INTELLECTUAL PROPERTY LAW IN NORTH KOREA: WHAT IS HAPPENING TO ONE OF THE MOST CAPITALISTIC LAWS IN THE MOST SOCIALISTIC COUNTRY?

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Recently, it was reported in South Korea that a North Korean patent and trademark agency had given a presentation in Beijing on North Korea’s intellectual property law. 1 The agency mentioned that a trademark of Apple, Inc. was about to be invalidated because it had not been used in North Korea for five years (Article 39 of the North Korean trademark law provides that “where a trademark is not used for five years from the date of registration, the trademark right shall be invalid”). 2 According to the agency, however, Apple claimed that it is infeasible to run its business in North Korea, due to the United Nations Security

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2 Id.
Council-led sanctions, and applied for a deferral of invalidation, which was successful.\(^3\)

What some might find intriguing in this news is that Apple had already considered the protection of its intellectual property in North Korea. In fact, Apple has so far applied for the registration of 390 trademarks\(^4\) in North Korea through the Madrid System\(^5\). Among its first registered trademarks in 2004 was “IPOD.”\(^6\) It was not only Apple that quickly moved to register its trademarks in North Korea after the socialist country began accepting applications for registration of trademarks of American corporations in late 2003.\(^7\) Trademarks such as “SUBWAY” (yes, the restaurant) and “INTEL INSIDE” were also registered in North Korea as early as in 2004.\(^8\) As of December 23, 2019, the total number of applications for registration of foreign trademarks submitted to the North Korean authority through the

\(^3\) Id.


\(^6\) Id.

\(^7\) Id.

\(^8\) Id.
Madrid System since 1947 amounts to 53,505, including 8,474 from Germany, 7,501 from France, 5,291 from China, and 1,587 from the United States.\textsuperscript{9}

From a legal—and a political economy—perspective, what is even more interesting in the news is that North Korea did not reject applications for registration of American corporations’ trademarks despite its perennial confrontations with the United States (Article 21 of the North Korean trademark law stipulates that “marks or inscriptions for whose application for registration was submitted from a country or region that is not friendly to our country may not be registered”). Until recently, North Korea had mostly rejected applications for registration of Japanese and South Korean trademarks.\textsuperscript{10} Neither did North Korea choose to invalidate or expropriate Apple’s trademark, contrary to the popular belief that it is a lawless country. Indeed, North Korea has little, if no, motivation to do so because that would result in driving away future applicants for registration, and collecting trademark registration fees is a relatively big and lucrative business\textsuperscript{11} in the impoverished country.\textsuperscript{12}

\textsuperscript{9} Id. The total number of applications for registration of foreign trademarks may be larger than this because some businesses may have opted to register their trademarks in North Korea through the Paris Convention.

\textsuperscript{10} Id.

\textsuperscript{11} As of December 22, 2019, it costs 100 Swiss francs (roughly 102 US dollars as of the same day)—in addition to the basic fee paid to WIPO—to apply for registration of a trademark in North Korea through the Madrid System, which is valid for 10 years. World Intellectual Property Organization, International Registration of Marks – Fee Calculation, https://www.wipo.int/madrid/en/fees/calculator.jsp (last visited Dec. 23, 2019). Thus, for example, according to a simple calculation, North Korea may have earned over 2,600,000 Swiss francs through the registration of over 26,000 foreign trademarks since 2000. This does not include the renewal fee of 100 Swiss francs per trademark, which is
Although overshadowed by many pressing issues, such as nuclear weapons, intercontinental ballistic missiles, and human rights, “knowledge economy” has been one of the keywords of the Kim Jong-un regime’s economic policy. The slogan was first observed in North Korea in 2009 and has been emphasized numerous times since, especially in recent years, by North Korean media including Rodong Sinmun, the official state newspaper—and by far the most influential daily newspaper widely read by the general public—published by the Central Committee of the Worker’s Party of Korea. North Korea recently established an “Intellectual Property Bureau” that oversees all kinds of intellectual property in the country and heavily advertises intellectual property through State media around April 26, celebrated as World Intellectual Property Day. Accordingly, intellectual property law has also been emphasized by Rodong Sinmun and many North Korean legal scholars. Now, you might wonder, to what extent and why does North Korea take intellectual property law seriously?

