. Lawyers are not widely used if at all. Indeed, it is commonplace that “People are denied access to lawyers, or any right to defend themselves, and are sentenced without any knowledge of what their sentence will be, in terms of length, or where they will end up.”<sup>175</sup>

Then, the courts in North Korea do not function in such a way as to merely facilitate the resolution of disputes. Apart from adjudication, the courts are also tasked with “political indoctrination through re-education.”<sup>176</sup> The courts “facilitate the exercise of power in the interest of the state” and “inculcate what the state considers ‘right’ thought and behaviour through the application of the law.”<sup>177</sup> Peculiar to the judicial function of North Korea is that “the court in its activity combines methods of persuasion with methods of compulsion.”<sup>178</sup> Further, North Korea implements “collective punishment” for crimes against the state; that means that once a family member is convicted, the whole family is incriminated in that they may be denied education, employment or access to public distribution of food; marriage to politically correct family may be prohibited; further, they may not even live in Pyongyang.<sup>179</sup>

Judges’ lack of expertise in law is also a concern over the proper delivery of justice. In North Korea, “Political loyalty and ideological reliability” rather than “legal experience or legal education” determine the appointment of judges at all three levels of courts.<sup>180</sup> In truth, legal education is not even required by the Constitution “as a qualification for being elected as a judge or people’s assessor.”<sup>181</sup> As noted before, theoretically, the respective people’s assemblies are tasked with the election of judges and assessors; in practice, it is the KWP that appoints judges without regard to legal education or experience.<sup>182</sup> It must be noted that

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<sup>171</sup> Sung Yoon Cho, *Law and Legal Literature of North Korea: A Guide* 17 (1988).

<sup>172</sup> *Id.*

<sup>173</sup> Kim Il-sung, *In order to Carry Out Our Party’s Judicial Policies* at p. 222.

<sup>174</sup> Sung Yoon Cho, *Law and legal literature of North Korea: A Guide* at p.17 (1988).

<sup>175</sup> Michael Glendinning, director of the European Alliance for Human Rights in North Korea (EAHRNK) as cited in Meabh Ritchie and Colin Freeman, “North Korea video shows two on trial for watching American films,” *the Independent*, 04 Sep 2015,

<http://www.telegraph.co.uk/news/worldnews/asia/northkorea/11840092/North-Korea-video-shows-two-on-trial-for-watching-American-films.html>

<sup>176</sup> Victor Cha and Balbina Hwang, *Government and Policies*, in Robert Worden (ed), *North Korea: A Country Study* 201 (5<sup>th</sup> ed) (2007)

<sup>177</sup> Zook, *supra* note 148.

<sup>178</sup> Philip Rudolph, *North Korea’s Political and Economic Structure* 25 (New York, International Secretariat, Institute of Pacific Relations) (1959).

<sup>179</sup> Zook, *supra* note 148.

<sup>180</sup> *Id.*

<sup>181</sup> James Minnich, *National Security*, in Robert Worden (ed), *North Korea: A Country Study* 276 (5<sup>th</sup> ed) (2007)

<sup>182</sup> Victor Cha and Balbina Hwang, *Government and Policies*, in Robert Worden (ed), *North Korea: A Country Study* 201 (5<sup>th</sup> ed) (2007).

“Over time, however, legal training has received more emphasis, although political reliability remains the prime criterion for holding office.”<sup>183</sup> In commercial law, viz., the trade and economic law, the judges do obtain and possess expertise through gradual cultivation.<sup>184</sup> In an effort to develop its economy in the special economic zones, the scope of trade and economic law is “expanded and enhanced”; as such law is still not separated from politics, it continues to be “a jurisdictional nightmare”.<sup>185</sup>

### (1) Culture as a hindrance

Culturally, Confucius is enmeshed in the North Korea society.<sup>186</sup> Confucius teaches that people must show “obedience to authority” and accept their position in the “hierarchical social order” and that “preservation of harmony within the social order is of paramount importance”.<sup>187</sup> Such teaching is adopted by North Korean leaders and “Kim Il Sung and Kim Jong Il have consciously attempted to wrap themselves in the mantle of Confucian virtues.”<sup>188</sup> With Confucian teaching assuming such paramount influence in North Korea, the question is what effect it may exert on the acceptance of copyright there. In answering that question, it is useful to examine the impact of Confucius on copyright in its originating country of China.

