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Will the Soviet Union and the People’s Republic of China Follow the United States’ Adherence to the Berne Convention?

The Berne Convention of Literary and Artistic Works (Berne Convention or Convention) grants exclusive rights to authors published in countries which are members of the Berne Union (Union). On October 31, 1988, the United States Senate passed legislation which made the rules of the Berne Convention applicable to the United States, and the Senate approved accession to the Berne Convention protocols. The United States’ accession to the Berne Convention is significant because the United States is a leader in the exporting of intellectual property. Author’s rights, however, remain weak because two significant countries have not joined the international copyright circle: the Union of Soviet Socialist Republics (Soviet Union) and the People’s Republic of China (PRC).

This Comment explores the need for Soviet and Chinese accession to the Berne Convention. This Comment begins by intro-

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3 See Ulmer, _International Copyright After the Paris Revision_, 19 _Bull. Copyright Soc’y_ U.S. 263, 267 (1972). The United States is also a member of the Universal Copyright Convention (UCC); however, this convention does not grant the same level of protection to authors of its members states as the Berne Convention does. Sandison, _The Berne Convention and the Universal Copyright Convention: The American Experience_, 11 _Colum.-VLA J.L. & Arts_ 89, 97–98 (1986).

ducing the Berne Convention and describing the substantive provisions of the Convention. The first section of the Comment focuses on who receives the protection of the Berne Convention, what level of protection an author receives, and what works receive protection.5

Next, this Comment traces the historical development of Soviet copyright law6 and discusses the present day Soviet copyright law.7 A history of Chinese copyright law comprises the third section of the Comment.8 While China has not enacted a copyright law, this Comment examines a draft copyright law which the Chinese have circulated.9 This Comment concludes with a discussion of the possibility of Soviet and Chinese accession to the Berne Convention and possible methods of dissolving the current barriers to accession.10

I. THE BERNE CONVENTION

The Berne Convention is an international copyright treaty which protects literary and artistic works first published in a member country.11 The Berne Convention was created in 1886.12 Since that time, it has been expanded seven times to encompass new developments in copyright.13 The first part of the Convention, articles 1 through 20, comprises the enforcement section of the Convention.14 Articles 22 through 38 detail the administrative processes of the Convention.15 The final part of the Convention, article 21 and the Appendix, creates a special set of rules for developing countries.16

5 See infra text accompanying notes 17–81.
6 See infra text accompanying notes 82–102.
7 See infra text accompanying notes 103–131.
8 See infra text accompanying notes 142–178.
9 See infra text accompanying notes 179–196.
10 See infra text accompanying notes 199–257.
11 Berne Convention, supra note 1, at preamble.
12 Id.
13 Koumantos, supra note 4, at 225–26. For a reprint of the revisions of the Berne Convention, see Berne Convention, Items A-1–F-1, 3 COPYRIGHT LAWS AND TREATIES OF THE WORLD (1987). The Berne Convention has been expanded seven times in its hundred year existence. The most recent change is the Paris revision which occurred in 1973.
14 Berne Convention, supra note 1, at arts. 1–20.
15 Berne Convention, supra note 1, at arts. 22–38. These articles include the provisions for revising the Convention, assembling members, financing the administration of the Berne Convention, and defining membership. For a detailed discussion of articles 22–38, see S. Ricketson, supra note 4, at 696–835.
16 Berne Convention, supra note 1, at art. 21, app. See S. Ricketson, supra note 4, at
A. The Protection Afforded Authors Under the Berne Convention

Articles 3 through 6 create the basic structure for the protection of works by specifying who receives protection and what level of protection an author receives. The first category of persons protected are authors who are nationals of a country of the Union. Nationals of a member state receive protection for both their published and unpublished works. The second category of persons protected are authors who are nationals of a non-Union country. The Berne Convention extends protection to individuals in the second category only if the work in question is first published in a member country or simultaneously published in a nonmember country and a member country.

The level of protection a work is given is determined by the laws of each member state subject to certain requirements. Article 5 deals with the level of protection an author enjoys under the Berne Convention. This level of protection is known as the principle of national treatment. Simply stated, this principle

590-662. The Appendix contains a set of special rules for developing nations. See infra notes 55-93 and accompanying text.

17 Berne Convention, supra note 1, at arts. 3-6. It should be noted that not all members have ratified or acceded to the Paris Act. This Comment discusses the Paris revision of the Berne Convention. References to different texts will be made where appropriate. The focus is on the Paris text because this is the version to which the Soviet Union and the People’s Republic of China (PRC) must accede. See id. at art. 34; S. Ricketson, supra note 4, app. 2.

18 Berne Convention, supra note 1, at art. 3(1)(a). The term “national” generally means “citizen of” or “subject of” when used in reference to an author. This seems in keeping with the spirit of the Berne Convention. The precise meaning of “national”, however, is determined according to the laws of each member country. See S. Ricketson, supra note 4, at 160-61.

One category of persons the Berne Convention specifically includes in the term “national” is a person who habitually resides in a member country. Article 3(2) provides that “[a]uthors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall . . . be assimilated to nationals of that country.” Berne Convention, supra note 1, at art. 3(2). There are some problems with including persons habitually residing in a member country in the definition of national. See S. Ricketson, supra note 4, at 161-64.

19 Berne Convention, supra note 1, at art. 3. The Berne Convention defines published works as “works published with the consent of their authors . . . provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public . . . .” Id.

20 Id. at art. 3(1)(b).

21 Berne Convention, supra note 1, at art. 3. Simultaneous publication is defined as “publication in two or more countries within thirty days of first publication.” Id.

22 Id. at art. 5.

23 Id.

stands for the proposition that an author receives the same protection in a foreign country that a citizen-author of the foreign country would receive.\textsuperscript{25}

Defining which works receive protection is important in applying the rules of the Berne Convention. Article 2(1) lists types of works which fall under the protective umbrella of the Berne Convention.\textsuperscript{26} This list, however, is not meant to be exclusive.\textsuperscript{27} The Berne Convention allows member countries the flexibility to determine whether a work receives protection.\textsuperscript{28} In addition to the list of works enumerated in article 2(1), the Convention grants protection to translations and other derivative works as well as collections of works.\textsuperscript{29} If a work fits into one of the categories of protected works, a member country must protect it.\textsuperscript{30}

A member country must grant works protection for a minimum term of the life of the author plus fifty years after his death.\textsuperscript{31} The term of protection after the author's death begins on the first of January of the year following his death.\textsuperscript{32} Each of the

\textsuperscript{25}Id. at 59.
\textsuperscript{26}Article 2(1) states the definition of a work:

The expression 'literary and artistic works' shall include every production . . . , whatever may be the mode or form of expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatrico-musical works; choreographic works and entertainments in dumb show; musical compositions . . .; cinematographic works . . . [and] works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works . . . [and] works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

Berne Convention, supra note 1, at art. 2(1).

\textsuperscript{27}See S. Ricketson, supra note 4, at 235; Guo Shoukang, China and the Berne Convention, 11 COLUM.-VLA J.L. & ARTS 121, 123–24 (1986).