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12 As of 2017, in terms of GDP per capita, North Korea was ranked at 195 out of the 210 United Nations member states and other territories in the world for which national accounts information is available. The GDP per capita of North Korea was 684 US dollars in 2017, which was slightly higher than that of war-ravaged countries such as Afghanistan ($619) and Democratic Republic of the Congo ($463). The United Nations Statistics Division, Per capita GDP at current prices - US dollars, http://data.un.org/Data.aspx?d=SNAAMA&f=grID:101;currID:USD;pcFlag:1 (last visited Dec. 23, 2019).


In fact, intellectual property law is one of several laws that originated in capitalist states that North Korea has most fervently attempted to introduce to its legal system starting in the 1950s. The first regulation on utility models was made in the 1950s and those on invention and trademark were made in the 1960s, long before North Korea enacted its first foreign investment law in 1984. It is a much less known fact that North Korea—not the most developed Asian economies, such as Japan, Singapore, South Korea, or Taiwan—was the first economy in Asia (excluding the Middle East and Central Asia, which was part of the Soviet Union) to join the World Intellectual Property Organization (WIPO) in 1974.

Since then, North Korea has entered into many other WIPO-administered treaties, much earlier than many other Asian economies. North Korea has ratified 16 of the 26 WIPO-administered treaties—surpassing China’s 14 and Vietnam’s 10, although these two countries opened up their economies long ago—placing it behind only Japan and South Korea. Since 2016, despite the ever-strengthening United Nations Security Council-led sanctions for its missile tests and nuclear program, North Korea has ratified four WIPO-administered treaties on intellectual property protection, including The Beijing Treaty on Audiovisual Performances, The Singapore Treaty on the Law of Trademarks, and The Patent Law Treaty. This is remarkable given the

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15 Although a draft of the Civil Code including a chapter on copyright was prepared in North Korea in the 1950s, it was not legislated.
18 Id.
extreme isolation of North Korea that has continued since the collapse of the Communist Bloc.

Despite North Korea’s apparently strong interest in intellectual property, however, significant differences have existed between its definition of intellectual property and those in non-socialist countries. Patent is the most remarkable case. The North Korean regime has long favored scientists and engineers—since long before North Korea joined WIPO—which was reflected in the country’s first constitution, in article 20, which provided that “Citizens have freedom of scientific, literary, and artistic pursuits. Copyright and inventor’s rights shall be protected by law.”

Intellectuals in North Korea were not repressed like their counterparts in China were, especially during the Cultural Revolution.

Thus, North Korea has always held a favorable view of intellectual property rights, such as inventor’s rights, which were modeled after its Soviet counterpart and are largely honorary rights in that the rights to use an invention belong to the State and the inventor merely receives a prize, unlike patent rights that enable the rightsholder (could be the inventor) to exclusively use an invention for a fixed term. Nevertheless, it strongly disapproved of patent rights on the grounds that they guarantee exclusive profit for the rightsholder and, thus, are incompatible with a socialist economy. North Korea’s hostile attitude toward patent rights can be observed in an excerpt from a law dictionary.

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19 Since 1948, this provision has largely been maintained in the North Korean Constitution except that patent rights were added to the provision and thereby came under constitutional protection in 1998.
published in 1971 by a North Korean government research institute:

Patent is a legal system that was first established in a capitalist society, reflecting the capitalist private ownership of means of production. Patent allows only the patentholder, not anyone else, to use an invention. Using such a monopolistic right, capitalists prevent the wide spread of an invention and make gains. In our country, it is a principle to introduce and disseminate all creative ideas including inventions in various fields of the people’s economy. Therefore, no enterprise, institution, or citizen is allowed to monopolize the right to use the invention.\(^\text{21}\)