Confucius, as Alford argues, has hindered the Chinese society in its acceptance of copyright for a long time.<sup>189</sup> Confucius shows reverence for the past, insisting, “I transmit rather than create; I believe in and love the Ancients.”<sup>190</sup> The true owner of intellectual creation resides in the past; later generation merely serves as a conduit for the passing on of that creation; monopolising intellectual creation through copyright as private property cannot be reconciled with Confucius.<sup>191</sup> That incongruence with Confucius is further reflected in Confucius’s contemptuous stance against pursuit of profit; to Confucius, “when profit is not emphasized, civilisation flourishes and the customs of the people improve... To open the way for profit is to provide a ladder for the people to become criminals.”<sup>192</sup> But pursuit of profit is integral to copyright.

If one accepts the above thesis concerning the hindrance of Confucius to the Chinese society’s acceptance of copyright, one may contend that copyright as private property over what belongs to the past cannot be accepted by the North Korean society and copyright law can hardly function, given the embracement of the same philosophical teaching there. Notably, though, unlike China which had long despised intellectuals and denied them any

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<sup>183</sup> James Minnich, National Security, in Robert Worden (ed), North Korea: A Country Study 276 (5<sup>th</sup> ed) (2007)

<sup>184</sup> Zook, *supra* note 148.

<sup>185</sup> *Id.*

<sup>186</sup> William A Boik, Understanding the North Korea problem : why it has become the "land of lousy options," Carlisle, PA : Strategic Studies Institute, U.S. Army War College 37, 2011.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> W.P. Alfred, To steal a book is an elegant offence: Intellectual Property Law in Chinese Civilization (Studies in East Asian Law, Harvard University) (1995).

<sup>190</sup> The Analects of Confucius, bk. 7, chp 1 (1988).

<sup>191</sup> *Id.*

<sup>192</sup> As cited in Kenneth Leiberthal, Governing China: From revolution through reform 5, (1995).

property right over the fruits of their creation historically and in modern times, North Korea had never exiled and banished intellectuals.<sup>193</sup> Rather, the regime recognised “the essential roles of intellectuals and professional workers in society” and “an educational population and skilled technicians were needed to rebuild the industrial bases that had been established during the Japanese colonial period but destroyed during the Korean War.”<sup>194</sup> Despite the different treatment of intellectuals, the Confucian ideal still goes against granting intellectuals the exclusive right in the form of copyright for the fruit of their creations. Rather, they can receive preferential treatment by other means than copyright. Indeed, as is to be seen in the next part, personal spiritual reward other than in the form of copyright is often employed; in fact, copyright is far from significant to the intellectual creators; it is instead sacrificed for the cause of the regime under its political hegemony.

Confucian influence not only shapes the general culture but also the legal culture. Per Confucius, it is in morality rather than the rule of law that governing a country lies – “If virtuous men lead by moral example, good government will follow naturally.”<sup>195</sup> Thus, it is no surprise that in North Korea moral suasion prevails over law; law is regarded “as a last resort against a morally intractable person”.<sup>196</sup> Indeed, the concept of the rule of law is lacking; the general public regards the law “as an autocratic decree or as a tool for the rigid political regimentation.”<sup>197</sup> As such, it is unlikely for the general public to naturally invoke copyright law to defend their rights; it is even more unlikely where the infringers are the state or its institutions and agencies.

## (2) Political and economic hindrances

Politically, it is debatable to what extent the regime is willing to give intellectuals as copyright owner the whole-hearted free reign in exercising their copyright as private property. As seen in its copyright law, one may own copyright, but it is the relevant government department that dictates its exploitation, fixes the amount of royalty and approves its sale to a foreign person or body incorporate.<sup>198</sup> The state controls the implementation of copyright<sup>199</sup> and the relevant department plays the supervisory role in controlling copyright and dealing with infringement.<sup>200</sup> Hence, political consideration inevitably trumps copyright where applicable. Take the moral rights for works of art for example, the author enjoys the moral rights absolutely under North Korean copyright law in all cases including commissioned works and works created by employees. On the face of it, in contrast with some jurisdictions,<sup>201</sup> that sounds like protecting the author’s right seriously.

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<sup>193</sup> Bruce Cumings, *Historical Setting*, Robert Worden (ed), *North Korea: A Country Study* 50 (5<sup>th</sup> ed) (2007).

<sup>194</sup> Helen-Louise Hunter, *The society and its environment*, in Robert Worden (ed), *North Korea: A Country Study* 79 (5<sup>th</sup> ed) (2007).

<sup>195</sup> Bill Mihalopoulos, *Sex in Japan's Globalization, 1870–1930: Prostitutes, Emigration and Nation-building* 149 (Routledge 2016).