\textsuperscript{28}Berne Convention, supra note 1, at art. 2(2). This paragraph allows the countries of the Union to specify the form of the work in order to gain protection. Requiring registration, notice, etc. are formalities which cannot prevent an author from receiving protection. Berne Convention, supra note 1, at art. 5(2).

\textsuperscript{29}Berne Convention, supra note 1, at art. 2(3)–(4).

\textsuperscript{30}Id. at art. 2(6).

\textsuperscript{31}Id. at art. 7(1).

\textsuperscript{32}Id. at art. 7(5).

The term of protection subsequent to the death of the author and the terms provided by paragraphs (2), (3) and (4) shall run from the date of death or of the event referred to in those paragraphs, but such terms shall always be deemed to begin on the first of January of the year following the death or such event.

\textit{Id.} The effect of this rule is that an author could gain an extra year. For example, if an author dies on January 2, 1989, his work would lose protection on December 31, 2040, because the date of death is considered to be January 1, 1990. The same would be true for each of the other terms of protection.

Article 7 provides three exceptions to this general rule. If a cinematographic work is
terms of protection may be granted for a period longer than the
minimum.  The actual term of protection applied to a work,
however, is that of the country of origin.  

The preamble of the Berne Convention states that the goal of
the Convention is to protect the rights of authors in their literary
and artistic works. During the lifetime of the Convention, the
member states have placed in it only those minimum rights that
each could agree should be afforded authors. These rights are
described as exclusive rights. Exclusive rights may be subdivided
into two categories: economic rights and moral rights.

An author receiving protection from the Berne Convention
enjoys several economic rights. First, the author has the exclusive
right to reproduce his work. This means that the author may
authorize the reproduction of his work in any manner or form.
The reproduction must be fixed in a material form though the
exact definition of material is unclear. Second, the Convention
grants an author the exclusive right to make or authorize trans­
lations. This right exists for the entire term of protection. A
person who makes a translation of another's work also enjoys the
protection of the Berne Convention. Third, an author has the
right to make adaptations of his work. The right of distribution
involved, the Berne Convention grants a minimum protection of fifty years from the date
of creation. Id. at art. 7(2). Anonymous and pseudonymous works also receive minimum
protection of fifty years. Id. at art. 7(3). Photographic works and works of applied art
receive protection for twenty-five years. Id. at art. 7(4).

Id. at art. 7(6).

Id. at art. 7(7).

Id. at preamble.

See S. Ricketson, supra note 4, at 367. The inclusion of these rights occurred only
when pressure was placed on the member states to the Berne Convention to do so. Id.
See supra note 9 and accompanying text.

See S. Ricketson, supra note 4, at 364.

Berne Convention, supra note 1, at art. 9(1). See S. Ricketson, supra note 4, at 371–
72.

Berne Convention, supra note 4, at art. 9.

See S. Ricketson, supra note 4, at 373–74. Sound and visual recordings clearly meet
the definition of reproduction. Berne Convention, supra note 1, at art. 9(3).

Article 8 states, "Authors . . . shall enjoy the exclusive right of making and of
authorizing the translation of their works throughout the term of protection of their
rights in the original works." Berne Convention, supra note 1, at art. 8.

Id. This article has been in force since 1908 when it was accepted by the members at
the Berlin Revision. Article 8 played an important role in Russia's non-accession to the

See Berne Convention, supra note 1, at art. 2(3).

Article 12 provides that an "[a]uthor . . . shall enjoy the exclusive right of authorizing
adaptations, arrangements and other alterations of their works." Id. at art. 12.
comprises a fourth category of protection under the Berne Convention.\footnote{S. Ricketson, supra note 4, at 403-04. No general right of distribution exists per se in the Berne Convention text. Most national laws provide some method of distributing a work to the public; however, no rule of thumb exists for all countries. One commentator advances an economic theory for the lack of an exclusive distribution right. He states that such a right might enable an author to effectively monopolize a market by preventing the resale of copies of his work. Id.}

Perhaps the greatest right the Berne Convention recognizes is the \textit{droit moral} or moral right. This right is found in Article 6bis.\footnote{Id. at art. 6bis(1). “Independently of the author’s economic rights, . . . the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.” Id.} Moral rights exist separate from economic rights.\footnote{Id.} The \textit{droit moral} embodies several notions of fairness. First, the author has the right to have his authorship recognized.\footnote{Id.} Second, the author may prevent the distortion, mutilation, or other acts which prejudice his reputation.\footnote{Id.} A moral right lasts at least as long as the duration of the author’s economic rights.\footnote{Id. at art. 6(2).} All members of the Berne Convention must provide protection of this right through some means.\footnote{Id. at art. 6(3).}

B. \textit{The Paris Revision}

The most recent revision of the Berne Convention placed special emphasis on the rights of developing countries to acquire...
copyrighted material.\textsuperscript{52} Known as the Appendix, the Union provided for compulsory translation and reproduction licenses for the lesser developed nations of the world.\textsuperscript{53} Article 21 of the Convention makes the Appendix an integral part of the Paris Act.\textsuperscript{54} However, article 28(1)(b) allows a country to declare in its instrument of ratification or accession that its accession does not apply to articles 1 through 21 or to the Appendix.\textsuperscript{55}

A country may invoke the special privileges only if it is a developing country.\textsuperscript{56} To invoke the provisions of the Appendix, a country must deposit a letter with the Director General of the Union notifying him that the country will avail itself of article II or article III or both.\textsuperscript{57} The declaration may be made at the time of accession or anytime thereafter; however, article V(1)(c) places a limitation on the latter.\textsuperscript{58} The Berne Convention allows a country the right to enjoy the Appendix for renewable periods of ten years.\textsuperscript{59}

\begin{footnotesize}
\begin{enumerate}
\item Berne Convention, \textit{supra} note 1, at art. 21(1). The Convention appended the special rules applicable to developing nations to the main text of the Convention. The appended rules are known collectively as the Appendix. \textit{Id.}
\item Berne Convention, \textit{supra} note 1, app. at arts. II–III.
\item \textit{Id.} at art. 21.
\item \textit{Id.} at art. 28(1)(b).
\item Any country may declare in its instrument of ratification or accession that its ratification or accession shall not apply to Articles 1 to 21 and the Appendix, provided that, if such country has previously made a declaration under Article VI(1) of the Appendix, then it may declare in the said instrument only that its ratification or accession shall not apply to Articles 1 to 20. \textit{Id.}
\item Article I(1) defines a developing country:
\begin{quote}
Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V(1)(c), at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both of those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V(1)(a).
\end{quote}
\textit{Id.} If the country meets the definition of a developing country as established by the United Nations General Assembly, then the Union affords the country the compulsory rights mentioned above. Tocups, \textit{The Development of Special Provisions in International Copyright Law for the Benefit of Developing Countries}, 29 J. COPYRIGHT SOC'Y U.S. 402, 415 (1981).
\item Berne Convention, \textit{supra} note 1, app. at art. 1.
\item \textit{Id.}, app. at art. V(1)(c). “Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.” \textit{Id.}
\item \textit{Id.}, app. at art. 1(2)(a).
\end{enumerate}
\end{footnotesize}
1. The Compulsory License to Translate

Four situations exist regarding the application for a compulsory license to translate. First, after a period of three years commencing on the date of first publication of the work, a country may apply for a license to translate a work if the work has not been published in a “language in general use” in that country by the owner of the right of translation. Second, a national may obtain a license if a translation of the work has been published, but all editions of it are out of print. Third, in the case of translations made into a language not of general use in one or more of the developed countries which are members of the Union, a translating country may replace the general three-year provision with a one-year clause. The final situation envisioned is a gloss on the third. Article II (3)(b) allows for the reduction of the general term to one year in the case of a translation from a work in general use in a developed country if (i) unanimous agreement exists between the developed countries in which that language is in general use, (ii) the language in question is not English, French, or Spanish, and (iii) such agreements are deposited with the Director-General by the governments which have concluded them.

