

Copyright

著作权

I. INTERNATIONAL

I. 国际性的保护

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

中国和美国都是《保护文学和艺术作品的伯尔尼公约》（伯尔尼公约）成员国。伯尔尼公约用著作权的形式设立了一系列原则和标准用以保护和推广“艺术表现”。

Three basic principles arise from the Berne Convention.² First, works originating in a member country must be given the same protection in each of the other member countries as each of the letter grants to the works of its own nationals (“National Treatment”).³ Second, the protection cannot be conditioned on compliance with any

formality (“Automatic Protection”).⁴ Third, the protection is independent of the existence of protection in the country of origin, i.e. the country where the work was created, except that if a member country provides for a longer term than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases (“independence”).⁵

伯尔尼公约有三项基本原则。首先，对于一成员国内产生的作品，其他成员国应当给予该作品其给予自己国民的相同待遇（国民待遇原则）。其次，著作权的保护不需要履行任何手续，作品创作完成即享有著作权（自动保护原则）。最后，各成员国给予其他成员国作品的法律保护，不以该作品是在其起源国是否受到保护为条件，除非该起源国给予的保护期限长于公约规定的保护期限，则当著作权保护在该起源国终止，其他伯尔尼条约的成员国也可以相应终止对该作品的保护（版权独立原则）。

The Berne Convention also set out a minimum standard of protection for works. The protection extends to “every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression.”⁶ The convention then listed out a set of exclusive rights including: the right to translate, the right to make adaptations, and the right to perform.⁷ The Convention also provided for a “moral right,” which allows an author to object to any modification that would negatively affect the author’s honor or reputation.⁸ Finally, works are protected, at minimum, until 50

years after the death of the original author.⁹ Applied art and photographic works last 25 years after creation.¹⁰

伯尔尼公约也规定了对作品保护的最低标准。受保护的作品包括文学、科学和艺术领域的一切作品，不论其表现方式或形式如何。公约列明了作者的一系列排他性权利：翻译权、改编权和公演权。公约还保护作者的“精神权利”，即作者有权反对任何有损其荣誉或者名誉的修改。最后，作品的保护期限至少为作者有生之年加上死后 50 年。实用作品和摄影作品的保护期限为创作完成之日起 25 年。

II. COPYRIGHT LAW IN CHINA

II. 中国的著作权法

A. Basics

A. 概况

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

中国著作权方面的法律主要是《中华人民共和国著作权法》。中国公民，以及受伯尔尼公约保护的外国人，其作品受法律保护，不论发表与否。这是为了鼓励作品的“创作与传播”，以促进社会主义精神文明和物质文明建设。

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

中国著作权法所保护的作品包括用特定形式表达的文学，艺术，科学和工程技术作品。表达方式包括书面，口头，音乐和摄影作品。然而，中国对法律法规，时事新闻，公式或通用数表不给予著作权保护。中国对依法禁止出版、传播的作品，也不给予著作权保护。

Once a work is copyrighted, the owner (the original author or organization with legal authority) of the work enjoys a large set of rights.¹⁸ The rights associated with Chinese copyright protection include the rights to publication, alteration, distribution, reproduction, and performance.¹⁹

一旦某作品受著作权法保护，其所有人（作者或者享有著作权的组织）享有广泛的权利。中国著作权保护的權利包括發表權，修改權，發行權，複製權和表演權。

B. Time Span and Remedy

B. 保护期限和救济措施

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

著作权保护期限为作者有生之年加死后五十年。对法人或者其他组织的作品，权利保护期为作品首次发表后第五十年，但作品自创作完成后五十年内未发表的不再予以保护。然而，第三人可以不经权利人许可使用享有著作权的作品如果是为个人学习之用，为在作品中适当引用，为研究而翻译，或者复制设置陈列在室外公共场所的作品。法院在决定如何使用作品可以不经著作权人许可、可以不向其支付报酬方面具有相当大的自由裁量权。

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

对侵犯著作权的行为，民事责任是最典型的救济方式。侵权行为人要承担停止侵权、公开赔礼道歉、并支付法院认为合理赔偿等责任。

III. COPYRIGHT LAW IN THE UNITED STATES

III. 美国的著作权法

The main goal of copyright law in the United States is to encourage new creations. In the United States copyright law provides the creator of a work the right to control the use of that work. A copyright is automatically created as soon as the author puts the creation in any tangible form.²⁶ However, registration of a copyrighted work at the U.S. Copyright Office provides comprehensive protection.

美国著作权法的主要目标是鼓励新的创作。在美国，法律给予作品的创作人对其作品使用的控制权。一旦作者以某种有形的方式将其创作表现出来著作权自然产生。然而，一项作品在美国版权局的登记会给予该作品综合性的保护。

A. Protection

A. 权利的保护

Three major requirements are needed to create a copyrightable expression. First, the creation must have fixation, meaning that it must be fixed on a tangible medium.²⁷ Fixation is a very loose standard and almost any medium will suffice.²⁸ The actual ideas and facts behind a creation are not actually protected, only the tangible

form in which they are expressed.²⁹ Next, the work must be original.³⁰ This merely requires that the work “owes its origin to the author.”³¹ As long as the work is independently created, it can be copyrighted.³² Finally, a minimal amount of creativity is necessary.³³ Something like a general form or telephone book cannot be copyrighted.