<sup>196</sup> Korea North General Secretary Kim Jong Ilm edited by USA International Business Publications 87, 2011.

<sup>197</sup> *Id.*

<sup>198</sup> Art. 45, CLDPRK (2006).

<sup>199</sup> Art. 45, CLDPRK (2006). Art 41, the Copyright Law of the DPRK 2006.

<sup>200</sup> *Supra* note 198.

<sup>201</sup> For example, UK law does not grant the employee author the right of attribution (s79(3), the CDPA 1988); further, the employer is not liable for infringing the right of integrity where it puts the employee work to

But the state exerts political control over works of art from their production to exhibition so that it would indoctrinate people's "hearts and minds".<sup>202</sup> This is not surprising, as it is common knowledge that governments, totalitarian or otherwise, often exert their ideologies on their people through works of art especially such public art as sculpture. Portal notes the moment in history in Paris where 150 public statues were erected there, reaching "statuomania" in the late eighteenth century.<sup>203</sup> The totalitarian governments, however, can go further by controlling both the productions of art and the destruction of artistic works as deemed "inappropriate".<sup>204</sup> Examples abound, ranging from Nazi Germany, to the Red Guards in China during the Cultural Revolution destroying antiquities per Chairman Mao's instruction, to the Taliban blowing up the giant Buddha statues in Afghanistan in 2001, and to the toppling of the statue of Saddam Hussein in 2003, and to the destruction of statues of Communist autocrats following a wave of change of regimes in the former Socialist states.<sup>205</sup> Given the dictatorial political control over all works of art permeating the society of North Korea, it is difficult to imagine that the moral rights such as the integrity right would be of any relevance to the artist in reality. Where there is the political will or necessity to alter or destroy works of art in North Korea, the moral right on the book may never be invoked in practice to prevent those infringements.

Indeed, the state control permeates copyright law itself; rather than truly protect the creation of individuals, it serves to strengthen its political agenda of controlling its people's "hearts and minds". The copyright law of North Korea is claimed to have two aims; first, to protect the rights of the copyright owners; second, to contribute to the development of literature and the arts and science and technology.<sup>206</sup> Those two aims are to be achieved by the establishment of "a strict system and order in the use of copyrighted works."<sup>207</sup> The law is not enacted explicitly to incentivise creation. The question is, what incentivises people such as artists to create if copyright law does not aim to serve or facilitate that function and indeed in what sense does copyright contribute to the development of literature and arts etc in North Korea? Again, take works of art as an example, the artists generally work in state-owned organisations: "they enjoy high social status, the state gives them quite favourable treatment, provides housing, and in the case of highly acclaimed artists, provides special cars."<sup>208</sup> It is the state that owns the work of artists; the price of artwork is fixed by the workplace of the artist or creation community; all revenues generated by the sale of artwork are paid into the state coffer; the artists are not given any share of them.<sup>209</sup> The regime justifies the above by

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derogatory treatment if the author is not identified; where the author is identified, then, to avoid infringement, the employer is only required to put in place a disclaimer to the effect that the treatment is made without the employee author's consent (s82(1)&(2), the CDPA 1988).

<sup>202</sup> Jane Portal, *Art under Control in North Korea*, Reaktion Books, 10 (2005).

<sup>203</sup> *Id.* at 12.

<sup>204</sup> Jane Portal, *Art Under Control in North Korea*, Reaktion Books, 7, (2005).

<sup>205</sup> *Id.*

<sup>206</sup> Art. 1, CLDPRK (2006).

<sup>207</sup> *Id.*

<sup>208</sup> Cui Zhenai, curator, North Korean Culture Department Fine Art Exhibition, as cited in North Korean artists' work belongs to the state and is not for personal transaction, Beijing International online, 12 July 2007, <http://news.163.com/07/0712/09/3J6MLPM200011248.html>.

