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The New Taiwan Copyright Law: Does It Spell Doom for Counterfeiters?, 8 *Computer L.J.* 171 (1988)

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I. INTRODUCTION

For many years, Taiwan has been one of the largest product-counterfeiting nations in the world. The products copied are virtually endless. Items such as record albums, Rolex watches, designer jeans, computer software products, and books are all prone to being copied and then sold at a tremendous profit.¹ In 1982, 56% of the counterfeited goods confiscated by United States Customs Agency were from Tai-

1. These products are often sold at a fraction of their normal price. The author, while in Taiwan, was able to purchase record albums by top recording stars for less than U.S. \$1.00 each.

wan.² In 1984, the figure rose to 62%.³ The United States, being the largest producer of goods, is the nation most affected by this practice. The world-wide economic market for U.S. producers shrinks as a result of Chinese nationalists that are copying products manufactured in the U.S. These copies are distributed in Taiwan, throughout the Orient, the United States, and many other nations and take away the copyright holder's opportunity in those markets. The loss of control over a copyrighted product results in lost revenue to the creator and lost taxes to the government. Consequently, the U.S. has attempted, for many years, to pressure the Republic of China into passing a copyright law that: 1) adequately protects the products of U.S. citizens and corporations, and 2) provides for more strict enforcement of existing copyright laws.⁴ As a practical matter these efforts have failed. On July 10, 1985, however, the Legislative Yuan (the Legislative Body of the Republic of China) passed a new Copyright Law. The Chinese claim that this new law has resulted in a drop in the amount of counterfeited goods confiscated by the U.S. Customs (from Taiwan) from \$13 million in 1984, to \$8 million in 1985.⁵ It is unclear, however, whether this progress is adequate.⁶

This Note analyzes the Republic of China's past efforts to develop a copyright law that is satisfactory to the United States and the ROC's own sense of justice. Parts II and III of this Note delineate the insufficiencies of the past laws. Parts IV and V of this Note further analyze the New Copyright Law and discuss whether or not it corrects the inadequacies of the past laws. Finally, this Note suggests further remedies for this costly counterfeiting practice that the new law does not afford.

II. HISTORY OF THE REPUBLIC OF CHINA'S COPYRIGHT LAWS

A. EARLY 1900'S—THE CIVIL WAR

The Chinese government's first effort to effectuate a copyright law was through a 1903 treaty with the United States.⁷ The treaty read:

Therefore the Government of China . . . agrees to give full protection,

2. Skretney, *Fighting a Reputation as the 'Counterfeit Capital' of Asia*, L.A. Daily Journal, May 16, 1986, at 3, col. 3.

3. *Id.*

4. The U.S. has recently threatened to withdraw low tariff privileges from Taiwan and to block aid to that country from the World Bank and International Monetary Fund. *See id.*

5. Skretney, *supra* note 2.

6. There is also the question of whether this was an accurate report of U.S. Customs' data. This question is dealt with later in this Note.

7. Huang, *The Protection of American Copyrights under Nationalist Chinese Law*, 12 HARV. INT'L L. J., at 71, 72 (1971).

in the same way and manner and subject to the same conditions upon which it agrees to protect trademarks, to all citizens of the United States who are authors, designers, or proprietors of any book . . . especially prepared for the use and education of the Chinese people, or translation into Chinese of any book . . . in the Empire of China during ten years from the date of registration. With the exceptions of . . . books . . . , no work shall be entitled to copyright privileges under this article. It is understood that Chinese subjects shall be at liberty to make, print and sell original translations into Chinese of *any* works written . . . by a citizen of the United States . . .⁸

It seems that China's reason for granting only a very limited copyright law was that the country wanted access to Western knowledge.⁹ The country's poverty prohibited its acquisition of foreign copyrights. The above provision allowed Chinese Nationals to copy anything that was not "especially prepared for" the Chinese and also gave them a *right* to translate foreign literary works.¹⁰ This provision effectively gave the Chinese the right to copy another's work.

