

COMMENT

KOREAN COPYRIGHT REFORM

William Enger*

The 1988 Olympic Games, trade surpluses since 1986, and the Korean edition of Saul Bellow's *More Die of Heartbreak* all indicate South Korea's new found global prominence. While the first two are rewards of a new status, the third represents one of its responsibilities. Bellow's novel, issued in Seoul in July 1987, was the first foreign publication to be protected under South Korea's revised Copyright Act.¹ Enacted in July 1987, the Copyright Act is one of a series of measures designed to enhance protection of foreigners' intellectual property rights in South Korea. Revised patent, trademark and computer program protection acts accompanied the Copyright Act. Persistent pressure by the United States deserves much credit for these measures.

The following article will describe copyright protection in South Korea under the new Copyright Act, emphasizing the rights of foreigners. First, this article will recount efforts by the United States and the Republic of Korea (South Korea) to effect legislation of Korean intellectual property reform. Next, it will introduce significant substantive elements of the new copyright regime. Finally, this study will argue that market incentives for infringement will hinder short-run protection of foreign copyrights, but that long-run gains to the South Korean publishing industry and to South Korea should eventually encourage compliance.

* J.D., 1989 UCLA School of Law; A.B. 1985, University of California, Berkeley. The author is presently associated with Lillick and Charles in Long Beach, California. The author would like to thank Professor William P. Alford for his invaluable assistance and encouragement. Additional thanks to Professor Park Choon-Ho, Korea University, School of Law, and, of course, to Shelley M. Enger.

1. *Saul Bellow Novel Becomes First Protected Foreign Work*, Korea Herald (U.S. ed.), July 11, 1987, at 6, col. 3.

I. THE AGREEMENT ON ADMINISTRATIVE GUIDANCE TO PREVENT PIRACY OF UNITED STATES PUBLICATIONS

The United States launched its campaign to effect copyright protection in South Korea during March, 1983 when a United States interagency delegation visited Seoul to protest unfair trade practices and inadequate intellectual property protection. The United States' copyright concerns focused on South Korea's non-participation in a major international copyright convention, limited protection for foreign authors under South Korean law, and lax enforcement of the existing law.² Despite United States' efforts, the South Korean government withdrew unpopular copyright proposals from its National Assembly in July 1985. Draft revisions to South Korean copyright law introduced the following autumn failed to address United States' concerns.³

The failure of bilateral negotiations to enhance South Korean copyright protection stimulated unilateral action by the United States. On October 16, 1985 President Reagan directed United States Trade Representative (USTR), Clayton Yeutter, to investigate South Korean intellectual property rights and to recommend action.⁴ Section 301 of the Trade and Tariff Act of 1974 authorized this USTR inquiry, the first concerning intellectual property protection.⁵

2. UNITED STATES GENERAL ACCOUNTING OFFICE, GAO/NSIAD-87-65, REPORT TO SELECT SUBCOMMITTEES, INTERNATIONAL TRADE: STRENGTHENING WORLDWIDE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS, 53 (1987) [hereinafter UNITED STATES GENERAL ACCOUNTING OFFICE]. See also K.J. PARK, THE INTELLECTUAL PROPERTY LAWS OF KOREA, 343 (1986). Under the existing Korean copyright regime promulgated in 1957, a work by a foreign author would enjoy copyright protection in South Korea only if it was published first in Korea. Further protection is available only pursuant to treaty.

3. UNITED STATES GENERAL ACCOUNTING OFFICE, *supra* note 2, at 53.

4. Korea Intellectual Property, 50 Fed. Reg. 45, 883 (OFF. U.S. TRADE REP. 1985)(INITIATION), 51 Fed. Reg. 29, 445 (Presidential Memorandum 1986)((Termination investigation). See also, *International Trade: Administration to Investigate Korean Patent and Copyright Laws*, 30 PAT. TRADEMARK & COPYRIGHT J. (BNA) 646 (Oct. 24, 1985).

5. Under section 301 of the Trade Act of 1974, if the President finds a policy or practice by a foreign country that is "unjustifiable" or "unreasonable," he may combat those acts by "appropriate and feasible action." 19 U.S.C.A. § 2411(a)(1)(B). The 1984 amendments include denial of "adequate and effective" protection of U.S. intellectual property rights in the definition of "unjustifiable" and "unreasonable" practices. 19 U.S.C. § 2411(e)(3)(C). See generally Fisher & Steinhardt, *Section 301 of the Trade Act of 1974: Protection for U.S. Exporters of Goods, Services, and Capital*, 14 LAW & POL. IN INT'L BUS., at 606 (Summer, 1982). The President's discretion to take "appropriate" action in retaliation to unreasonable trade practices is expansive, "limited only by the constraints of Article II of the Constitution and international law." More concretely, the President could "i. suspend concessions under any trade agreement, such as the Generalized System of Preferences, ii. impose duties or tougher import restrictions on the offending country, or iii. use any diplomatic, political or economic leverage that the