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60 Id., app. at art. II(2)-(3).
61 Id., app. at art. II(2)(a).

Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, any national of such country may obtain a license to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction. Id. It appears that no license would issue if any translation were published in the three year window. This conclusion seems logical when subparagraphs (a) and (b) are taken as a whole. See S. Ricketson, supra note 4, at 639.

62 Berne Convention, supra note 1, app. at art. II(2)(b). “A license under the conditions provided for in this Article may also be granted if all the editions of the translation published in the language concerned are out of print.” Id. The exact meaning of “out of print” remains undefined; however, one commentator presumes the phrase to mean that no copies of the translation are available on the open market in any member state. See S. Ricketson, supra note 4, at 639.

63 Berne Convention, supra note 1, app. at art. II (3)(a). “In the case of translations into a language which is not in general use in one or more of the developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2)(a).” Id. This clause applies only in the case of translation from one developing country’s language to another. Id.

64 Id., app. at art. II (3)(b).
Issuance of licenses occurs only when it is being sought for "the purpose of teaching, scholarship or research." An owner of the translation right may terminate a license by publishing a translation of the work in question. The Berne Convention places some limitations on this right. First, the owner's translation must sell at "a price reasonably related to that normally charged in the country for comparable works." Second, the owner must use the same language for his translation as that of the licensed translation and have the same content. Third, while not expressly stated, the owner must give reasonable notice of the publication of the translation and the termination of the license. To this end, article II allows for the distribution of all copies made by the license holder before termination of the license.

2. The Compulsory Right to Reproduce

The second license the Berne Convention grants is a license to reproduce. The general right to obtain a reproduction license is similar to that of the translation license except that one must wait five years instead of three. Furthermore, the Convention

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65 Id., app. at art. II (5). The term research does not extend to industrial or commercial research; however, the limit of the meaning remains unclear. S. Ricketson, supra note 4, at 642-43.
66 Berne Convention, supra note 1, app. at art. II(6).
67 If a translation of a work is published by the owner of the right of translation or with his authorization at a price reasonably related to that normally charged in the country for comparable works, any license granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.
68 Id.
69 S. Ricketson, supra note 4, at 643.
70 Berne Convention, supra note 1, app. at art. II(6).
71 Id., app. at art. III.
72 Id., app. at art. III(2)(a).
73 If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of
   (i) the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or
   (ii) any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date, copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a
prohibits reproduction if the author has distributed the work to
the public. The Convention, however, provides for a longer or
shorter waiting period if the work fits into certain categories.

A developing country may receive a license to reproduce only
for systematic instruction. A country may only distribute a work
which would fulfill the needs of a “specified instructional ac-
tivit[y].”

The creator of the work may terminate the reproduction li-
cense if he distributes copies of the work in question. The
author may distribute the works to the general public or in con-
nection with systematic instructional activities. In both cases the
price of the work must be the normal price. The author must
distribute the same work, and he should give reasonable notice
of the distribution. Just as in article II, the copies reproduced
before the termination of the license may be distributed until the
stock is exhausted.

The Berne Convention provides substantial rights to authors
and their works. These rights benefit not only the author but the
developing countries of the world as well. These benefits, how-

license to reproduce and publish such edition at that or a lower price for use in
connection with systematic instructional activities.

Id.

73 Id.
74 Id., app. at art. III(3). For instance, if the work is one of natural or physical sciences,
article III reduces the waiting period from five years to three. Id., app. at art. III(3)(i).
The period referred to in paragraph (2)(a)(i) shall be five years, except that
(i) for works of the natural and physical sciences, including mathematics, and
of technology, the period shall be three years;
(ii) for works of fiction, poetry, drama and music, and for art books, the period
shall be seven years.

Id.

75 Berne Convention, supra note 1, app. at art. III (2)(a). The records of the Berne
Convention do not indicate what systematic instruction means. An analysis of the report
of the UCC, however, indicates that reproduction for research would be excluded. See S.
Ricketson, supra note 4, at 651. The legislative bodies of the UCC and the Berne
Convention met in Washington, D.C. The purpose of the meeting was to create the rules
for the developing countries. In order to prevent countries from choosing between the
Conventions due to differences in terms, the Washington conference took place. Hadl,
Toward International Copyright Revision, 18 BULL. COPYRIGHT SOC’Y U.S. 183 (1970). Rick-
etson uses the General Report of the UCC to infer the meaning of unclear terms in the
Appendix of the Berne Convention. S. Ricketson, supra note 4, at 649.
76 Id. at 651–52.
77 Berne Convention, supra note 1, app. at art. III(6).
78 Id.
79 Id.
80 Id., app. at art. III(6); S. Ricketson, supra note 4, at 652.
81 Berne Convention, supra note 1, app. at art. III(6).
ever, are lessened if countries such as the Soviet Union and the PRC do not join the Union.

II. THE SOVIET COPYRIGHT LAW

The viability of the current Soviet copyright law lies, in great part, in the constitution of the Soviet Union. Before turning to the current structure of copyright law, an analysis of the history of Soviet copyright law is helpful to gain some understanding of current copyright law.

A. Soviet Copyright Law Before 1973

Czarist Russia recognized an author’s right to benefit exclusively from his work. From 1828 until 1917, copyright law was governed by the Council of State.\(^82\) The first law, promulgated in April 1828, granted an author or translator the exclusive right to “reproduce, publish and disseminate” his work.\(^83\) Foreign writers received no protection for their works.\(^84\) In 1857, the Council of State offered copyright protection for the first time to foreigners if their works were first published in Russia.\(^85\) In 1911, the copyright statute was changed again.\(^86\) Foreign authors received the right to grant permission to reproduce the work in its original language.\(^87\) The 1911 statute remained intact until the Bolshevik Revolution.\(^88\)

During the mid-nineteenth century, the Russians joined the move toward international copyright laws.\(^89\) In 1856, a treaty on commerce and navigation between Russia and France called for a special convention on copyright protection.\(^90\) When the Berne