<sup>209</sup> Introduction to investment in North Korean painting, the Consulate General of the DPRK in the PRC, Beijing, 28 July 2013, <http://news.zhuokearts.com/newsview.aspx?id=195206>.

employing the following rationale, namely, “To the artists, the state gives them the opportunity to receive education and training, provides them with the sites, tools and conditions for creation; as such, it is natural that they return motherland and provide people with the best spiritual wealth by means of their artistic creation.”<sup>210</sup> As far as the incentive for creation is concerned, it is thus the repaying of the indebtedness to motherland that incentivises creation; “the artists have no commercial incentives or motives to create; they wholeheartedly create for the state.”<sup>211</sup> In terms of reward, it is “spiritual,” coming in the form of a certificate of commendation “highly precious to the artists”.<sup>212</sup> In addition, the state gives them “an annual gift” which, though not necessarily expensive, is significant in serving as “the spiritual inspiration”.<sup>213</sup>

It can be seen from the above that, contrary to the proclaimed aim of North Korean copyright law, copyright apparently does not play a role in the development of literature and art. As copyright in artwork is owned by the state, copyright law in fact protects the interests of the state; it further strengthens the control of the state in artwork by preventing the artists from dealing with their own creations; should they do so, they would infringe the copyright of the state. That squarely puts copyright beyond the reach of the artists; rather, that brings copyright within the fold of the state to strengthen its control over the development of art.

The regime also ensures that its copyright law helps to maintain its political propaganda. With respect to foreign works, the regime has the political will to censor its protection as reflected in its copyright law. North Korean copyright law makes it clear that, where a work is prohibited from publication, issuance, performance, broadcasting, showing and exhibition, its copyright is not protected.<sup>214</sup> As the vast majority of foreign works are so prohibited, they are *de facto* denied copyright. Under North Korean criminal law, importing, making, distributing, keeping or even watching or listening to “music, dance, drawings, photos, books, video recordings or electronic media that reflects decadent, carnal or foul contents” is an offence subject to short-term labour for less than two years or, in the case of grave offence, reform through labour for less than five years.<sup>215</sup> The provision can achieve wide coverage, given the possibility of all-catching political interpretation of “decadent, carnal or foul contents.” In truth, evidence shows that it is a serious crime to watch American films and in one instance the offender is sentenced to the labour camp for nine months.<sup>216</sup> Further, any

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<sup>210</sup> Cui Zhenai, curator, North Korean Culture Department Fine Art Exhibition, as cited in Painting of North Korea: Goldmine ready to be unearthed with huge potential, the Xinhua net, 20 September 2011, [http://news.xinhuanet.com/collection/2011-12/20/c\\_122450341.htm](http://news.xinhuanet.com/collection/2011-12/20/c_122450341.htm)

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> Art. 6, CLDPRK (2006).

<sup>215</sup> Art. 193 and 194, Criminal Law of the Democratic People's Republic of Korea (2009); It is also an offence to import, keep or distribute sexual video recordings subject to the reform through labour for more than five years and less than ten years (Article 193).

<sup>216</sup> Meabh Ritchie and Colin Freeman, “North Korea video shows two on trial for watching American films,” the Independent, 04 Sep 2015 (“Rare video footage, filmed secretly and smuggled out of North Korea, shows the open air public trial of two men who are sent to a labour camp for crimes related to “the corrupt ideology of capitalism”), <http://www.telegraph.co.uk/news/worldnews/asia/northkorea/11840092/North-Korea-video-shows-two-on-trial-for-watching-American-films.html>.

broadcasting “hostile to the Republic” is prohibited; anyone listening to, collecting or distributing such broadcast is criminally liable and subject to punishment for short-term labour for less than two years or reform through labour for less than five years.<sup>217</sup>

Despite prohibition of relevant foreign works, the reality is that they are pirated and circulated in North Korea, causing huge loss of revenues to the copyright industry such as the film industry. There are, for example, stores that secretly make pirate DVDs of foreign films smuggled into North Korea from China; those DVDs are then sold to consumers in the country.<sup>218</sup> The illicit foreign films include *Titanic*, *Superman Returns*, *James Bond* and *Pretty Woman*.<sup>219</sup> The elites and state officials are not only consumers but also are involved in the dealings.<sup>220</sup> Overseas Chinese are involved in the business either directly or through leaking those DVDs to local North Koreans who then make pirate versions for circulation in North Korea.<sup>221</sup> MP3/4 players are used to play pirate South Korean songs. Foreign movies and music are shared through MP3 players.<sup>222</sup> USB flash drives are replacing CDs and DVDs for copying and sharing foreign media, as prevalent among young elites and students.<sup>223</sup>

Irrespective of the loss of revenue to the foreign copyright owners, copyright piracy serves the useful purpose of disseminating Western values and offering North Koreans “a rare window on the outside world.”<sup>224</sup> Pirated DVDs, probably “the greatest force for change,” enable “nearly everyone” to watch South Korean soap operas.<sup>225</sup> As one escapee from North Korea said, “I was told when I was young that South Koreans are very poor, but the South Korean dramas [accessed from the illegal DVDs] proved that just isn’t the case.”<sup>226</sup> To Park Yeon-mi, another North Korean defector, “Watching *Titanic* made me realise something was wrong in my country.”<sup>227</sup> Change also occurs to the regime itself. Due to the widespread circulation of pirated DVDs, the North Korea regime has now dropped its old propaganda that “South Korea is a destitute colony of U.S. imperialism.”<sup>228</sup> Indeed, copyright piracy by modern technology serves as a more powerful means of enlightening the people of North Korea than the traditional means of dissemination of information such as radio broadcasts.