In December, 1985, simultaneous to the USTR investigation, the United States and South Korea began a second series of bilateral trade negotiations.⁶ In the following July, after learning that continued enjoyment of United States Generalized System of Preference benefits would partly depend on its efforts to heighten protection of U.S. intellectual property rights, South Korea agreed to enact major revisions of its intellectual property regime.⁷ The Agreement on Administrative Guidance to Prevent Piracy of United States Publications (the Agreement) provided that the South Korean government enter the Universal Copyright Convention, and amend its copyright law to broaden its scope and strengthen penalties for infringement. The Agreement also provides for ten years of retroactive protection of American works. In exchange, the United States agreed to halt Trade Representative Yeutter's section 301 investigation of South Korean intellectual property protection.⁸ The South Korean-United States Economic Consultation Trade Subgroup would discuss the implementation of the Agreement and any further intellectual property issues between the United States and South Korea.⁹

These negotiations between the United States and South Korea illustrate the ascendance of intellectual property rights as a major trade issue in the 1980s. This emergence stemmed from the combination of two factors: the growing technical maturity of the newly industrialized countries (NICs) and the deepening of the United States' trade deficit.

Increased industrial development in South Korea, Taiwan, Singapore and Hong Kong has spawned scores of businesses capable of mass production of copyrightable works. Likewise, rising national incomes have boosted demand for foreign products, such as books, records and videos. Because publishing and recording industries in these NICs lack the patience to market unproven works or to purchase publishing rights, they have issued a high volume of pirated works.¹⁰

President may possess." *Id.*; see also UNITED STATES GENERAL ACCOUNTING OFFICE, *supra* note 2, at 46.

6. *Korea, US Review GSP in Trade Talks*, Korea Herald (U.S. ed.), Dec. 8, 1985, at 1, col. 3.

7. *US Ties Patent Issue To GSP Benefits*, Korea Herald (U.S. ed.), June 20, 1986, at 1, col. 2; UNITED STATES GENERAL ACCOUNTING OFFICE, *supra* note 2, at 54. The Generalized System of Preferences is a body of tariff preferences granted by the United States and other developed nations to certain imports from lesser developed countries. See generally J. BARTON & B. FISHER, *INTERNATIONAL TRADE AND INVESTMENT*, 513-30 (1986).

8. UNITED STATES GENERAL ACCOUNTING OFFICE, *supra* note 2, at 54; see also Recent Development, *International Trade*, 28 HARV. INT'L L.J. 166 (1987) (authored by Anna Y. Park).

9. Recent Development, *supra* note 8, at 171.

10. UNITED STATES GENERAL ACCOUNTING OFFICE, *supra* note 2, at 8.

Meanwhile, trade with these same countries has grown to account for a significant proportion of the United States' trade deficit.¹¹ Piracy of United States' intellectual property contributes to this trade gap. According to the United States International Trade Commission, intellectual property piracy worldwide costs U.S. concerns \$43-61 billion annually. The same estimates hold South Korean piracy responsible for nearly \$500 million in losses in 1986.¹² Regarding copyright violations alone, the USTR estimates that South Korean publishers sold \$70 million in unauthorized copies of books and technical journals in 1984. Likewise, American record companies lost approximately \$40 million in sales in the South Korean market, sixty percent of which was comprised of unauthorized copies.¹³ Further losses may have resulted from the exportation of unauthorized copies from South Korea to the United States and other countries.¹⁴ Vice President Bush articulated United States' frustration, "Americans are sick and tired of that kind of treatment."¹⁵

II. ELEMENTS OF KOREAN COPYRIGHT REFORM

Pursuant to negotiations with the United States, South Korea initiated a sweeping reform of its copyright regime. Measures of this reform that affect foreign copyrights include South Korea's signing of two multilateral copyright treaties, extensive amendments to its copyright law, and an administrative decree which retroactively protects United States' copyrights.¹⁶

A. Membership in Multilateral Copyright Treaties

Perhaps most significant for the protection of foreign copyrights was South Korea's decision to join two major multilateral copyright conventions. Pursuant to agreement with the United

11. Clifford, *Appearances Are Deceptive*, FAR E. ECON. REV., Feb. 11, 1988, at 60. In 1987 South Korea ran close to a \$ 10 billion trade surplus with the United States. *Id.* at 60.