First, only books were protected. Artistic works or other literary items were not included. Second, only those books that were prepared for the exclusive use of the Chinese could be protected. The category of protected works was, therefore, greatly narrowed. Third, even books that fell into this narrow category of protection were not exempted from translations. Finally, copyright protection was given only to books after registration and then for only 10 years.

This treaty clearly granted more protection for the Chinese than for U.S. business interests. Unless an author of a book could prove an exclusive purpose of designing the item for the Chinese, no protection was given. China essentially codified a right they had advocated for a long period of time—translation of foreign works. With the exception of a few books the treaty displayed a permissive attitude in acquiring Western knowledge by any means. Some authorities justified the treaty as a means of serving some sort of U.S. missionary interest in China.¹¹ In 1912, the Republic came into power and overthrew the Ching dynasty. With the coming of the Republic, there was hope that a new respect for copyrights would also emerge. However, the New Copyright Law that was passed in 1915 was essentially a duplicate of the previous law.¹²

8. Treaty between the United States and China for the Extension of the Commercial Relations between them, Oct. 8, 1903, United States-Republic of China, 33 Stat. 2208 part II, T.S. No. 430, Art. XI (emphasis added).

9. Huang, *supra* note 7, at 74.

10. *Id.* at 74.

11. *Id.* at 73-74 n.10.

12. 2 S. LADAS, THE INTERNATIONAL PROTECTION OF LITERARY AND ARTISTIC PROPERTY 993 (1938).

In 1928, the Nationalist Government became the legal power of China (the R.O.C.). In May, 1928, a revised copyright law was promulgated.¹³ Some of the problems for Americans seeking copyright protection, however, were left unresolved. Article 14 of the Regulations for Enforcement stated that:

Foreigners who produce works useful to the Chinese may apply for registration under this law. The foregoing provision, however, is limited to those foreigners whose countries accord reciprocal copyright privileges to Chinese citizens. The period of copyright on works referred to in Clause 1 of this Article is limited to ten years.¹⁴

This revised law was a step in the right direction, but still left some loop-holes that many counterfeiters were able to jump through. The law only afforded protection for ten years to foreigners, compared to a term of the author's lifetime, plus an additional 30 years, given Chinese nationals.¹⁵ In the U.S., copyrights were given for 28 years, with a possibility of renewal for an additional 28 years. Also, the product in the R.O.C. was protected only after being granted a copyright, requiring registration with the Ministry of the Interior.

The result was effectively a "Catch-22" situation. Corporations were not protected unless they registered the product. Registration, however, did not assure U.S. corporations of adequate protection. Corporations were unwilling to expend the time and money to register their works.¹⁶ Registration was also limited by the prohibition of copyrights to products that are not "useful" to the Chinese.¹⁷ While this may be a broader requirement than that of "especially prepared for the use of the Chinese"¹⁸, it still was a subjective, self-serving provision. The net effects provided no additional protection for U.S. authors. However, Article 10 of the law stated that, "[t]ranslations of literary works may be copyrighted . . . , but this shall not exclude others from making original translations provided there is a wide difference in the translations."¹⁹ Although the literal meaning would cover only the translation itself and not the right to translate, it was later determined that the Chinese did not recognize the right of translation to run with

13. *Detailed Regulations for the Enforcement of the Copyright Law*, 4 CHINA L. REV. 7 (1929) (N. Allman trans.).

14. *Id.*

15. Huang, *supra* note 7, at 77.

16. Skrentny, *supra* note 2.

17. *Detailed Regulations for the Enforcement of the Copyright Law*, *supra* note 13, at 8, art. 14.

18. Treaty, *supra* note 8.

19. *Detailed Regulations for the Enforcement of the Copyright Law*, *supra* note 13, at 2.

the copyright.²⁰ The clear meaning of the Article allowed Chinese nationals to gain a copyright (through the translation of a literary work), but still allowed competition among the Nationals by granting a copyright for a *different* translation. Some claim that the Chinese, inherently, do not have the concept of copyright. However, when this type of law is reviewed, it is unclear whether the government (or perhaps the people themselves) intentionally prohibited the concept from ever developing in their country and culture.