\(^82\) M.A. Nexus, Copyright Law in the Soviet Union 6–10 (1978).
\(^83\) Id. at 6.
\(^85\) M.A. Nexus, supra note 82, at 7.
\(^86\) Comment, supra note 84, at 55.
\(^87\) Id. An author would receive royalties only if the work were published in its original language. The author would not be allowed to prevent the translation of his work into Russian.
\(^88\) M.A. Nexus, supra note 82, at 10.
\(^89\) Comment, supra note 84, at 55.
\(^90\) See M.A. Nexus, supra note 82, at 11. Five years later, Russia and France signed a copyright agreement. The Russo-Franco treaty placed restrictions only on works in their original language. No restriction was placed on the free translation of works. Id.
Convention was established in 1886, however, the Russian government declined an invitation to join.91

In the early 1900s, Western nations, whose works were being pirated, began to use copyright protection as a tool in trade negotiations.92 As a result, Russia signed copyright treaties with some Western nations.93 Although the Russian government attended the Berlin Revision conference of the Berne Convention, they did not accede to it.94

The first attempt to model copyright legislation in the Soviet Union occurred shortly after the Revolution in 1917.95 The All-Union Central Executive Committee issued a decree which enabled the Department of Education to declare a monopoly on literature.96 In 1918, the Soviet government further diminished authors' rights in their literary and artistic works through the nationalization of all works in the Soviet Union.97

The copyright law developed from the “Principles of Copyright” (Principles), a document issued on May 16, 1928, to further Lenin’s goal of politicizing literature.98 In 1938, the provisions

91 See Comment, supra note 84, at 55. The Berne Convention requires that authors receive remuneration for all works copied that are not in the public domain. The Russian people strongly desired to read foreign literature. By ratifying the Berne Convention, Russian publishers of translated material would have had to surrender their freedom to translate. Because the Berne Convention required that all works not in the public domain be protected, the publishers would have been subject to increased royalty payments. See id. Ironically, the retroactive clause remains a problem in gaining Soviet adherence today. See infra notes 247–50 and accompanying text.
92 M.A. Newcity, supra note 82, at 13.
93 France, Germany, Belgium, and Denmark signed bilateral treaties with Russia. Id. at 15.
94 See Comment, supra note 84, at 55.
96 Note, New Dawn, supra note 95, at 452. The decree granted a monopoly to the Department of Education for a period of five years. The decree only applied to Russian classics. Id. The legislation enabled the new government to distribute Russian classics to the masses at the cost of production. Dozortsev, Legal Aspects of the USSR's Participation in the Universal Copyright Convention, 1981 Internationale Gesellschaft Fur Urheberrecht E.V. Schriftenreihe [I.G.F.U.S.] 31, 33.
97 Note, Soviet Accession, supra note 95, at 405.
98 See Note, New Dawn, supra note 95, at 452.
were changed to extend the duration of an author's copyright to the life of the author plus fifteen years. Section 7 of the Principles limited the state monopoly over an author's work by providing that an author owned the exclusive right to publish, reproduce, and circulate his work. The section also granted the author the right to remuneration. The Principles remained virtually intact until 1973.

B. Copyright Law In the Soviet Union Since 1973

An analysis of the copyright law of the Soviet Union begins with the Soviet constitution. Article 47 of the constitution guarantees that an author will receive protection for his works. In connection with the principles enunciated in article 47, the Soviet government issued chapter IV of the Fundamentals of Civil Legislations (Fundamentals).

1. Protection Under the Fundamentals of Civil Legislations

The Fundamentals declare the copyright policy of the Soviet Union. Rules concerning the types of works to be protected, the length of protection, who receives protection, and the type of protection are set out in this law.

Article 96 of the Fundamentals generally states the works which receive protection. Any literary work expressed in a material

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99 See id.
100 See id.
101 See id.
102 See id. The Soviet Union recodified their federal legislation in 1961. Chapter IV of the laws contain the copyright codes. While the laws were recodified, the laws themselves were not changed. In 1973, the Soviet Union joined the UCC. The UCC is the other multilateral copyright treaty in existence. The principle reason for the UCC's creation was to gain the participation of the United States in international copyright protection. Because of this fact the requirements of the treaty were not as stringent. When the Soviet Union joined the UCC, it had to modify its domestic legislation to provide for the requirements of the UCC. Id.
103 Konst. SSSR art. 47, in 3 Copyright Laws and Treaties of the World (1987) [hereinafter Copyright Laws]. "Citizens of the USSR . . . are guaranteed freedom of scientific, technical, and artistic work . . . . The rights of authors, inventors and innovators are protected by the state." Id.
104 Id.
106 Id. at art. 96–106.
107 Id. at art. 96. "Copyright extends to scientific, literary or artistic works, independently of their form, destination, value, and method of expression." Id.
form is eligible for copyright protection. The protection extends to published and unpublished works. The republics of the Soviet Union are charged with implementing the Fundamentals. In implementing article 96, the copyright provisions of the Civil Code of the Republic of Russia (Code) list the types of works which receive protection.

Article 97 of the Fundamentals directs those who are eligible for copyright protection. If an authors' work is first published in the Soviet Union, article 97 decrees that they will receive protection despite their nationality. If a work is unpublished, it will receive protection if it is physically located in the Soviet Union. Citizens of the Soviet Union receive protection under the Fundamentals for works which are first published outside the Soviet Union.

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108 Id. "Copyright extends to published or unpublished works, expressed in any material form permitting reproduction of the product of the creative activity of the author (manuscript, drawing technique, picture, public performance or execution, recording upon films, mechanical or magnetic tape recording, etc.). Id.

109 Id.

110 Supreme Soviet Resolution (1961), in 3 Copyright Laws, supra note 103.

111 Copyright Provisions, GK RSFSR, art. 475, in 3 Copyright Laws, supra note 103 [hereinafter Code].

The following may be the subject of copyright: oral works ... ; written works . . . ; dramatic . . . dramatrico-musical works, and musical works . . . ; translations; scenarios, synopses; cinematographic or television films . . . ; choreographic works . . . ; works of painting, sculpture, architecture . . . ; plans . . . relating to science, techniques, or stage performances of dramatic . . . works; geophysical . . . or other maps; photographic works and works obtained by processes analogous to photography; . . . mechanical or technical recording[s].

Id. This Comment discusses the law of the Soviet Union; however, the law of the Russian Federation will be used for explanatory purposes. Id. Soviet legislation merely sets the policies of the country. The regulation of copyright is left to the republics. See Boguslavski, The Soviet Union, in S. Stewart, International Copyright and Neighbouring Rights 457 (1983). For examples of other Soviet republic laws, see 3 Copyright Laws, supra note 105.

112 Fundamentals, supra note 105, at art. 97.

113 Id. "Copyright in respect of a work first published on the territory of the USSR . . . shall belong to the author . . . irrespective of [his] nationality . . . ." Id. See Code, supra note 111, at art. 477.

114 Fundamentals, supra note 105, at art. 97. "Copyright . . . in respect of an unpublished work in any material form, located within [the] territory [of the Soviet Union], shall belong to the author . . . irrespective of [their] nationality." Id.; see Code, supra note 111, at art. 477. The Code substitutes the word objective for material. Id. Article 96 defines material form.