12. Trautman, *U.S. Pledges Action Against Intellectual Property Pirates*, Reuter Bus. Rep., Feb. 26, 1988, (BC cycle) [newswire].

13. OFF. OF USTR, DEPT. OF COM., THE 1987 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 205 (1987). *See also No Hiding Place: Copycats Become Less Welcome Around The Asia Region*, 132 FAR E. ECON. REV., Apr. 24, 1986, at 60 (stating that "[b]etween a quarter and a third of books published in South Korea are translations of foreign books for which no royalties are paid.")

14. *See generally* STALSON, INTELLECTUAL PROPERTY RIGHTS AND U.S. COMPETITIVENESS IN TRADE (1987).

15. *Bush warns U.S. will fight Asian Unfair Trade Practice but Denounces Textile Quota Bills*, 2 Int'l Trade Rep. (BNA) 1327 (Oct. 23, 1985).

16. South Korea also enacted statutory protection of Computer Software on July 1, 1987. The Computer Program Protection Act closely follows Korea's new Copyright Act. *See Lee, Recent Developments in Korean Law With Notes on the Protection of Computer Software*, 15 KOREAN J. OF COMP. L. 186 (1987).

States, on October 1, 1987, South Korea joined the Universal Copyright Convention (the UCC) and the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (the Geneva Phonogram Convention).¹⁷

Both treaties are based on the principle of national treatment. By entering the UCC and the Geneva Phonogram Convention, South Korea agreed to extend the same treatment to nationals of contracting states as it would to its own citizens.¹⁸ To enjoy this protection, a national of a contracting state need only label his work with a symbol *c* for the UCC and *p* for the Geneva Phonogram Convention, his name and the year of publication.¹⁹ Thus, South Korea immediately obliged itself to protect the works of authors from over thirty-five nations that have ratified or acceded to the treaties. The United States is signatory to both.²⁰

B. Amendments to the Copyright Act

Among the most salient amendments to the Korean Copyright Act (the KCA) are a broadened scope and a lengthened period of protection. First, the amendments establish neighboring rights previously unrecognized in South Korean copyright law. South Korean copyright law's current protection include stage performances, phonograph records and broadcasting.²¹ These media broaden the protection of the original KCA which covered maps and pantomimes, as well as literary, musical, artistic, choreographic, architectural, cinematographic, and photographic works.²²

The KCA protects both economic and moral rights in copyright. Economic rights include the rights to publish, perform in public, broadcast, display, distribute, and produce derivative

17. *But see* Min & West, *The Korean Regime for Licensing and Protection of Intellectual Property*, 19 THE INT'L LAW. 545, 562 (Spr. 1985) (stating that "Korea was an original signatory to the 1886 Berne Convention for the Protection of Literary and Artistic Works; however, the intervening Japanese annexation and division of the peninsula lead most domestic commentators to the conclusion that the Republic of Korea is not a party to that treaty.")

18. Universal Copyright Convention, Sept. 6 1952, Geneva, 6 U.S.T. 2731, T.I.A.S. No.3324, 216 U.N.T.S. 132, revised July 27, Paris, U.S.T. 2741, T.I.A.S. No.7868; Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Oct. 29, 1971, arts. III, IV, 25 U.S.T. 309, 326; T.I.A.S. No. 7808 [hereinafter Geneva Phonogram Convention].

19. Universal Copyright Convention, *supra* note 18, art. III, para. 1; Geneva Phonogram Convention, *supra* art. 5.

20. Universal Copyright Convention, *supra* note 18; Geneva Phonogram Convention, *supra* note 18.

21. Copyright Act, ch. IV, art. 61, Law No. 432 (Jan. 28, 1957), *as amended by* Act of Dec. 31, 1986, Law No. 3916 (Korea).

22. K. J. PARK, THE INTELLECTUAL PROPERTY LAWS OF KOREA, 306-308 (1986).

works.²³ Economic rights in a work are transferrable either wholly or in part, and an owner of economic rights may consent to the use of the work by others.²⁴

However, the KCA places several restrictions on one's economic rights. In several instances involving the public interest, one may reproduce a work without obtaining permission from or paying royalties to the owner.²⁵ Furthermore, the Ministry of Culture and Information may approve unlicensed use of a work if it is impossible to obtain consent from the owner and the user deposits owner's compensation with the Ministry.²⁶

Unlike United States' copyright law, the Korean Copyright Act protects an author's moral rights in a work.²⁷ These rights vest exclusively in the author, regardless of economic rights in the work.²⁸

The revised KCA extends the duration of protection of the author's economic rights by twenty years. When the author is a natural person, economic rights last the lifetime of the author plus fifty years.²⁹ When a juridical person claims authorship, economic rights exist for fifty years from the date of publication.³⁰ Phonographs and other media covered by neighboring rights are protected twenty years from the date of initial publication or production of the work.³¹

C. Enforcement Provisions of the Copyright Act

The Korean Copyright Act provides a private cause of action for the victims of infringement as well as criminal penalties against the infringer.