In 1946, the Republic of China and the United States entered into a Treaty of Friendship, Commerce and Navigation.²¹ The treaty again attempted to address the problem of piracy in China. Article IX of the treaty afforded protection (provided rules of registration were complied with) to literary and artistic works, including inventions, trademarks and trade names, rather than just books, maps and prints.²² The problem with translations, however, still existed due to the Protocol in the treaty that did not require the Republic of China to protect translations.²³ The fact that the new law failed to protect items of a non-literary nature is possibly what led to the explosion of pirating the following years.

B. POST-CIVIL WAR: THE ROC ON THE ISLAND OF TAIWAN

After the Civil War of 1949, and the Nationalist Government (led by Chiang Kai-Shek) relocation to Taipei, Taiwan, those who practiced piracy continued to do so in Taiwan. The practice, with virtually no expenses in research, design, market testing, etc., was and is very profitable. Added to this was Taiwan's low cost of labor, which allowed for a mass production of counterfeited goods. The American government tried to put extreme pressure on the Republic of China officials to curb the activity.²⁴ This pressure, while leading to some official governmental action, did not affect the unauthorized copying of works. In fact, the practice dramatically increased.

The Republic of China did outlaw the export of pirated works. It was not, however, able to take a strong enough stand to finally suppress the activity. Part of the problem probably was that allowing the activity to continue was in the nation's best interest. The act of counterfeiting creates more commerce, jobs and taxes.

20. *Study of Comparative Copyright Law*, 2 UNESCO Copyright Bull. No. 2-3, at 24 (1949).

21. Treaty of Friendship, Commerce, and Navigation, November 4, 1946, United States-Republic of China, 63 Stat. 1299, T.I.A.S. No. 1871.

22. *Id.*, art. IX, 63 Stat. 1308-1309, T.I.A.S. No. 1871, at 770.

23. Yambrusic, *The Status of U.S. Copyright Relations with Taiwan*, 13 INT'L J. LEGAL INFO., Feb.-Apr. 1985, 1.

24. Huang, *supra* note 7, at 82.

The problem was again addressed in the 1964 revision of the copyright law.²⁵ The law did provide protection for foreign works, (rather than only works by foreigners that were useful to the Chinese) but explicitly withheld the right of translation from the foreign authors.²⁶ This revision may be seen as hollow; it did not allow standing to firms not registered in Taiwan. Only people/businesses that qualified as "juristic persons" were able to initiate private prosecutions. Unregistered businesses did not qualify.²⁷ There had been no other changes in the copyright law until the summer of 1985.

As the law stood from 1964 to 1985, there were a few significant gaps, allowing pirates to make a very profitable return on a wide range of products without risk of penalty. The copyright law protected only limited types of works — items that seemed to have some literary or artistic value. A copyright holder in China, however, did not possess the right of translation. This exploited an author's work because most literary items of foreign origin had little value to the Chinese until translated. Counterfeiters were not only taking the market in Taiwan for an author's works, but they also took any other market in the world for the item. Therefore, due to the lack of a sufficiently stringent copyright law, counterfeiters had endless opportunities in reproducing various items very profitably. Another problem that faced U.S. corporations and authors was that as producers of unregistered products, they had no standing in Taiwanese courts to civilly protect their creations. According to the Judicial Yuan (the governing body of courts in Taiwan), only "juristic persons" were allowed to be private prosecutors.²⁸

Possibly the greatest cause for the tremendous amount of copyright infringement in Taiwan has been the lack of significant penalties inflicted upon counterfeiters. Without the fear of facing payment of heavy fines or the prospect of incarceration, pirates in Taiwan are not deterred from illegally making and selling copies of protected works. The penalties that could be imposed, prior to the new law being passed in 1985, were limited to one year imprisonment and a fine of not more than 1,000 NT (New Taiwanese dollars).²⁹ In addition, a pirate that imitated a copyright and one that printed or sold the copies were subject to

25. *Id.*, n. 44.