115 Fundamentals, supra note 105, at art. 97. "The citizens of the U.S.S.R. . . . shall enjoy copyright in respect of a work first published abroad or established in any material form." Id. See Code, supra note 111, at art. 478. The Fundamentals also provide for protection of foreign authors published outside the Soviet Union. "Other persons shall
Article 105 of the Fundamentals defines the duration of copyright protection. Copyright protection in the Soviet Union lasts for the life of the author plus twenty-five years. The Soviet Union allows the republics to determine the term of protection for photographic works and applied art works.

Soviet law grants the following rights to the author. First, the author enjoys the right to publish, reproduce, and distribute his work. Second, article 98 of the Fundamentals grants the author the right of inviolability of a work. The right to compensation for the use of a work is a third guarantee.

2. Creation and Regulation of the Author's Contract

Prior to 1973, the responsibility for enforcing Soviet copyright laws rested in the hands of various organizations. In 1973, the creation of the All-Copyright Union (VAAP) centralized administration of the copyright laws and enforcement of authors' contracts.

Civil codes of the Union republics provide the rules for creating an author's contract. There are two types of contracts for a transfer of a work: 1) a transfer contract of a work for use; or 2) an author's license contract. There are two transfer methods under the author's contract for the transfer of a work for use. First, an organization may receive the rights to a created work for a stated purpose. Second, an organization may commission an author to create a specific work. The first type of contract includes the right to publish a work in its original form, publicly...
perform a work, use an unpublished work in a film, as well as other types of contracts which allow for the use of a work.\textsuperscript{128}

The second type of contract is a licensing contract.\textsuperscript{129} Under this type of agreement, the author stipulates in the agreement the type of uses that the contracting organization is permitted.\textsuperscript{130} The terms of the agreement are fixed in a contract. Contracts between foreign persons and Soviet citizens are governed by the VAAP.\textsuperscript{131}

Articles 125 and 126 of the Soviet constitution grant the authority to create VAAP.\textsuperscript{132} The statute creating VAAP gives the organization, a nongovernmental agency, the right to enter into exclusive agreements in its own name.\textsuperscript{133} VAAP protects copyrights both inside and outside the Soviet Union.\textsuperscript{134} This protection includes the buying and selling of translation rights internationally.\textsuperscript{135} Because VAAP is a monopolistic entity in the area of copyrights, it retains a strong position when bargaining for the use of a work.\textsuperscript{136} VAAP’s statute expressly provides that a foreigner may only obtain the right to use a Soviet author’s work if permission is received from VAAP.\textsuperscript{137} The statute further requires that all agreements for use of Western works in the Soviet Union receive VAAP approval.\textsuperscript{138} Acting as an intermediary, VAAP oversees all negotiations for the use of a work between foreigners and Soviet citizens.\textsuperscript{139}

The copyright law of the Soviet Union has not strayed from its original roots. Since the founding of the Union of Soviet Socialist Republics, the Soviet government has maintained tight control over the distribution of works. This is true of domestic works as well as foreign works.

III. The Chinese Copyright System

The Chinese government has exercised control over the intellectual activities of the Chinese people for many centuries because

\textsuperscript{128} Id.
\textsuperscript{129} Id. at 458.
\textsuperscript{130} Id.
\textsuperscript{131} Id.
\textsuperscript{132} KONST. SSSR arts. 125–26. See Comment, supra note 84, at 61.
\textsuperscript{133} Comment, supra note 84, at 61.
\textsuperscript{134} Id.
\textsuperscript{135} Id.
\textsuperscript{136} Id.
\textsuperscript{137} Id.
\textsuperscript{138} Id.
\textsuperscript{139} Id.
intellectual activities are perceived as important in Chinese politics. Although China has not enacted a copyright law, since the early days of the establishment of the Communist regime, the government has issued close, detailed, and changing regulations regarding copyright royalty payments and other rights of authors. In order to understand the recent developments in Chinese copyright law, a survey of Chinese copyright history is a necessary starting place.

A. Background

1. History of Domestic Copyright Laws In China Before the Communist Revolution

In 1910, the Qing government issued the first copyright law of China, the Law of Author's Rights of the Great Qing (Law of Qing). The law detailed the rights of the author, the scope of the works protected, how to secure the rights, the duration of protection, the limitations on the rights, and the penalties for infringing an author's rights. The law, however, was issued one year before the fall of the Qing Dynasty. Therefore, the Law of Qing's effect was limited to influencing the laws of governments which followed the Qing Dynasty.

In 1911, the Qing Dynasty was overthrown, and the laws in effect were repealed. The Republic of China took the place of the dynasty. Four years later, the Law of Author's Rights of the Northern Warlords (Law of the Warlords) replaced the Law of Qing. The legislation's content closely patterned the Law of Qing. The Law of Author's Rights of the Kuomintang government (Law of Kuomintang) supplanted the Law of the Warlords in 1928. The Law of Kuomintang remained intact until the

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141 See id. at 261–63.
142 See id. at 258.
143 See id. An author's rights were defined as "the exclusive advantages in copying works." Works protected included literature, photography, calligraphy, painting, and sculptures. The protection of the law lasted for the life of the author plus thirty years. Id.
144 See id. at 259.
145 See id.
146 See id.
147 See id.
148 See id.
149 See id.
Chinese Communist Party gained control and established the People's Republic of China. 150

2. History of International Copyright Relations

China may be described as a country which denied protection to foreign authors. Prior to the Law of Qing, the Qing government entered into treaties with the United States and Japan which included copyright agreements. 151 For example, the Shanghai Treaty as to Commercial Relations contained a provision recognizing the rights of authors. 152

In 1908, the member states of the Berne Convention invited the Qing government to participate in the revision conference in Berlin. 153 Accordingly, the government sent a representative to Berlin to observe. 154 Just like their Russian counterparts, however, the Qing government did not accede to the Berne Convention. 155

In 1913, the United States requested that the Chinese enter into a bilateral treaty covering copyrights. 156 Chinese publishers strongly disapproved of the treaty, and the government refused the offer. 157 In 1920, several of the Berne members requested that the Chinese join the Berne Convention; however, the Chinese rejected the advance. 158 The final international agreement discussing copyright that non-Communist China's Kuomintang government entered into was the Treaty of Friendship, Commerce, and Navigation, (Treaty of Friendship). 159 The

150 See id.
151 Treaty as to Commercial Relations, Shanghai, Oct. 8, 1903, United States-Imperial China, 33 Stat. 2208, 2313, art. XI, T.S. No. 430 (Shanghai Treaty); Baumgarten, Copyright Relations Between the United States and the People's Republic of China—The Seventeenth Annual Jean Geiringer Memorial Lecture, 27 BULL. COPYRIGHT SOC'Y U.S. 419, 421 (1980); China & Copyright, supra note 140, at 260.
152 The Shanghai Treaty only protected works created specifically for use by the Chinese people. Baumgarten, supra note 151, at 261.
153 Guo, supra note 27, at 121; China & Copyright, supra note 140, at 260.
154 Guo, supra note 27, at 121.
155 Id.; supra text accompanying note 94.
156 See China & Copyright, supra note 140, at 260–61. The Shanghai Chamber of Book Commerce petitioned the various ministries not to sign a treaty. The petition pointed out that the United States had not adhered to the Berne Convention because the United States did not export many works. The Chamber felt the Chinese were in the same position vis-a-vis the Americans. The petition went on to point out the inequalities that would be created by the treaty. Id.
157 See id. at 261.
158 See id.
159 China & Copyright, supra, note 140, at 260; Baumgarten, supra note 151, at 421–22.
Treaty of Friendship was short-lived because the Communist Chinese overthrew the Kuomintang government.160