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<sup>217</sup> Art. 95, Criminal Law of the Democratic People's Republic of Korea (2009).

<sup>218</sup> Nat Kretchun and Jane Kim, A QUIET OPENING: North Koreans in a Changing Media Environment, InterMedia, May 2012, [http://audiencescapes.org/sites/default/files/A\\_Quiet\\_Opening\\_FINAL\\_InterMedia.pdf](http://audiencescapes.org/sites/default/files/A_Quiet_Opening_FINAL_InterMedia.pdf) at 19.

<sup>219</sup> Stephan Haggard and Marcus Noland, Witness to Transformation: Refugee Insights into North Korea (Peterson Institute for International 2011); Nathan Thompson, “Watching Titanic made me realise something was wrong in my country,” says North Korean defector,” the Guardian, 26 August 2014, <http://www.theguardian.com/world/2014/aug/26/north-korea-defector-titanic>.

<sup>220</sup> Nat Kretchun and Jane Kim, A QUIET OPENING at 19.

<sup>221</sup> *Id.* at 20.

<sup>222</sup> *Id.* at 58.

<sup>223</sup> *Id.*

<sup>224</sup> Nathan Thompson, “Watching Titanic made me realise something was wrong in my country,” says North Korean defector,” the Guardian, 26 August 2014.

<sup>225</sup> Not the Pyongyang Times, Journalism that carries the death penalty, The Economist, Jan 20th 2011, <http://www.economist.com/node/17969948>.

<sup>226</sup> *Id.*

<sup>227</sup> *Supra* note 224.

<sup>228</sup> Professor Lankov of Kookmin University as quoted in Lucy Craft, TV drama from South saturates black market in North Korea, bringing hope, and risk, CBS NEWS, December 10, 2013, <http://www.cbsnews.com/news/north-koreas-dangerous-addiction-to-daytime-tv/>.

Undoubtedly, the old means of spreading democracy and information by radio has its own limitation; the BBC World Service, though “operationally, editorially and managerially independent,” was financially constrained and, as from the end of 2013, could no longer afford to continue broadcasting to the country in the Korean language.<sup>229</sup>

Thus, copyright piracy poses difficult questions for foreign governments and copyright owners. On the one hand, they may want to pressurise North Korea into respecting their IP rights by stopping those piracies. On the other hand, however, they may refrain from doing so because stopping the piracy would deprive the people of North Korea of the valuable means of knowing about the truth and of the opportunity to “pierce” the indoctrination of the regime. Furthermore, they would not want to be perceived as accomplices in the regime’s suppression of its people. The North Korean regime has implemented severe punishment including execution to deter the circulation of foreign films (apparently pirated copies).<sup>230</sup> Copyright could be used to stop those piracies. In that case, rather than truly protect property, the regime would be abusing copyright as a vehicle of suppression to maintain its political control and brainwashing. As such, foreign governments and copyright owners would probably hesitate to enforce their copyrights so as to dissociate themselves from such an abuse.

As far as North Korean works are concerned, the regime may show willingness to protect their copyrights where they do not oppose the regime or relate to politics. However, the difficulty is that the country’s economic reality hinders the function of copyright law. Though, as is to be seen in the next part, it experiences some economic development in recent years, North Korea is still a poor country. Poverty hinders the function of copyright law, furthermore, lack of economic power also prevents the fruitful exploitation of copyright in its relationship with other countries. Though it has a strong film industry, it is put at a disadvantage in exploiting its copyright worldwide. As noted before, the copyright for *The Schoolgirl’s Diary* outside North Korea is owned by China.<sup>231</sup> A South Korean company has now bought copyright for overseas and the box income shall be shared between the Chinese and South Koreans.<sup>232</sup> Whether that would bring in good income would not concern North Korea; it shows that such a weak economy as North Korea lacks the bargaining power for worldwide exploitation of copyright and that copyright does not appear to function well with respect to its film industry.