26. *Id.*

27. Note, *Protection from Commercial Counterfeiting in Taiwan for U.S. Firms*, 16 L. & POL. INT'L BUS., 641, 655 (1984).

28. This, however, was somewhat resolved by the Judicial Yuan of the government prior to the amendment to the Copyright Law. In response to inconsistent holdings in two cases involving U.S. Corporations seeking to bring a private prosecution, the Judicial Yuan, in 1983, held that U.S. companies should be given juristic status. Note, *Protecting Intellectual Property in Taiwan*, 60 WASH. L. REV., 117 (1974).

29. 1,000 NT roughly equals \$30 U.S. dollars. Wall St. J., Nov. 21, 1986, at 50, col. 5.

the same penalties.³⁰

The result of Taiwan's ineffective copyright law is felt by many U.S. industries. Taiwan has become the "international haven for trademark counterfeiters and copyright pirates."³¹ Examples of the products and the industries affected by such piracy include Levi pants, Cross pens, Rolex watches, Johnny Walker scotch whiskey, Gucci handbags, Samsonite luggage, Pierre Cardin fashion clothes, books, recordings, drugs, electrical components, automobile parts, and computers.³² As previously noted,³³ counterfeiting leads to the loss of market opportunities in Taiwan for copyright holders. Market opportunities across the world, however, are also unjustly taken away as pirates export their illegal copies. An example of this can be found in the *Apple Computer* case. The Apple II computer had been counterfeited many times not only in Taiwan, but also throughout all of Southeast Asia.³⁴ Apple, Inc., initially decided to sacrifice the market in Taiwan, Hong Kong and the rest of Southeast Asia. This action, however, resulted in the export from Taiwan (and other countries) into established Apple markets in Australia, South Africa, South America and California.³⁵ The prospect of losing these established markets prompted Apple to initiate legal action in Taiwan and Hong Kong.³⁶ As a response to this type of infringement, Commerce Secretary Malcolm Baldrige has stated that counterfeiting costs the U.S. economy almost \$20 billion per year. The number of lost jobs, the Secretary estimates, ranges from 130,000 to 750,000.³⁷

Another counterfeiting concern arises from the comparison of original items to their copies. The copies are generally of inferior quality when compared with the original item.³⁸ This seems to have two possible effects. First, the consumer of the item (whether the consumer is in Taiwan or another part of the world) may often purchase an item believing it is an original. Since the purchased item's quality is inferior, the low cost possibly reflects a fair price for the item. Thus the purchaser could not claim to have overpaid for the product. The problem, however, is meaningful when the product is valued for its technological

30. Shapiro, *Strengthening of Trademark, Copyright Laws Proposed*, E. ASIAN EXECUTIVE REP. April 1982, at 17-18.

31. *Id.*, at 17.

32. Note, *supra* note 27, at 641, 642.

33. See *supra* notes 2-3 and accompanying text.

34. *Asia's 'Microchip Pirates'*, WORLD PRESS REV., July 1983 at 52.

35. Note, *supra* note 28.

36. Parks, *High Tech Pirates Sell Look Alikes*, Los Angeles Times, Oct. 13, 1982, at 1, col. 1.

37. Skrentny, *supra* note 2, at 14, col. 3.

38. It is unclear whether Taiwan's lack of technology or the counterfeiters' greed for greater profits cause cheaper components to be used in the end product.

usefulness. A copied item that does not match its original in quality can be worthless to the consumer, if the item will not serve the desired purpose. This is great economic waste to customers anywhere.

Second, many items that do not meet high standards of quality may cause physical harm to the user/consumer.³⁹ Since a counterfeiter not only copies the product in appearance, but also copies the trademark, the consumer will be led to believe that he is purchasing the original product. This combination gives consumers no indication that the item does not possess the safety standards of the original.