23. Copyright Act, *supra* note 21, ch. II, arts. 16-21.

24. Copyright Act, *supra* note 21, ch. II, arts. 41-42.

25. These circumstances include the necessity of copies of a work for governmental purposes, for educational purposes below the high school level, for reporting news, for research purposes, for preparation for entrance examinations, and reproduction in braille at institutions for the blind. Also, broadcasters may record or videotape a work for their own broadcasting purposes. Copyright Act, ch. II, arts. 22-35; *see also* Park, *Copyright Act Defines Authors' Rights*, The Korea Herald (Seoul), Jul. 3, 1987, at 6, col. 1.

26. Use by broadcasters, phonograph manufacturers, and translators may enjoy this ministerial approval. *See* Copyright Act, ch II, arts. 22-35. *See also* Park, *supra* note 25.

27. Moral rights include the right to release a work, the right to have the author's name indicated on a work, and the right to maintain the identity of the contents, form and title of the work. Copyright Act, ch. II, arts. 11-13.

28. K.J. PARK, *supra* note 22, at 310.

29. Copyright Act, *supra*, note 21, ch. II, art. 36.

30. Copyright Act, ch. II, art. 38. *Cf.* K.J. PARK, *supra* note 22, at 303-304. The original KCA provided protection thirty years after a natural author's death, and thirty years after publication by a non-natural author. *Id.* at 303-304.

31. K.J. PARK, *supra* note 22, at 303.

i. Civil Sanctions for Infringement

Under the revised KCA, owners of economic rights may seek to enjoin infringement and may seek compensation for damages. A claimant under the Copyright Act may halt an alleged infringement by claiming infringement and demanding the withdrawal from infringement activities. The demand may also request the disposal of the offending copies. If the complaint is adjudged in favor of the defendant, however, the complainant must compensate for the losses incurred by his demands.³²

The revised KCA measures damages by profits gained by the infringing activity plus the amount which the complainant could have earned in excess of the defendant's profits.³³ When it is difficult to discern the number of illegal publications, the law presumes 5,000 unauthorized book reprints and 10,000 unauthorized phonograph records.³⁴ These provisions mirror those of the 1957 version of the Copyright Act except that the earlier law estimated the number of illegal publications to be 3,000.³⁵

Similarly, an author who has suffered infringement of his moral rights may demand the infringer to take action to restore his reputation. The author may also seek compensation for such harm.³⁶

ii. Criminal Sanctions for Infringement

The revised KCA provides for much stiffer criminal penalties than the original Act. The criminal copyright violations, currently, fall into two categories: criminal infringement of copyright and illegal publishing.³⁷ Under the revised KCA, criminal infringement may bring a maximum three-year prison term, a fine not exceeding three million won, or both.³⁸ Acts of illegal publishing include re-

32. Copyright Act, *supra*, note 21, ch. VIII, art. 91.

33. Copyright Act, *supra*, note 21, ch. VIII, art. 93.

34. Copyright Act, *supra*, note 21, ch. VIII, art. 94.

35. K.J. PARK, *supra* note 22, at 338-340.

36. Copyright Act, *supra*, note 21, ch. VIII, arts. 95-96.

37. Chapter IX of the Copyright Act defines criminal infringement of rights to include the following: i. infringement of economic rights or other property rights protected by the Act by means of reproduction, public performance, broadcast or public display; ii. infringement of moral rights that defames the dignity of the author; iii. fraudulent copyright registration. Copyright Act, *supra*, note 21, ch. IX, art. 98. It defines illegal publication as the following: i. releasing a work under a name or alias of a person other than that of the author; ii. prejudicing the author's moral rights or defaming the dignity of a deceased author; iii. operating a copyright agency business without obtaining a permit; iv. knowingly importing or distributing goods which would have infringed copyright or neighboring rights had the goods been produced in the Republic of Korea. Copyright Act, *supra*, note 21, ch. IX, art. 99.