This perspective has fundamentally changed since the 1980s, as North Korea joined the Paris Convention, which protects patents, trademarks, industrial designs, geographical indications, etc., in 1980. Although the socialist country began viewing patent rights more positively, it clearly prioritized inventor’s rights over patent rights. Even though patent rights became enshrined in its 1998 constitution and Invention Law enacted in the same year, North Korea continued to give advantages to those opting for inventor’s rights over those applying for patent rights by exempting the registration fee in the case of the former.\(^\text{22}\) Moreover, until recently, the country left large room in its Invention Law for State acquisition of patented inventions.\(^\text{23}\)


\(^{22}\) Article 27 (Patent Application Fees) of the 2014 North Korean Invention Law provides that “Patent applicants shall pay fees for application, examination, and registration of a patent to an administrative organ that oversees invention,” whereas there is no such provision for those who opt for inventor’s rights.

\(^{23}\) For example, Article 31 (Transfer of Patent to the State) of the 2011 North Korean Invention Law provides that “Where the patented science
Indeed, it seems that there has been little room for inventors and rightsholders, other than the State, to utilize patents in North Korea—arguably the most socialistic country in the world. In a North Korean law journal article published in 2000, a legal scholar argued as follows:

In our socialist system, where the means of production are socially owned, individual citizens' corporate management activities are not allowed. Therefore, a patent owner in our country may not establish or operate a private enterprise by introducing his invention protected by patent right into production or construction.\textsuperscript{24}

Nonetheless, it appears that in recent years, North Korean inventors have increasingly opted for patent rights rather than inventor’s rights, perhaps as a result of the spread of marketization in North Korea, which is still largely unofficial, but has tacitly been approved by the Kim Jong-un regime. In Rodong Sinmun, for example, heroic stories of inventors who hold a patent have begun to appear more often than before, although inventor’s

and technology are to be used in the public interest, the State may take over the patent or the right to use the science and technology thereof. In this case, due reimbursement shall be made to the patent owner.” This provision was abrogated through the 2014 amendment to the said law. However, it is still possible for the rightsholder to change a patent application into an application for inventor’s rights, but not vice versa. Article 25 (Cancellation and Change of Application) of the 2014 North Korean invention law provides that “The applicant may request that … patent rights be changed to inventor’s rights before the examination of an application for inventor’s rights or patent rights is completed,” while no comparable provision is stipulated for those who wish to change an application for inventor’s rights into a patent application.

certificates are still more frequently mentioned than patent certificates in the paper. This suggests that North Koreans are increasingly placing more value on private property than on honorary rights.

HEIGHTENED AWARENESS OF COPYRIGHT

There have also been remarkable developments regarding copyright. Should you ever have a chance to read North Korean materials, especially academic ones, you will be shocked to find that there are no citations whatsoever, except the words and instructions of “the Supreme Leaders” — Kim Il-sung, Kim Jong-il, and Kim Jong-un. In other words, plagiarism, one of the most detested words that often terminates one’s (academic) career in developed countries, has long been the de facto standard in North Korea. Moreover, the author’s name is often missing in many North Korean materials, which suggests the extent to which author’s rights have been neglected in the socialist country.

Yet this was not always the case. Up to the early 1960s, North Korean legal scholars cited many sources, both domestic and international (mostly from the Communist Bloc). Soviet materials were by far the most important sources for (foreign) legal studies.²⁵ It seems that the disappearance of citations of any

²⁵ For example, a dictionary of academic terms published in North Korea in 1954 contained only Korean–Russian translations of thousands of academic terms including 818 legal terms. See HAKSUL YONGO´ SAJO´ NG WİWO´ NHOE. CHOSON´ N MINJUJU´ I INMIN KONGHWAGUK KWAHAGWO´ N (학술용어사정위원회편찬. 조선민주주의인민공화국과학원: The Committee for Review of Academic Terms, The Academy of Sciences of North Korea), HAKSUL YONGO´. SAHOE KWAHAK (학술용어. 사회과학: Academic Terms. Social Sciences) (1954) (in Korean and Russian). The Soviet influence is also confirmed by the fact that many legal materials from that period had a table of contents in both Korean and Russian and cited only Russian legal sources and scholars.
sources since the mid-to-late 1960s is attributable to a combination of the following factors.