It can therefore be concluded that lack of copyright protection results in losses to not only the product creator but also to consumers in lost money and potential physical harm. To resolve these inequities the Republic of China should promulgate a law that eliminates the counterfeiter's motivation to steal others' products. Without a law that produces fear and unrest in the minds of these counterfeiters, the unauthorized reproduction of goods in Taiwan will continue to harm producers and consumers.

III. INADEQUACIES OF U.S. REMEDIES

The fact that the counterfeiters in Taiwan export their goods into the U.S. is evidence of the inadequacy of U.S. copyright infringement laws. To better understand this phenomenon, a brief synopsis of the actions available in the U.S. is provided, along with an explanation of their shortcomings.

A. THE LANHAM ACT

Under the Lanham Act, a copyright holder who proves that a counterfeiter has violated its copyright, may be entitled to injunctions,⁴⁰ destruction of equipment used in the illegal reproductions,⁴¹ treble damages, defendants profits from the counterfeited items, and occasionally attorneys fees.⁴² These remedies, however, have not controlled the growth of counterfeited goods brought into this country.⁴³ One problem with the Act is that it does not provide criminal sanctions, and judges rarely invoke the most severe (but discretionary) civil remedies.⁴⁴ Moreover, the Lanham Act places the cost and burden of bringing the case to trial on the complaining party. This burden exceeds the abilities

39. Note, *supra* note 27, at 641-2.

40. 15 U.S.C. § 1114 (1982).

41. 15 U.S.C. § 1118 (1982).

42. 15 U.S.C. § 1117 (1982).

43. Rakoff and Wolff, *Commercial Counterfeiting and the Proposed Trademark Counterfeiting Act*, 20 A. CRIM. L. REV. 145, 163.

44. Note, *supra* note 27, at 646.

of small and medium size companies to thwart counterfeiters.⁴⁵ In addition, it is unlikely that professional counterfeiters would honor a civil judgment or that such judgment could be enforced. The Lanham Act also places on the plaintiff the burden of proving his damages. This usually necessitates showing lost sales, which means the plaintiff must rely on the defendant's business records. The defendant can easily destroy these records.⁴⁶

B. THE TARIFF ACT

The Tariff Act of 1930⁴⁷ was amended in 1978 to suppress the inflow of counterfeited goods by requiring that U.S. Customs officials seize counterfeited goods.⁴⁸ These provisions, however, affect importation of illegal goods only modestly. Counterfeiters use very sophisticated means to avoid detection.⁴⁹

C. STATE CRIMINAL STATUTES

There are many state statutes that criminalize the counterfeiting of goods. But the crime under most statutes is only a misdemeanor and the penalty under these statutes is only a prison term of a few months.⁵⁰ Such penalties will have little or no deterrent effect, as the counterfeiter faces a relatively insignificant punishment.

The U.S. correctly contends that the ROC has not provided for adequate copyright laws that will curb the tide of counterfeited goods into this country.⁵¹ The U.S., however, has not adequately legislated this problem at home in order to provide as much protection as it can unilaterally. Therefore, the problem is more than just the ROC's blatant infringement of U.S. citizen's copyrights.

IV. THE NEW COPYRIGHT LAW

A. THE NEW PROVISIONS

On July 10, 1985, the Republic of China signed a New Copyright Law.⁵² The Copyright Law of 1985 includes some very important provi-

45. Rakoff and Wolff, *supra*, note 41, at 164.

46. *Id.* at 165.

47. 19 U.S.C. § 1526 (1982).

48. *Id.* § 1526(e).