3. Domestic Copyright Law Since the Revolution

In 1949, Mao Zedong and the Communist Party established the People's Republic of China repealing all laws and treaties.161 Included in the class of nullified laws were the domestic copyright laws enacted during the reign of the Kuomintang government.162 The PRC enacted a new body of law which conformed to Marxist-Lenist ideology by placing possession of property in the hands of the state bureaucracy and out of individual control.163 Socialist theory declared that the "renunciation of property [was] essential to the success of the class struggle and the economic growth of the nation."164 Because copyright law, which restricted the free use of a work by society, conflicted with socialist philosophy, there was no use for such laws in China.165

Because the communist philosophy conflicted with the Western view of copyright—the protection and encouragement of an individual's rights—the Chinese government never acceded to an international copyright treaty or bilateral agreements.166 As a result, the PRC entered into a period of isolationism and control similar to the Soviet experience in 1917.167

This isolationist attitude predominated during the Cultural Revolution, which lasted from 1966–1976.168 During this period, the Chinese considered anything connected to the outside world evil.169 Characterized as tools of oppression, codified laws were rejected.170 From 1966 to 1976, the Gang of Four closed univer-

161 Comment, supra note 84, at 64.
162 Sidel, supra note 160, at 478.
164 Id.
165 Id. at 64–65.
166 Id. at 64–65.
167 Id. at 65.
169 Comment, supra note 84, at 65.
170 Id.
sities, stopped the importation of foreign books, and inhibited scholarship in China.\(^{171}\)

When the ten-year reign of the Gang of Four ended, the Chinese leaders reacted to the world pressure around them and launched a plan of reconstruction. This plan of reconstruction, known as the Four Modernizations, began in 1978 and focused on four specific areas: agriculture, industry, national defense, and science and technology.\(^{172}\) Although Chinese Premiere Hua Guofeng stated that the goal of the Four Modernizations was to prevent imperial aggression,\(^{173}\) imperialist countries soon became the suppliers of the equipment and technology China needed to strengthen itself. Much like the Soviets in the 1960s, the Chinese government realized that the only method of obtaining technology was by providing protection for the owners of technology.\(^{174}\) This realization resulted in increased interest in patent and trademark laws.\(^{175}\)

The first pressures for a domestic copyright law in the PRC came with the signing of the 1979 Agreement on Trade Relations (Agreement) between the United States and the PRC.\(^{176}\) Article 6 of the Agreement provided that both the United States and PRC would implement laws to protect the rights of authors of the respective countries in an equal manner.\(^{177}\) A literal reading of article 6 would imply that China must enact a copyright law equal to that of the United States.\(^{178}\)

B. The Proposed Chinese Copyright Law

While the Agreement called for mutual copyright protection in the two countries, the PRC has yet to afford American copyright owners the same protection the United States affords Chinese writers. Chinese copyright officials, however, have asked

\(^{171}\) Id.

\(^{172}\) Id.

\(^{173}\) Id.

\(^{174}\) See id. at 66.


\(^{176}\) Agreement on Trade Relations, July 7, 1979, United States–People's Republic of China, 31 U.S.T. 4652, T.I.A.S. No. 9630; Comment, supra note 84, at 66–67.

\(^{177}\) Agreement on Trade Relations, supra note 176, at art. VI, at 4657–58.

\(^{178}\) Comment, supra note 84, at 67.
This patience is apparently about to be rewarded. The Chinese have finalized a draft copyright law and are circulating it at this time.

Article 1 of the Chinese copyright law (Draft Law) states that the law's purpose is to protect an author's right in his work. Other goals of the law are to regulate the distribution of an author's work and promote the development of a cultural and scientific environment. The Draft Law also grants protection to foreigners' works first published in China and for works unpublished but existing in China. The most recent draft of the copyright law does not discuss the protection afforded foreign authors. The Draft Law also has a retroactive effect on works published prior to its enactment. What this means for foreign authors, however, remains unclear.

The Draft Law grants the author moral as well as economic rights. The term of protection of the economic rights lasts for the author's life plus fifty years, the same term of protection as found in the Berne Convention. Moral rights last indefinitely.

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179 Id.
181 Draft Law, supra note 180, at art. 1.
182 Article I states its purpose "to protect the rights of authors . . . in literary, artistic and scientific works, to regulate the relationships among authors . . ., distributors, and the public . . . and to promote the development of a flourishing scientific and cultural environment." Id. Article I does not deviate substantially from previous drafts although a reference to socialist civilization has been stricken. See Goldberg, supra note 180, at 2, col. 5.
183 Draft Law, supra note 180, at art. 2.
184 There is no reference to the rights of foreign works in this draft of the copyright law. The Draft Law does protect works first published in China regardless of the author's nationality. Id. at art. 2. The previous draft did allow for foreign authors' rights in conformance with treaty obligations. See Goldberg, supra note 180, at 2, col. 5. "Foreigners shall enjoy the protection of their works which are first published outside China or their unpublished works, in accordance with the bilateral or multilateral agreement of which China is a party." Id.
185 Draft Law, supra note 180, at art. 52.
186 PRC, Copyright Law (Draft), 7 CHINA L. & PRAC. 40, 50 (1989) (editor's comments on the draft law) [hereinafter Comments].
187 Id. at art. 8.
188 Id. at art. 26.
189 Id. at art. 25.
The moral rights include the right of publication, right of acknowledgement, right to affix the author's name on the work, and the right to protect the integrity of the work.\textsuperscript{190} The right of publication encompasses both an economic and a moral right.\textsuperscript{191} The moral aspect of this right is the right to refuse to publish one's work.\textsuperscript{192} The moral rights are also similar to those found in European copyright laws.\textsuperscript{193} The economic rights include the right to publish, the right to perform, the right to distribute the work, and the right to make adaptations of the work.\textsuperscript{194}

While it is unclear whether the copyright law of China will remain in the form as proposed in the draft legislation, Chinese commentators speculate that the law will not deviate substantially from this form.\textsuperscript{195} In addition, the Chinese have indicated a willingness to adhere to one of the international copyright conventions following ratification of domestic copyright legislation.\textsuperscript{196}

IV. CHINESE AND SOVIET ACCESSION TO THE BERNE CONVENTION

While the development of Soviet and Chinese copyright laws has closely paralleled each other, the desire to adhere to an international copyright treaty has not. The PRC has frequently indicated that the government will join a copyright convention as soon as its domestic law is ratified.\textsuperscript{197} While the Soviet Union is a member of a multilateral copyright treaty, its active participation has been questioned.\textsuperscript{198} Although neither country has announced accession to the Berne Convention, an analysis of Soviet and Chinese domestic laws indicates that Chinese adherence is more likely to occur in the near future.