First, the complete removal of the private property system in North Korea in 1958\(^{26}\) likely weakened the notion of copyright, as copyright is meaningless when everything, including every work, is regarded as State property and, thus, in the public domain. Second, there were often tensions in North Korea’s relationships with the Soviet Union and China after Stalin’s death in 1953 and the purge of the pro-China and pro-Soviet factions in North Korea who failed to oust Kim Il-sung in 1956.\(^{27}\) Third, since Kim Il-sung managed to purge all of his opponents and solidify his power base in the late 1960s, North Korea supposedly had a policy disapproving of the authority of any person other than Kim Il-sung and his successors, which—tacitly or expressly—encouraged everyone to cite only the words of their Supreme Leaders. Such a policy would be highly effective because North Korean materials are heavily censored before they are printed.\(^{28}\)

Nevertheless, there are signs that the almost complete absence of citations of sources is gradually changing, such as North Korea’s recent emphasis on copyright and other intellectual property rights. In addition, there seems to be a growing


awareness of the problems of such a custom, at least among North Korean legal scholars. This is suggested in an article published in the Journal of Kim Il-sung University in 2017 that criticizes the common practice of omitting citations.\(^{29}\) Also of note, in the same law journal published in March 2019, six of the eight articles therein written by North Korean legal scholars\(^ {30}\) include many footnotes—albeit still far less thorough than the general practice in many other countries, at times inconsistent in the citation style, and occasionally even somewhat irrelevant—including citations of foreign legal materials, which all but disappeared in North Korea after the early 1960s.

**WHAT THE CHANGES IMPLY FOR NORTH KOREA’S FUTURE**

The recent developments in North Korea in the field of intellectual property do not mean that intellectual property law is well observed or enforced in the country. It takes time—often several decades—for a country where intellectual property infringement is prevalent to become deeply committed to intellectual property protection. Typically, such a change does not occur until the country’s economy develops to the level that its industries become—domestically and/or internationally—victims of intellectual property infringement. A notable example is the United States, which largely ignored the rampant piracy of works by British authors, such as Charles Dickens, throughout the 19th century, but finally joined the Berne Union in 1896 for international copyright protection, in part, because of growing concerns about piracy of American works, such as Mark Twain’s

\(^{29}\) Young-il Park (박영일), *Joojangmurui naeyonginyonge daehan ilbanjeongnihae* (저작물의 내용인용에 대한 일반적리해: An Introduction to Citation of Works), *JONGCHI POPRYUL YONGOO* (정치법률연구: Journal of Political Science and Law), no. 2, June 2017, at 49–50 (in Korean).

novels, in Canada. Another example can be found in East Asia, which observed decades of rapid economic growth. Although South Korea and Taiwan were called “piracy havens” until the 1990s, infringement of intellectual property has been taken increasingly seriously since the 2000s in both economies. China appears to be gradually following the same trajectory as its intellectual property has remarkably increased.

In any case, it is extremely interesting that intellectual property law, one of the most capitalistic laws, has been greatly emphasized in North Korea in recent years, accompanied by growing awareness of the value of intangible private property. Such a development is remarkable because private property has generally been given far less legal protection than State property.


32 For example, the Patent Court of Korea was established in 1998 and the Intellectual Property Court of Taiwan was established in 2008.


in the most rigid socialist economy. Yet it remains to be seen whether North Korea’s intellectual property law will continue to evolve, not only in writing but in practice, to the current level of its counterparts in incomparably more open and developed socialist economies, such as China and Vietnam. It will serve as a barometer of the Kim Jong-un regime’s willingness to accept global standards to address the perennial economic crisis in the country.

35 A notable example is that the North Korean Penal Code provides for aggravated punishment for crimes against State property as compared to crimes against private property.