49. Note, *supra* note 27, at 648.

50. Rakoff and Wolff, *supra* note 43, at 169.

51. See *infra* notes 3-4 and accompanying text.

52. CHINESE COPYRIGHT LAW OF 1964 (amended in 1985) (note—since locating an English version of the Copyright Law is difficult it is recommended that the reader refer to Wang, *New Copyright Law; Update on Related Draft Legislation*, EAST ASIAN EXECUTIVE REPORTS, Aug. 1985, at 20, col. 2, and Lin and Lo, *Taiwan's Copyright Law: New Con-*

sions. First, it grants standing to U.S. corporations even if they are not registered in Taiwan.⁵³ This provision is important because copyright infringement is not directed exclusively toward items produced or sold in Taiwan, which would necessitate registration by the producer. Therefore, while there may be other prerequisites to bringing a civil prosecution in the Taiwanese courts, the critical requirement of registration to gain standing is no longer an issue. While the law states that only nationals of states that have a reciprocal provision to Chinese nationals are allowed to bring a civil suit, this is not a problem for U.S. nationals and corporations although it may be prohibitive to other states.

The Copyright Law of 1985 also lengthens the list of protected items. The items added to the list include: computer software, sound tracks, films, lectures, musical and artistic performances, dance, sculpture, scientific and engineering designs, drawings, models and other works of art.⁵⁴ The law gives lifetime protection to most of the above items.⁵⁵ While this may not be an exhaustive list of what Americans would think of as protected works, it does, however, offer more protection to producers than previously offered. As stated above, the development of copyright law in the R.O.C. has been slow and awkward. Thus, this provision may please many producers as a small step forward for the R.O.C. and for U.S. business people. Still, the question remains of how well the government will enforce these new provisions. Without effective enforcement, the counterfeiters in Taiwan will not be deterred.

The Copyright Law of 1985 now makes leasing of a copyrighted work the right of the copyright owner, excluding this right from all others. Furthermore, leasing of pirated works is punishable by a fine and/or imprisonment.⁵⁶

The Copyright Law of 1985 defines "computer programs" in the same way as the U.S. Copyright Law.⁵⁷ The Ministry of Interior (hereinafter MOI) has issued a draft detailing the criteria for copyright infringement of computer programs.⁵⁸ The draft provides that the re-writing of a program requires the author's consent.⁵⁹ It also states that the author has the right of reproduction, public broadcast (including

cepts, Remaining Questions, East Asian Executive Reports, Dec. 1985, at 23 for summaries of the Copyright Law). (hereinafter CHINESE COPYRIGHT LAW)

53. *Id.*, at art. 17.

54. *Id.*, at art. 4.

55. *Id.*, at art. 5.

56. *Id.*, at art. 4.

57. *Id.*, at art. 3(17).

58. American Institute in Taiwan, *Outline of Taiwan's New Copyright Law*, March 1986, p. 27.

59. *Id.*

transmittal through a computer network), editing, leasing and rewriting.⁶⁰ Also, the ROC has welcomed the American Institute in Taiwan to furnish it with a documentation of the U.S. experience with regard to software protection.⁶¹

Possibly the most important part of the Copyright Law of 1985 is its added penalties for copyright infringement. If an infringed property has a fixed price for each unit, "the damages awarded shall not be *less* than 500 times the fixed price of the infringed property."⁶² If no retail price is set, then a court may use its discretion to determine the amount of damages to be awarded.⁶³ Prison terms have also been extended to a maximum of five years.⁶⁴

B. COMPARISON WITH OTHER COPYRIGHT LAWS

The R.O.C. must provide penalties and disincentives that will subdue the motivation to profit by illegal copying. It is only by dealing on this level that the R.O.C. will be able to curb the depths of this illegal and costly activity. While it has been previously noted that the R.O.C. might actually benefit from counterfeiting (on the domestic perspective),⁶⁵ the R.O.C. is now at a stage where it is dependent on international approval and support to insure its existence. Derecognition by the U.S. and the disaffirmance of the Defense Treaty of 1952, has left the people of Taiwan virtually unprotected from a large and powerful army separated by a mere 80 miles of ocean. Therefore, the R.O.C. should have as its primary interest the desire to win the approval of other states. The New Copyright Law may be seen as such an attempt. The penalties and possibility of incarceration in the Copyright Law of 1985 compare favorably with statutory provisions in other countries.