As from the above, North Korea is seized with strict political control and stricken with poverty. Strict control and poverty undoubtedly engender corruption; corruption then undermines the enforcement of law with the law enforcement officials accommodating or conniving infringement of intellectual property rights.<sup>233</sup> Indeed, it is those elites or

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<sup>229</sup> The Deputy Prime Minister, House of Commons, Hansard, Column 316, *Wednesday 12 March 2014*.

<sup>230</sup> Lizzie Dearden, North Korean officials 'publicly executed for watching South Korean soap operas', *The Independent*, 29 October 2014, <http://www.independent.co.uk/news/world/asia/north-korean-officials-publicly-executed-for-watching-south-korean-soap-operas-9825170.html>.

<sup>231</sup> “Meeting in Pyongyang: distance of two eras, *Vista on the world*, vol. 217, 22 August 2012, [http://www.21ccom.net/articles/qqsww/qqgc/article\\_2012090767154.html](http://www.21ccom.net/articles/qqsww/qqgc/article_2012090767154.html).

<sup>232</sup> *Id.*

<sup>233</sup> Zook, *supra* note 148.

government officials who enjoy the elitist status in the highly hierarchical society of North Korea giving them protégé from the force of law and who would, consequently, dare to engage in piratical activities.<sup>234</sup> Unsurprisingly, it would be difficult to stamp out infringement and counterfeiting under its current legal system as enforcement of law “is open to negotiation in ways that seem to circumvent any recognisable system of legal procedure.”<sup>235</sup>

## THE FUTURE OF COPYRIGHT

We show various hurdles and impediments to the function of copyright above. Given those hindrances, the question is, can copyright ever function in the country and indeed can the world intellectual creations be protected there? Logically, cultural, political and economic changes together with judicial reform are necessary for copyright to function. It does not require much for one to appreciate the difficulty for those changes to take place, though. However, it is not impossible as the history of China shows. Economic change could be the first step; indeed, copyright is inherently linked with economic development and it is of no significance in a poverty-stricken economy. For its economy to develop, North Korea would certainly need trade and investment with the outside world. Given its nuclear ambition, the outside world is not engaging North Korea, which is not helping with economic change, far less, political, cultural and judicial changes. We recommend engagement to bring about all-rounded changes and it is our stance that unless the world community engages with the country it is unlikely that copyright shall fully function there.

North Korea recognises copyright as private property and shows willingness to use copyright in its development. In pursuit of economic development, changes are taking place in North Korea. With the reform in special economic zones, “the Kim Jong Il regime has started down a path that is difficult to reverse and also holds the potential to spark real change in North Korea.”<sup>236</sup> Indeed, retailing has mostly been private for decades there.<sup>237</sup> Following Kim Jong Il, the new leader, Kim Jong Un shows more tolerance toward markets and is embarking on a course once taken by China, that is, encouraging the market economy and moving the country toward capitalism without giving it such an appellation.<sup>238</sup> Investment from and trade with China prompts the emergence of aspects of market economy such as the allowance of pecuniary incentives based on performance.<sup>239</sup> Then the North Korean scholars openly recommend that the state adopt a positive attitude toward market economy; and thousands of cadres are dispatched to China to learn about the economy and the development of science and technology there.<sup>240</sup> Some enterprises in North Korea are essentially run in the capitalist

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<sup>234</sup> See generally, Nat Kretchun and Jane Kim.

<sup>235</sup> Zook, *supra* note 148.

<sup>236</sup> David Kang, *The Economy*, in Robert Worden (ed), *North Korea: A Country Study* (5<sup>th</sup> ed), 172 (2007).

<sup>237</sup> Andrei Lankov, *Historian: North Korea will reform economically, but not politically*, *Fault Lines*, January 16, 2015, <http://america.aljazeera.com/watch/shows/fault-lines/articles/2015/1/16/historian-north-koreawillreformeconomicallybutnotpolitically.html>.

<sup>238</sup> *Id.*

<sup>239</sup> James Reilly, *China’s market influence in North Korea*, (2014) *54*(5) *Asian Survey* 894-917.