38. Copyright Act, *supra*, note 21, ch. IX, art. 98. Calculated at the March 1988 exchange rate of 750.8 won per U.S. Dollar, this fine could total U.S. \$3,995.74. See *Business International Money Report*, at 118 (Apr. 4, 1988).

leasing a work under a name other than that of the real author and the importing and distributing of pirated works. These are punishable by up to one year imprisonment and/or a fine not exceeding one million won.³⁹ In contrast, under the 1957 Copyright Act, criminal infringement of moral rights triggered a 100,000 won fine; criminal infringement of economic rights triggered a 500,000 won fine and a possible one-year prison term; illegal publishing triggered a fine of up to 500,000 won and/or a six-month prison term.⁴⁰

D. Retroactive Protection of United States Works under the Administrative Guideline

The third major prong of the South Korean copyright reform is a government administrative guideline which retroactively protects American publications for ten years.⁴¹ Consistent with the Agreement between the United States and South Korea, the guideline provides that books published in the United States since January 1, 1977 may be reprinted only under proper licensing agreements.⁴² The Ministry of Culture and Information will enforce the guideline by levying fines and by discontinuing publication loans available through the Korea Publishing Fund.⁴³

III. PROSPECT FOR ENFORCEMENT

Despite the promulgation of the South Korean copyright reform, the question remains whether its provisions will provide satisfactory protection of American works. It is doubtful that civil remedies and criminal penalties can deter infringement in the short run. A partisan judiciary and the absence of discovery mechanisms

39. Copyright Act, *supra*, note 21, ch. IX, art. 99; This fine could total the equivalent of U.S. \$1331.91 at the March 1988 exchange rate. *Business International Money Report*, *supra* note 38.

40. K.J. PARK, *supra* note 22, at 341.

41. Park, *Revised Copyright Act Goes Into Effect*, Korea Herald, (Seoul), Jul. 2, 1987, at 6, col. 1 (reporting that this Agreement on Administrative Guidance to Prevent Piracy of American Publications represents a compromise between United States and South Korean negotiators. The United States originally demanded that South Korea join the Berne Convention for the Protection of Literary and Artistic Works which requires 20 years retroactive protection for signatory countries). See also Choi, *Joining of Copyrights Body Hasty*, Korea Herald, (Seoul), Jan. 22, 1986, col. 2 (reporting that Korean interests balked at this proposal arguing that their relatively young publishing industry would collapse under such a provision.) Park, *Copyright Act Heralds End of Pirating*, Korea Herald, (Seoul), Aug. 14, 1987. See also *An Eye for an Eye*, BUS. KOREA, at 50 (Jan. 1988). This exclusive arrangement for retroactive protection in South Korea by United States copyright owners angered the European Economic Community (EEC). The EEC suspended trade benefits to South Korea under its GSP. This first suspension of EEC GSP benefits will cost South Korean exporters approximately U.S. \$ 63 million. *Id.* at 50.

42. *SEL Battling Illegal U.S. Book Reprints*, Korea Times, (Los Angeles), Feb. 5, 1988, col. 1.

43. *SEL Battling Illegal U.S. Book Reprints*, *supra* note 42.

discount the value of civil remedies against infringement. Furthermore, the same market conditions which fostered South Korea's pirating tradition are likely to urge publishers to ignore the heightened criminal penalties, at least for the short-term. Pirating may subside on the more distant horizon, however, when South Korean publishers recognize the long-term benefits of copyright protection and if the South Korean government recognizes the value of persistent and rigorous enforcement of its copyright law.

A. Civil Remedies

Obstacles presented by South Korean civil procedure could impede the deterrent value of civil remedies for infringement. American attorneys criticize the South Korean judiciary for designing judgments to promote the political or economic interests of South Korea rather than to address solely the merits of a case.⁴⁴ Furthermore, South Korea's civil law system lacks procedures characteristic of litigation practice in common law jurisdictions, such as discovery and the right to compel documents.⁴⁵ The "sheer physical difficulty of obtaining necessary documentation to justify prosecution" dampened reactions to recent copyright reform in similar civil law jurisdictions, namely Thailand.⁴⁶

Advocates of South Korean copyright reform point to two factors which enhance the efficacy of civil litigation for foreigners against copyright infringement. First, South Korean agencies enjoy greater abilities to monitor publishing activities and to gather relevant statistics than was possible before the reform and than is possible in less-developed countries like Thailand.⁴⁷ Second, the amendments to the Copyright Act authorize the establishment of copyright agency businesses, private agencies with the power of attorney that function as local watchdogs for copyright owners.⁴⁸ In addition to amassing the information necessary for litigation, the copyright agency businesses may represent foreigners in arbitration and court hearings.⁴⁹ Copyright agency businesses function under the supervision of the Copyright Deliberation and Conciliation Committee of the Ministry of Culture and Information.⁵⁰

Before resorting to a judicial settlement of a copyright matter, parties to a dispute may seek arbitration of their dispute by the

44. Interview with Marvin Jubas, partner at the law firm of Spensly, Horn, Jubas and Lubitz (Nov. 20, 1987).

45. *Id.*

46. *No Hiding Place*, FAR E. ECON. REV., Apr. 24, 1986, at 58, col. 3.