\textsuperscript{190} Id. at art. 8.
\textsuperscript{191} Id.
\textsuperscript{192} Id.
\textsuperscript{193} Comments, supra note 186, at 51.
\textsuperscript{194} Draft Law, supra note 180, at art. 8.
\textsuperscript{196} Goldstein, supra note 163, at 3.
\textsuperscript{197} See id.
\textsuperscript{198} Comment, supra note 84, at 63. There have been charges of violations of the UCC since the Soviet adherence in 1973. In October 1974, United States publishers accused the Soviet Union of violating at least two sections of the UCC. The Soviet Union was accused of copying the first two chapters of Kurt Vonnegut's Breakfast of Champions as well as other works without the permission of the copyright owners. Id.
A. **Chinese Accession to the Berne Convention**

The Draft Law of China provides the minimum protections of the Berne Convention.\(^{199}\) The Draft Law grants protection to all of the works listed in article 2(1) of the Berne Convention.\(^{200}\) The Draft Law requirement of materiality does not conflict with any Berne Convention provision.\(^{201}\) The Draft Law grants protection to all works first published in the PRC regardless of citizenship.\(^{202}\) Works unpublished but existing in China, however, receive the full protection of the Draft Law.\(^{203}\) This poses no problem because this protection is limited to citizens of the PRC. If, as in past drafts, the PRC granted protection in this draft for unpublished works existing in the PRC, such a scheme would pose problems when an alleged infringement took place in another member state. Because the author is not a national of the PRC, the Berne Convention does not guarantee protection for his unpublished works.\(^{204}\) Hence, a foreign author might enjoy the protection in the PRC, yet he may not claim protection for his unpublished work in other member states.\(^{205}\)

The term of protection granted under the Draft Law does not conflict with the Berne Convention counterpart.\(^{206}\) The Draft Law grants the minimum protection stated in the Berne Convention.\(^{207}\) In addition, prior drafts have extended the period of protection for works published subsequent to an author’s death.\(^{208}\) The effect of this rule is that a foreign author’s heirs might receive protection for one hundred years after the author’s death.\(^{209}\)

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\(^{199}\) *See supra* notes 17–51 and accompanying text; *see supra* notes 182–94 and accompanying text.

\(^{200}\) *See supra* note 26 and accompanying text.

\(^{201}\) *See supra* note 28 and accompanying text. Materiality means the placing of the work on some tangible medium such as paper.

\(^{202}\) *See supra* text accompanying note 184.

\(^{203}\) *See supra* text accompanying note 183.

\(^{204}\) *See supra* text accompanying notes 20–70.

\(^{205}\) The Berne Convention specifically states that only the published works of a national of a non-Union country may receive protection. If the unpublished work were from a member country, it would receive protection. If the work in question were the product of a non-national habitually residing in the PRC, the work would also receive protection. *See supra* notes 18–21 and accompanying text.

\(^{206}\) *See supra* text accompanying notes 31–32, 188.

\(^{207}\) *See supra* text accompanying note 188.

\(^{208}\) *See Goldberg, supra* note 180, at 3.

\(^{209}\) *See id.* If the work were published the day before expiration, the practical effect is
Not all of the exclusive rights granted by the Berne Convention are addressed in the Draft Law. The right of translation is protected under the Draft Law.\textsuperscript{210} The Draft Law grants the author the exclusive right to reproduce his work.\textsuperscript{211} The Draft Law, however, allows for the reproduction of a work without remuneration to the author.\textsuperscript{212} This may be a violation of article 9(2) prohibiting legislation which impairs the ability of the author to exploit his work.\textsuperscript{213}

The Draft Law also grants the creator of dramatic works the right to publicly perform a work.\textsuperscript{214} The Draft Law, however, limits the economic value of the right by allowing noncommercial public performances without the permission of the author.\textsuperscript{215} The Draft Law authorizes performance by professional art groups as long as a royalty is paid to the author.\textsuperscript{216} If the PRC accedes to the Berne Convention, these compulsory licenses would not have to be changed. Article 17 would probably be cited to show approval of the Draft Law provisions.\textsuperscript{217}

While no formalities are apparent in the Draft Law, one commentator favors the use of a copyright notice.\textsuperscript{218} The commentator believes the notice would enlighten the Chinese people to the purpose of copyright.\textsuperscript{219} Such a requirement, however, would conflict with article 5 of the Berne Convention which does not permit the use of formalities such as notice.\textsuperscript{220} Clearly, Chinese law generally complies with the requirements of the Berne Convention. Mere compatibility does not guarantee accession, however, and some benefit must be shown.

The biggest advantage to Chinese accession to the Berne Convention is the government's right to invoke the privileges of the

\textsuperscript{210} See Draft Law, \textit{supra} note 180, at art. 8.
\textsuperscript{211} See id.
\textsuperscript{212} See id. at art. 40; Berne Convention, \textit{supra} note 1, at art. 9(2).
\textsuperscript{213} Berne Convention, \textit{supra} note 1, at art. 9(2).
\textsuperscript{214} See \textit{Draft Law}, \textit{supra} note 180, at art. 8.
\textsuperscript{215} Id. at art. 40.
\textsuperscript{216} Id. at art. 41.
\textsuperscript{217} Berne Convention, \textit{supra} note 1, at art. 17.
\textsuperscript{218} See Guo, \textit{supra} note 27, at 126.
\textsuperscript{219} See id.
\textsuperscript{220} See \textit{supra} note 28 and accompanying text.
Appendix. Both the PRC and other member states which are considered developing nations would benefit from accession. The PRC benefits because the government could translate and reproduce works without the permission of the author.

Under the Berne Convention, the general rule is that a developing country must wait three years to translate an author's work. A reduction in the waiting period, however, may be gained if all of the developing countries which use the language that the work will be translated into agree. In this case, the Chinese language is not in general use in any developed country; therefore, the waiting time is reduced to one year.

Other developing nations would benefit from the PRC's accession because of the reduction in the waiting period for the use of developing countries works. Article II, paragraph 3(a) allows developing countries to gain a license one year after publication if the language to be translated is not of general use in the developed countries. Developing countries other than the PRC would benefit because they can obtain Chinese works after a year.

In the case of reproductions, the general rule under the Berne Convention is that a country must wait five years before it may obtain a license. Works involving natural sciences, however, may be reproduced three years after publication. This would benefit the PRC because the government has expansionary goals. The reproduction rule, however, is not as important as the translation rule. Because Chinese is not a language which is commonly used in developed countries, a reduced waiting period for reproducing works has little value. The ability to translate a

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221 See supra notes 52–81 and accompanying text.
222 Id.
223 Berne Convention, supra note 1, app. at art. V. The developing country must notify the author that the country plans to translate or reproduce the book. The Berne Convention does not require the country to find the author; it merely requires the country to make a reasonable attempt at finding the author. Id.
224 See supra note 64 and accompanying text.
225 Id.
226 See supra notes 63–64 and accompanying text.
227 Berne Convention, supra note 1, app. at art. II(3)(a).
228 See S. Ricketson, supra note 4, at 569.
229 See supra notes 71–74 and accompanying text.
230 See supra notes 172–75 and accompanying text.
work has more significant value because the waiting period may be reduced to one year. By invoking this privilege, the PRC would be allowed to distribute copyrighted material to people in the important areas of reconstruction.