<sup>240</sup> *Id.*

way for profit and their managers retain much of the profit.<sup>241</sup> Then, capitalism has already shown its influence over the young generation. Young people aged between 20 and 30 use smart phones to engage in business ranging from retailing, real estate, loan, gas station and tea houses, making money in the capitalist way.<sup>242</sup>

The reality is that North Korea is “a malnourished country” but it is not “starving”. Rather, its economy is steadily growing with 1.3 percent growth rate per annum over the past 15 years and a projected growth of 5 to 6 percent for the year of 2015.<sup>243</sup> Indeed, “There is no comparison between the North and developed countries like South Korea. But it fits in if compared to developing countries in Asia, Africa and Latin America.”<sup>244</sup> Though not integral to the international community, it is far from being a “hermit kingdom” with its active involvement in Asia and Africa ranging from training and educating hundreds of its students overseas, to dispatching thousands of North Koreans to work in China and Mongolia, to constructing work in Cambodia, and to developing its cartoon industry and software industry for iPhone, to say nothing of operation of international brands in its capital.<sup>245</sup> Then the latest statistics promulgated by the South Korea Trade Council showed that IT equipment is steadily gaining popularity in North Korea and by the end of June 2014, more than 2.4 million people there use mobile phones accounting for 10% of its whole population.<sup>246</sup> As seen before, North Korea is to establish more special economic zones in its twelve provinces and municipal city under direct central authority.<sup>247</sup> The proclaimed purpose is to improve economic development and people’s living standard and enlarge economic exchange with countries all over the world.<sup>248</sup>

With the economic changes taking place, it is possible for copyright to function. However, lack of engagement with the country prevents any further progress in the function of law and indeed in any respects including resolution of the regime’s nuclear ambition. Note the above stance of the US government over the unauthorised use of Walt Disney’s cartoon characters and the infuriation of the people concerned over the counterfeiting activities engaged by North Korea. Infuriation does not, though, go anywhere; it is a futile attempt to enforce any copyright there.

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<sup>241</sup> *Supra* note 237.

<sup>242</sup> South Korea Media: North Korean Youth hit rich by real estate, China Daily Net, 25 November 2014, <http://news.cntv.cn/2014/11/25/ARTI1416869058658393.shtml>.

<sup>243</sup> The figures are the official estimated figures by the South Korea Government as quoted by Andrei Lankov, Historian: North Korea will reform economically, but not politically, Fault Lines, January 16, 2015, <http://america.aljazeera.com/watch/shows/fault-lines/articles/2015/1/16/historian-north-koreawillreformeconomicallybutnotpolitically.html>.

<sup>244</sup> Joel Wit and Jenny Town, It's Not a Hermit Kingdom, and 4 Other Myths About North Korea, Mar 29 2013 <http://www.theatlantic.com/international/archive/2013/03/its-not-a-hermit-kingdom-and-4-other-myths-about-north-korea/274488/>.

<sup>245</sup> *Id.*

<sup>246</sup> South Korea Media: more than 2.4 million people use mobile phones IT equipment gain steady popularity, China News Net, 30 January 2015, <http://www.chinanews.com/gj/2015/01-30/7021274.shtml>.

<sup>247</sup> North Korea plans to establish multiple economic zone with “unique” privilege, China News Net, 13 November 2014, <http://news.cntv.cn/2014/11/13/ARTI1415847590242232.shtml>.

<sup>248</sup> *Id.*

Indeed, “It is difficult for any nation to influence or have an impact on another if it refuses to engage.”<sup>249</sup> It is true that the North Korea leader may be reluctant to engage with the outside world.<sup>250</sup> Engagement with the outside world would serve as “a double-edged sword” - opening up to the outside world could help to develop its economy but that could also enable its people to see through the problems with the regime, thereby risking “the preservation of the regime” and posing the challenge to the regime on how to control its people and how to manage their “expectations and grievances”.<sup>251</sup> It is, however, far from true that the world community should isolate the country. Indeed, people such as Boik are adamant in recommending engagement as the way forward. In engaging with the regime, the US must first accept the current regime of North Korea and work within the country’s mentality of “preservation of the regime”; and it can start to influence North Korea by providing, inter alia, economic assistance.<sup>252</sup> The new regime under Kim Jong Un shall not abandon its nuclear programme; but it certainly desires to develop its economy.<sup>253</sup> Though those two pursuits are regarded as “contradictory,”<sup>254</sup> they are unlikely to change. However, what can change is the way in which the economy can be developed and the nuclear programme diverted for peaceful use. In tracing the root cause of North Korea’s nuclear programme, it can be noted that the country’s nuclear ambition lies in its perceived threat to its regime from countries such as the US possessing military presence on the peninsula; hence, “the possession of nuclear weapons can be used as a deterrent against a perceived risk of attack.”<sup>255</sup> Then, for the country to abandon its nuclear weapons programme, its “perceived vulnerability” must be “significantly reduced.”<sup>256</sup> Engagement with the regime is as important a pre-requisite for mitigating its perceived vulnerability as the forgoing of any attempted democracy “promptly and forcefully pushed” to the regime.<sup>257</sup>

Economic engagement with the aim to bring about political change and peaceful resolution of its nuclear programme provides the best way forward. The best policy for the West, as Abt argues, “is to support market forces to invest and engage” and indeed “Market forces are the strongest agent of change.”<sup>258</sup> Some oppose such a solution. Their rationale is this. The

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<sup>249</sup> William A Boik, *Understanding the North Korea problem : why it has become the "land of lousy options,"* Carlisle, PA : Strategic Studies Institute, U.S. Army War College, 2011 at p.53.