1. *The United States*

In the United States, an author may recover actual damages, the profits of the infringer, or statutory damages from \$250 to \$10,000; or \$50,000 if *willful* infringement can be proven.⁶⁶ The equipment used to produce the illegal copies will be destroyed.⁶⁷ In addition, attorney's fees and litigation costs are recoverable.⁶⁸ A *willful* infringer can face criminal prosecution and penalties of one year in jail and a fine of

60. *Id.* at 28.

61. *Id.* at 47.

62. CHINESE COPYRIGHT LAW, *supra* note 52 at art. 33.

63. *Id.*

64. CHINESE COPYRIGHT LAW, *supra* note 52 at art. 40.

65. *See supra* notes 24-5 and accompanying text.

66. Title 17 U.S.C.A. § 504(c) (West Supp. 1977).

67. *Id.* § 503.

68. *Id.*

\$10,000; one year and \$25,000 for sound recording violations; and two years and \$50,000 for recidivism.⁶⁹

2. *France*

In France, a copyright holder can have the receipts and equipment used in the illegal reproduction confiscated and given to him.⁷⁰ The counterfeiter faces a fine of 36,000 to 1,200,000 francs (\$6,000 - \$200,000 U.S. dollars).⁷¹ The punishment is raised to 80,000 to two million francs (\$13,333 to \$333,333 U.S. dollars) and three to twenty-four months in jail where the infringer habitually engaged in counterfeiting. If the infringer is a recidivist, the penalties are doubled.⁷²

3. *West Germany*

According to West Germany's 1985 Amended Copyright Statute,⁷³ a copyright holder may sue for injunctive relief and either damages or the profits of the infringer.⁷⁴ The author may also demand delivery or destruction of the equipment used for the illegal reproduction.⁷⁵ The criminal penalties are a fine or up to five years imprisonment if the infringement was done on a "commercial" basis.⁷⁶

Comparison of these penalties to those of the R.O.C. indicates that the R.O.C.'s New Copyright Law provides for penalties much like those of the United States and West Germany, but generally does not provide for monetary fines comparable to those imposed under the French laws. A damage award of 500 times the unit price of the infringed items (depending on the item) is approximately equivalent to the awards available under the United States copyright laws.⁷⁷ This is important to computer manufacturers. Computer counterfeiters could now face judgments up to \$150,000 for software infringement.⁷⁸ The Copyright Law of 1985's five year prison term is similar to West Germany's five year sentence for the business-minded infringer.

The Copyright Law of 1985 grants a copyright to Chinese nationals at the time the intellectual work has been completed, but to foreigners

69. *Id.* § 506(a).

70. French C. Pen.

71. *Id.* art. 425 at 142.

72. *Id.* art. 427.

73. West German Copyright Statute of 1985.

74. *Id.* at art. 97(1).

75. *Id.* at art. 97(2).

76. *Id.* at art. 108(a)(1).

77. CHINESE COPYRIGHT LAW *supra* note 52, at ART. 33 with 17 U.S.C.A. § 504(c) (West Supp. 1977).

78. It has been the author's experience that typical software programs cost between \$250-\$300.

only upon registration.⁷⁹ The provision, as it stands, causes some problems for U.S. producers; registration is allowed only if the first publication is done in Taiwan or if Chinese nationals enjoy a reciprocal benefit in the other country.⁸⁰ Not long after the law became effective, the MOI initiated a study of the extent to which Chinese nationals enjoy copyright protection in other countries.⁸¹ On October 24, 1985, the MOI announced that U.S. Nationals and corporations will enjoy copyright protection without having to fulfill the registration requirement.⁸² Even though this announcement conflicts with the New Law, there may be a legitimate rationale for the exception to the law. The Treaty of Friendship, Commerce and Navigation of 1946 provides for equal treatment concerning copyrights between the two countries.⁸³ Therefore, since Chinese nationals receive a copyright and protection upon completion (and without registration) the FCN could then be interpreted as waiving any registration requirement for U.S. copyright holders. It is possible that the Judicial Yuan will react to this politically motivated declaration with disdain. First, such a proclamation by the MOI cannot be seen as controlling the statute. Second, the above logic implies that an American could receive copyright protection from the R.O.C. upon completion of a work in the U.S., but the copyright holder would be unable to protect his copyright through litigation in the U.S. until fulfilling the registration requirements under U.S. law.⁸⁴