47. Interview with Park Choon Ho, Professor of Law, Korea University, Vice Chairman, Committee for Deliberation and Coordination of Copyrights (Feb. 19, 1988).

48. Copyright Act, *supra* note 21, ch. VI, arts. 78-80.

49. Interview, *supra* note 47.

50. Copyright Act, *supra* note 21, ch. VI, arts. 78-80; Interview, *supra* note 47.

Conciliation Chamber of the Copyright Deliberation and Conciliation Committee (the CDCC). Founded upon Chapter VII of the Copyright Act, the CDCC is comprised of fifteen to twenty lawyers, scholars and other experts. One of its main functions is the conciliation of disputes through binding arbitration. Although binding, arbitration may not be a dependable avenue for dispute resolution. The CDCC will deem an arbitration a failure if it is not completed within three months, or if an interested or necessary party declines to participate.⁵¹

Unfortunately, a reliable indicator of the effectiveness of the copyright agency businesses and the CDCC is unavailable. South Korea's history of problematic litigation, however, suggests that most of the deterrent impact of the reform will come from the enforcement of criminal provisions of the KCA and the administrative guideline.

B. Criminal Enforcement

The market conditions which fostered South Korea's past piracy persist and cast doubt on the immediate deterrent force of the KCA and the administrative guideline. Short-run profit opportunities may spur piracy despite vigilant enforcement of the KCA and the threat of criminal penalties.

On the demand side, university students and scholars present a growing and hungry market for pirated reprints of foreign works.⁵² Widespread training in English feeds this demand,⁵³ and South Korean universities commonly employ foreign original works and their unauthorized copies as textbooks.⁵⁴ Surely, academic consumers would continue to select unauthorized reprints against the foreign originals, priced five or six times higher,⁵⁵ or licensed copies, priced twenty-five to thirty percent higher.⁵⁶

Satisfying this demand with pirated reprints is an easy task. Pirate publishers avoid significant costs borne by legitimate outfits, such as royalties and the production of unpopular titles. Hence,

51. Copyright Act, *supra* note 21, ch. VII, arts. 81-86. INTRODUCTORY LEAFLET ISSUED BY SECRETARY GENERAL, COPYRIGHT DELIBERATION AND CONCILIATION COMMITTEE.

52. In 1985, 1,000,062 students were enrolled in colleges, universities, or graduate institutions. This figure more than doubles the number enrolled in 1980. ECONOMIC PLANNING BOARD (SOUTH KOREA), SOCIAL INDICATORS IN KOREA 1986, at 164-165 (1986).

53. Olian, *International Copyright and the Needs of Developing Countries: The Awakening at Stockholm and Paris*, 7 CORNELL INT'L L.J. 81, 91 n.44 (1974).

54. Choi, *Copyright Pact Apt to Hurt Publishers*, Korea Herald, Jul. 25, 1986, at 6, col. 1.

55. *SEL Battling Illegal U.S. Book Reprints*, *supra* note 42.

56. Choi, *supra* note 54.

production costs are limited to the price of a press.⁵⁷ Recent technological advances have lowered this cost and increase the profit margin for pirate publishers.⁵⁸ Accordingly, at the time of the reform, roughly eighty percent of Korea's 2,400 registered publishers are "one or two-man fly-by-night operations."⁵⁹

Evidence of South Korean publishers' short-run interest in violating the new measures can be seen in the sale of illegal reprints that took place soon after the reform was enacted. The 1987 fall semester opened with the widespread sale of illegally reprinted American textbooks. Perhaps in an effort to deceive, South Korean publishers claimed legitimacy of the books despite the seeming violation of the administrative guideline. The reprints sported stickers reflecting a purported understanding between South Korean and American publishers that five percent of the cover price would be paid as a royalty.⁶⁰ However, American publishers denied the existence of such an understanding and claimed to have seen none of the royalties.⁶¹

It may be presumptuous, however, to predict failure of the reform from this episode. Greater compliance may eventually result if and when the publishing industry recognizes the long-term advantages of copyright protection and the likelihood that the South Korean government will vigorously enforce the reform indefinitely.