Most commentators argue that the PRC will join the Universal Copyright Convention (UCC). This view, however, is based on the fact that the United States previously did not belong to the Berne Convention. Now that the United States has acceded to the Berne Convention, the argument for Chinese adherence to the UCC seems weaker. If the PRC does accede to the UCC, it will be because of the lesser standards required. The Draft Law, however, is very compatible with the Berne Convention standards, and accession to the Berne Convention would not be a very difficult next step.

B. Soviet Accession to the Berne Convention

The Fundamentals do not meet all of the minimum standards of the Berne Convention. The biggest problem is that the Soviet Union does not have a federal copyright law. Instead, the Soviet Union leaves the regulation of copyright to the republics of the Soviet Union. By formulating copyright law in this manner, the Soviet Union creates a problem for foreign authors. Because of the principle of national treatment, the different laws in the different republics are not applied uniformly.

The Fundamentals do provide coverage for most of the works listed in article 2 of the Berne Convention. Three-dimensional works are missing from the list of works covered by the Fundamentals. The list of works in the Fundamentals, however, is

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232 See Zheng, supra note 195, at 143; Comment, supra note 84, at 69.
233 See Comment, supra note 84, at 66.
234 See supra notes 17–51 and accompanying text; supra notes 104–39 and accompanying text.
235 See supra note 111.
236 See supra notes 23–25 and accompanying text. For instance, some republics limit the term of protection for photographic works but others do not. Because of the differences, a photograph might be copied legally in the Soviet Union if it is copied in one of the republics that limits protection. The problem then becomes one of distribution. If the copying is legal it would seem to follow that distribution would also be legal. See supra note 118.
237 See supra note 26 and accompanying text.
238 See supra note 111 and accompanying text.
not exclusive; therefore, a presumption may be made that three-dimensional works would be covered. 239

Another conflict with the Berne Convention exists in the term of protection. 240 The Soviet Union would have to increase the duration of protection in order to gain entrance into the Convention. The conflict exists not only in the general duration provision, but in the special provision for photographic works and works of applied art. 241 This conflict is more pronounced because of the different provisions in the various Soviet republics. 242

In addition to the difference in duration, the Soviet legislation conflicts greatly with the Berne Convention in the area of photographic works. 243 The Code requires the author to place his name on the photo as well as the place and year of publication in order for the work to gain protection. 244 This is clearly in conflict with article 5 of the Berne Convention which prohibits the use of formalities to deny protection to works. 245 This problem could be avoided by not imposing this rule on foreign works. 246

The major conflict between the Berne Convention and Soviet systems of copyright is the principle of retroactivity. 247 Should the Soviet Union accede to the Berne Convention, there is a possibility that foreigners would receive huge royalty payments. 248 One solution to the problem would be to enter into agreements with major producers of copyrighted matter. 249 This solution, while temporary, would give the Soviet Union time to correct the imbalance. 250

Under the Fundamentals, the author receives the right to authorize translations. 251 The Fundamentals explicitly protect this

239 See supra notes 107–08 and accompanying text.
240 See supra notes 31–34 and accompanying text.
241 See supra note 117–18 and accompanying text.
242 See supra note 118, 236 and accompanying text.
243 Compare Code, supra note 111, at art. 475 with Berne Convention, supra note 1, at art. 5. See supra note 118.
244 Code, supra note 111, at art. 475.
245 See supra note 28 and accompanying text.
246 See infra notes 255–56 and accompanying text.
247 Berne Convention, supra note 1, at art. 18. The principle of retroactivity means that all works which have not entered the public domain would receive protection. Id.
248 See supra note 91 and accompanying text.
249 See S. RICKETSON, supra note 4, at 958.
250 Id.
251 See supra note 119 and accompanying text.
right. The only method of legally obtaining a right to translate is through a contract with an author. 252 This right, however, is limited because of the remuneration rules of the Soviet Union. 253

Finally, VAAP might be considered to be a formality. While the Berne Convention does not explicitly guarantee a right of distribution, the Soviet Union does guarantee such a right. In order to exercise this right, however, an author must go through VAAP. 254 This prevents an author from enjoying other rights guaranteed in the Berne Convention.

The probability of Soviet accession to the Berne Convention would seem to be very low. Two alternatives to gaining accession are apparent. The first would call for the Soviet Union to implement a dual copyright system. 255 Such a system would allow the Soviet Union to maintain its domestic copyright system while allowing the authors of other countries to benefit from their work. This recommendation opposes the socialist doctrine of the Soviet Union by creating a separate class of persons in the Soviet Union.

The second alternative is the same method the United States used to gain Soviet accession to the UCC. 256 One or more of the Berne members would have to give some benefit to the Soviet Union in order to gain compliance by the Soviet Union to the Berne Convention. This seems to be the more practical route to take given the Soviet history of international involvement in copyright. 257

V. CONCLUSION

The Berne Convention protects the right of authors who publish their works in countries which are members of the Union.

252 See supra notes 132–39 and accompanying text.
253 See Boguslavski, supra note 111, at 455.
254 See supra notes 132–39 and accompanying text.
255 Article 5, paragraph 3, provides that protection in the country of origin is governed by that country. Berne Convention, supra note 1, at art. 5(3). One interpretation of article 97 of the Fundamentals might be that the Soviets have established this type of system already. Article 97 provides that foreign authors "shall enjoy copyright . . . in accordance with international treaties entered into by the USSR." Fundamentals, supra note 105, at art. 97 (emphasis added). The question, therefore, is whether the republics of the Soviet Union interpret the phrase "in accordance with" in the same manner as posited. The Russian Republic uses the phrase "in accordance with" in reference to determining the situs of publishing. Code, supra note 111, at art. 476. It does not appear the republics interpret this phrase as posited. The fact that the Soviet Union changed its legislation after accession to the UCC further illustrates the Soviet interpretation.
256 Note, New Dawn, supra note 95, at 461–62.
257 See Comment, supra note 84, at 63.
The level of protection granted the author depends on the legislation of each member state; however, an author receives a minimum level of protection in each country. Developing countries receive benefits through membership in the Berne Convention.

The People's Republic of China is poised for membership in the Convention. Officials in China have met with officials from other Berne Convention countries as well as officials from the World Intellectual Property Organization. Commentators on Chinese law have stated their belief that the PRC will join a copyright convention as soon as a domestic copyright law is passed. From all indications, it would appear that China will join the Union of members of the Berne Convention.

Gaining the membership of the Soviet Union will be a more difficult matter for the Berne Union. The Soviet Union is already a party to an international copyright treaty. This treaty places less responsibility on the shoulders of the Soviet Union. Soviet accession to the Berne Convention would bring about many conflicts. Perhaps the only way to gain Soviet adherence to the Berne Convention will be by a tradeoff with a member country.

Without the membership of the Soviet Union and the People's Republic of China in the Berne Convention, the goal of the Union will not be met. The goal of global protection of an author's literary and artistic works is but a dim light at the end of a very long tunnel.

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