As noted previously, R.O.C. officials have already claimed that Taiwan's new anti-counterfeiting campaign has resulted in the reduction of counterfeit goods confiscated by U.S. Customs officials.⁸⁵ This, however, is not accurate as in 1985 Customs confiscated \$7.9 million worth of good coming into this nation from Taiwan. Although this is a reduction of the previous year's amount of \$12.9 million, Taiwan still leads all other Asian countries in the amount of counterfeit goods seized in this country.⁸⁶

V. INADEQUACIES OF THE NEW COPYRIGHT LAW

The Copyright Law of 1985 gives only limited protection to the fol-

79. CHINESE COPYRIGHT LAW, *supra* note 52, at art. 15 and 17.

80. CHINESE COPYRIGHT LAW, *supra* note 52, at art. 17.

81. Lin and Lo, *Taiwan's Copyright Law: New Concepts, Remaining Questions*, EAST ASIAN EXECUTIVE REPORTS, Dec. 1985, at 23.

82. *Id.*

83. Treaty of Friendship, Commerce and Navigation, Nov. 4, 1946, United States-Republic of China, art. IX, 63 Stat. 1300-1308, T.I.A.S. No. 1871.

84. Before bringing suit for infringement, the author must have either registered his work or have delivered to the Copyright Office the deposit, application, and fee required for registration. 17 U.S.C.A. § 411(a) (Law. Co-op. 1978 & Supp. 1987).

85. See Skretney, *supra* note 2 at 3, col. 3, 15, col. 1.

86. Skretney, *supra* note 2, at 3, col. 3, 15, col. 1.

lowing items: literary writings and translations, motion pictures, phonographic records, videotapes, photographs and computer software. These products receive a protection period of 30 years.⁸⁷

One of the critical problems with the Copyright Law of 1985 is that the owner of an original work does not retain the right to the translation of the work.⁸⁸ This will result in producers of literary works not receiving the same protection as other producers. This reflects China's longstanding policy to bring Western knowledge into their society through translation of Western literature and China's belief that it has a preemptory right to do so. Since the accumulation of knowledge serves a purely social purpose and is not overt commercial exploitation, the Chinese feel that lack of complete protection for literature is completely justified and causes no harm. Although this viewpoint may have been tolerated in the past there is less sympathy today with China's justification for pirating; translations are now used more for commercial gain than to educate the masses.

VI. CONCLUSION

The New Copyright Law of 1985 is by far the most stringent copyright law that the R.O.C. has ever passed. It includes protection for more types of works, lengthens the period of protection, addresses the important question of computer program protection, imposes stricter penal sanctions and civil penalties, and grants standing to sue for infringement in Taiwanese Courts. The new law indicates an attempt to put the R.O.C. in line with the rest of the world with respect to copyright protection. However, the rest of the world is not likely to be impressed, and the United States in particular will not be satisfied unless the R.O.C. enforces the law rigorously and to its potential degree of severity. Anything less will probably result in only a modest decrease in the number of counterfeit goods brought into this country.

Because it is unreasonable to believe that the R.O.C. is the only party responsible for the problem of counterfeited goods in the U.S., the U.S. should provide more effective anti-counterfeiting laws if it hopes to reduce this activity.

W. Scott Lawler

87. CHINESE COPYRIGHT LAW, *supra* note 52, at art. 12.

88. CHINESE COPYRIGHT LAW, *supra* note 52, at art. 13.