Widespread compliance with the KCA and the administrative guideline should, in the long-run, favor the South Korean publishing industry.⁶² First, protection of copyrights, especially foreign copyrights, may help rationalize this fiercely competitive industry. Domestic investors in South Korean publishing may gain confidence in the profitability of their capital knowing the time has passed when they must race several other local publishers to market the latest foreign best-seller or textbook.⁶³

Second, the South Korean publishing industry stands to benefit from the international absolution of South Korea's reputation as an intellectual property pirate nation. Enforcement of the Copyright Act may lower foreign authors' inhibitions toward licensing their work with a South Korean publisher.⁶⁴ Indeed, some conscientious South Korean publishers have taken extraordinary measures to

57. UNITED STATES GENERAL ACCOUNTING OFFICE, *supra* note 2, at 9; H. STALSON, *supra* note 14.

58. See McDowell, *Seoul's Book Pirates Share the Booty*, N.Y. Times, Mar. 19, 1986, at C19, col. 4.

59. *Id.*

60. *Reprints of Foreign Books Again on Sale*, Korea Herald, Sept. 9, 1987, at 9.

61. *SEL Battling Illegal U.S. Book Reprints*, *supra* note 42.

62. *No Hiding Place*, *supra* note 13, at 60.

63. STALSON, *supra* note 14, at 82.

64. STALSON, *supra* note 14, at 49.

demonstrate their respect for American copyrights, including reproducing a facsimile of a work's licensing agreement on the back of each printed copy and paying in advance on the agreement, even before signed contracts were delivered.⁶⁵ Finally, South Korean publishers should benefit from the stimulation and retention of local literary talent resulting from the reform.

C. Continued Enforcement Serves Long-Run Interests of the South Korean Government

Indefinite enforcement of the reform measures would also encourage compliance. Although the South Korean government shirked enforcement of its previous copyright regime, it may now recognize the utility of vigorous enforcement. Foreign copyright protection could promote South Korean cultural heritage, lubricate the transfer of needed technology to South Korea and ameliorate economic relations with the United States.

First, successful enforcement should promote South Korea's literati and its cultural heritage. Enhanced domestic protection might not only encourage South Korean authors to produce, such protection of foreign rights will raise the price of international titles, helping the lesser known South Korean authors to compete with more famous foreign counterparts.⁶⁶ This stimulation of the South Korean literati may be a crucial defense for South Korea's literary heritage against the myriad foreign influences resulting from South Korea's growing global prominence.⁶⁷

The fortification of South Korea's written tradition seems especially compelling considering its proud literary history. Korea's literary past boasts the carving of the Buddhist *Tripitaka* on 86,000 wooden blocks and the invention of movable type in the early thirteenth century.⁶⁸ Perhaps the proudest moment, however, occurred in the fifteenth century when the revered King Sejong invented *Hangul*, Korea's phonetic, twenty-four character alphabet, the only deliberately contrived alphabet still in use.⁶⁹

The South Korean government may also recognize the value of copyright protection for the country's continued technological development. The copyright measures are just one prong in a sweeping attempt to erase South Korea's image as an intellectual property pirate.⁷⁰ Observers label the South Korean's ability to incorporate increasingly sophisticated technology into its economy as a requisite

65. McDowell, *supra* note 58.

66. See Olian, *supra* note 53, at 93.

67. Cf. Olian, *supra* note 53, at 92 (discussing post colonial American concerns of cultural domination by Britain.)

68. W.K. HAN, *THE HISTORY OF KOREA*, 196 (1970).

69. HAN, *supra* note 68, at 208-209.

70. Olian, *supra* note 53, at 88-89.

for joining the ranks of the advanced countries and for fending off threats from labor intensive upstarts such as Thailand, Malaysia, and China.⁷¹ While effective patent protection is an incentive for the licensing of technology, inadequate copyright protection could inhibit this flow of ideas to South Korea by breeding suspicion of lax protection of all intellectual property rights.

South Korean interest should also view stringent international copyright protection as a component of a general intellectual property regime that could protect South Korean ideas from foreign pirates. At a time when local industrial research and development figures have nearly quadrupled from those of 1980, and when South Korean firms like Samsung Semiconductor and Telecommunications are entering high-technology fields,⁷² South Korea may already have passed the threshold where protecting ideas yields a greater benefit than infringing upon others'.⁷³

Maintenance of a friendly economic relationship with the United States may by itself provide a sufficient incentive to protect foreign copyrights zealously. South Korea's economic relations with the United States have grown more urgent. The export prowess of the South Korean economy is matched by its reliance on access to the American market.⁷⁴ This relationship has become more delicate as American protectionist sentiment focuses on South Korea. Indeed, South Korean economic officials assert that President Roh must set management of South Korean-United States trade relations as a "top priority," and resolve trade disputes with the United States, especially in light of South Korea's \$10 billion trade surplus with the United States.⁷⁵

The United States and South Korea would most likely settle any disputes regarding the South Korean protection of American copyrights in bilateral negotiations,⁷⁶ such as those which began in

71. Clifford, *supra* note 11, at 58.

72. Clifford, *supra* note 11, at 59.

73. STALSON, *supra* note 14, at 48-49.

74. In 1986, approximately 38% of exports from South Korea were shipped to the United States; South Korea's exports totaled over \$34.7 billion and the United States imported almost \$13.9 billion of Korean products. ECONOMIC PLANNING BOARD (SOUTH KOREA), MONTHLY STATISTICS OF KOREA, at 138-139 (Nov. 1987).