一项可享有著作权的表现形式要满足三个要求。首先，这个作品必须有形，即固定于某种有形的表现媒介。有形是个相当宽松的标准，几乎任何载体都可以满足这个要求。一个作品背后的想法和事实是不受保护的，只有有形的表现方式才可获得保护。其次，这个作品必须是原创的。这仅仅要求作品源自于该作者。只要该作品是独立创作的，就可以受到著作权保护。最后，少许的创新性是必要的。类似于通用表格或者电话号码本的作品是不受著作权保护的。

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

近年来，著作权的保护期限延长了。目前，著作权保护期限为作者有生之年加死后 70 年。如果是为法人或者其他组织创作的作品，保护期限为作品创作完

成后 120 年或者首次发表后 95 年，以较短的为准。一旦著作权保护期限到期，作品即进入公共领域，任何人都可以不经许可使用。

For any works published after 1989, no notice needs to be given.³⁷ However, notice allows a copyright owner to sue an infringing party for *willful* infringement, which nets a much greater amount of damages. Also, notice may have a deterrent effect on potential infringers. Finally, there are some countries that have not adhered to the Berne Convention and thus notice will give protection in those countries.

发表于 1989 年后的作品不需做著作权声明。然而，著作权声明有利于著作权人起诉侵权行为人故意侵权，获得比较大金额的赔偿。另外，著作权声明还有对潜在侵权人的抑制作用。最后，有些国家不遵循伯尔尼公约的自动保护原则，著作权声明有利于作品在那些国家得到保护。

Finally, copyright protection does not prohibit any “fair use,” such as criticism, news, or teaching as long as the work is not diminished.³⁸

最后，著作权保护并不禁止合理使用，比如说评论，新闻或者教学，只要指明出处。

B. Registration

B. 登记

Copyright registration lists basic information about a copyrighted work to the general public. An owner must by fill out an application and pay an application fee in order for the work to be registered.³⁹ One good reason to copyright is that an author cannot sue for infringement in federal court until a work is registered. Therefore, early registration leads to easier initiation of a lawsuit. Also, a copyright owner who files a timely registration is given more extensive statutory monetary damages than if the author registered at the time of the suit.⁴⁰ For published works, timely registration is considered within three months of the date of the first publication and before the infringement.⁴¹ For unpublished works, a timely registration is anytime before the infringement.⁴²

著作权登记对公众列明一项受著作权保护的作品的信息。登记时，权利人必须提交申请并支付一定的申请费用。登记的一个重要作用在于登记是在联邦法院起诉侵权的前提条件。因此，早登记有利于诉讼的提起。另外，一个及时登记的权利人能比一个在诉讼时再登记的权利人获得更多的法定金钱赔偿。对于已发表的作品，及时登记是指首次发表后三个月内并且在侵权行为发生之前登记。对于没有发表的作品，及时登记是指在侵权行为发生之前登记。

IV. DIFFERENCES

IV. 两国著作权保护的差异

The first major differences between the two countries copyright system is that in the United States copyrighted work must be on a tangible medium whereas in China the work needs only to be able to be reproduced in a tangible form.⁴³ Therefore, oral and acrobatic works can be copyrighted easily in China, but not always in the United States. Also, the United States also provides fewer moral rights than China.⁴⁴ It is much harder for a copyright owner to argue that another use of their work is negative enough to warrant legal action in the United States than in China. As for rights, the United States has a right to display whereas China has a right of show and a right of exhibition.⁴⁵ The protection term also differs between the two countries with the United States having the longer term.⁴⁶

中美两国著作权体系的第一个主要差异在于在美国能受著作权保护的作品必须固定在有形载体上，而在中国能受著作权保护的作品只要求是能以某种形式表现出来的智力创作成果。因此，在中国不排除对未固定在有形载体上的口述作品和杂技作品的保护，而在美国则不然。另外，美国对著作权人精神权利的保护比中国少。在美国，著作权人如因他人对作品某方面使用会对作品产生消极影响而请求司法介入比在中国困难。对于具体的权利，在美国著作权人仅有展示权而中国既有展览权又有陈列权。作品的保护期限也有差异，美国的保护期限比较长。

V. CONCLUSION

V. 结论

Both countries use copyright law to protect and encourage artistic works. However, Chinese copyright law merely meets the international treaty requirements and does little to go above and beyond, unlike the United States, which has more stringent and strong copyright laws than China.

两国均用著作权法来保护和鼓励创作。然而，中国的著作权法仅仅符合国际条约的要求，很少超越或者高于国际条约的规定，不像美国，具有很严格和强有力的著作权法。

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