<sup>250</sup> *Id.*

<sup>251</sup> *Id.* at 54.

<sup>252</sup> *Id.* at 53.

<sup>253</sup> Anonymous, “There Are Tantalizing Signs of Liberal Reforms in North Korea,” *The Economist*, 28 February 2015. (“It may be that the regime wants to develop the economy. But it is certainly not going to do so at the expense of developing nuclear weapons--or of lessening the repression and state violence by which it stays in power.”)

<sup>254</sup> Alastair Gale, *North Korea Signals New Economic Push*, *The Wall Street Journal*, Dec. 27, 2013, <http://www.wsj.com/articles/SB10001424052702304753504579281770272632030>.

<sup>255</sup> Joachim Krause and Andreas Wenger (eds.), *Nuclear Weapons into the 21st Century: Current Trends and Future Prospects*, Bern, Switzerland: Peter Lang AG, European Academic Publishers, 2001 at 230, quoted in Kwang Ho Chun.

<sup>256</sup> Kwang Ho Chun, *North Korea’s nuclear question: sense of vulnerability, defensive motivation, and peaceful solution*, Carlisle, Pa.: Strategic Studies Institute, U.S. Army War College, 2010 at v & viii.

<sup>257</sup> *Id.*

<sup>258</sup> Felix Abt as quoted in Stephen Evans, *A quiet revolution in North Korea*, 14 January 2015, *BBC News*, <http://www.bbc.co.uk/news/business-30812237>.

“marketization necessary to revitalise the economy” erodes state control.<sup>259</sup> Then, the erosion may well enable the regime to resort more to its nuclear ambition to retain its regime. Economic engagement with the country may also help the regime toward the realisation of its nuclear ambition; whilst engagement may be less risky immediately it would enable the country to proceed with its nuclear programme unchecked and hence would pose risk for the longer consideration.<sup>260</sup> However, resort to containment or even pre-emption would not result in the country abandoning its nuclear ambition; instead, any hope for any peaceful solution would be in jeopardy. In contrast, engagement would at least provide the possibility for the regime to divert its nuclear programme for peaceful use. In fact, economic development does not necessarily expedite the nuclear ambition. As the history of China shows, it is with lack of economic development that China realised its nuclear ambition. Indeed, economic development may enable the regime to realise the benefit that it brings in contrast to the consequence of single-minded pursuit of nuclear ambition. It facilitates political change and enhances the possibility of diverting its nuclear programme for peaceful use. Furthermore, such a path brings many benefits to the world including, in this connection, the protection of world intellectual creations in North Korea. Containment or pre-emption can only consign copyright into the dustbin together with any hope for peaceful resolution of its nuclear programme.

## CONCLUSION

Contrary to the misconception of lack of copyright there, North Korea enacts copyright law and makes efforts to respect and protect copyright and other intellectual property rights not least because it needs foreign investment for which IP protection is a prerequisite. In fact, the country realises the importance of IP rights and joins many relevant international conventions. It is also keen on learning from the experience of China and educating its people over copyright. However, its legal, cultural, political and economic environments are inimical rather than conducive to the function of the law. Amongst others, North Korea employs copyright more as a tool to maintain its hegemony over its people than as a means to promote the development of its economy or the creation of arts and literature.

As it stands, the lax enforcement of copyright law apparently benefits the country’s education and gives the country the breathing space to share the world’s knowledge and meet its developmental goals, a path which countries like the United States and China trod in the course of their development. The way forward rests with the removal of the mix of those hindrances. That aside, it further depends on whether the world community, both the East and the West, is willing to engage with the country and its people to learn from each other and to effect changes in the process.

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<sup>259</sup> David Kang, *The Economy*, in Robert Worden (ed), *North Korea: A Country Study* (5<sup>th</sup> ed), 172 (2007).

<sup>260</sup> David J Bishop, *Dismantling North Korea’s nuclear weapons programs*, Strategic Studies Institute, U.S. Army War College, 2005.