75. According to South Korean officials, continuation of its trade surplus is needed to pay off its \$35 billion foreign debt. However, South Korea expects to be a net creditor by 1992. Clifford, *supra* note 11, at 57; see also Jo Yun-Jeung, *South Korea Is Determined to Resolve U.S. Trade Issues*, Reuter Business Report (newswire), March 4, 1988.

76. The Universal Copyright Convention would allow the United States to appeal to the International Court of Justice (ICJ) if it disagrees with South Korea's interpretation of application of treaties. Universal Copyright Convention, *supra* note 18, art. XV. However, voluntary jurisdiction under the ICJ and its lack of an enforcement agency undermine the efficacy of this option. Interview with William Alford, Professor of Law, UCLA School of Law, (Mar. 1, 1988). The Universal Copyright Convention encour-

February 1988.⁷⁷ The countries will likely assume familiar negotiation postures. Like before, if the United States were displeased with South Korea's enforcement of intellectual property protection for foreigners, it could initiate a second investigation under section 301 of the Trade Act.⁷⁸ The USTR recognized this option as the dawn of 1988 ushered in a rash of complaints by American publishers.⁷⁹ If the USTR were to again find inadequate protection of American intellectual property, the President could exercise broad discretion to retaliate in an "appropriate" manner.⁸⁰ Deference to recent democratization and anti-americanism in South Korea, however, might temper United States' retaliation.⁸¹

Time has extracted one important negotiating lever, the United States' GSP program, which helped the United States negotiate the Agreement with South Korea. In February, 1988, President Reagan graduated South Korea from the United States' GSP, citing South Korea's rapid economic development and trade competitiveness.⁸² United States industry groups lament the loss of the GSP as a bargaining tool. According to Linda Colancecco, Manager of Intellectual Property issues at the Computer and Business Equipment Manufacturers Association, this loss "cuts our bargaining power and sets us back substantially," with respect to enforcement issues.⁸³ It is still unclear how damaging South Korea's graduation from the GSP is to the United States' ability to compel vigilant enforcement of the copyright reforms. In any case, prior to graduation, South Korea's Ministry of Culture and Information credited pressure from American publishers and the threat of a section 301 action for a "crackdown" on piracy, featuring weekly inspections of bookstores and publications houses.⁸⁴

ages settlement before parties resort to the ICJ. Universal Copyright Convention, *supra* note 18, art. XV.

77. *SEL Battling Illegal U.S. Book Reprints*, *supra* note 42.

78. Copyright protection is just one of a range of concerns that may trigger a Section 301 of the Trade Act of 1974 investigation. USTR Clayton Yeutter has also received complaints from U.S. pharmaceutical manufacturers who charge South Korea with failure to enforce its agreement to protect U.S. patents entered during the same negotiations that stimulated copyright reform. *Pharmaceutical Manufacturers Association Charges South Korea*, PR Newswire, March 10, 1988. Furthermore, U.S. interests have complained about South Korea's import restrictions on cigarettes, beef and potatoes, and curbs on foreign insurance companies. Scherer, *U.S. Warns South Korea To Lift Import Barriers*, Christian Science Monitor, Dec. 17, 1987, at 5; see also, *South Korea Is Determined To Resolve U.S. Trade Issues*, *supra* note 75.

79. *MCUI To Crack Down On "Pirate" Books*, Korea Herald, Jan. 14, 1988, at 9.

80. See Korea, *U.S. Review GSP Trade Talks*, *supra* note 6.

81. Scherer, *supra* note 78.

82. Yoshihara, *Importers Await Effects of Slap at "Four Tigers"; Decision to End Duty-Free Status of Asian Nations May Escalate Costs in U.S.*, Los Angeles Times, Feb. 8, 1988, Part IV at 1, col. 5.

83. *Id.*

84. *MUCI To Crack Down on "Pirate" Books*, *supra* note 79.

If South Korea recognizes its interest in adequate intellectual property protection and reverses its tradition of neglect, it will have followed a path well-trodden by maturing economies.⁸⁵ While counterfeiting may once have promoted modernization by providing technology and information cheaply, intellectual property infringement may hinder further economic gains. As is presently the case with South Korea, copyright infringement can impede a newly developed country's access to lucrative markets, and inhibit innovation by depressing creative sectors.⁸⁶

85. STALSON, *supra* note 14, at 33.

86. *Id.*

