

# Case study of perception about the copyright of the digital libraries in Mainland China with Hong Kong and Taiwan, China as the reference system<sup>①</sup>

ZHAN Qingdong\* & ZHANG Wende

Library of Fuzhou University, Fuzhou 350108, China

Received Nov. 25, 2009  
Revised Dec. 9, 2009  
Accepted Dec. 11, 2009  
Translated with a permission from *Information Research* (in Chinese), 2009(5):3

**Abstract** This paper analyzes the perception of the librarians in mainland China about the copyright during the development of digital libraries with Hong Kong Special Administrative Region (HK SAR) and Taiwan, China as the reference system, through questionnaire survey of copyright cases of the digital libraries by investigating the digital library builders and librarians of 30 universities from mainland China, HK SAR and Taiwan, China ranked among the top 500 in the Academic Ranking of World Universities (SJTU Version). The report holds that: 1) The copyright law shall evolve with the times and be revised from time to time; 2) it is imperative to popularize and educate in the copyright law; 3) the guidelines for the use of the copyright law of the education industry shall be developed as soon as possible; and 4) the *Collective Management of Copyright Regulations* shall be enforced as early as possible.

**Keywords** Digital library, Librarian, Perception about the copyright, Case study

## 1 Introduction

What does reference system mean? The object or object system selected as reference for determining the position of an object or describing the movement of the object is known as the reference system. In the science of motion, the reference system may be selected randomly. The movement of an object may be studied and described only after the reference system is selected<sup>[1]</sup>. Likewise, when exploring the perception of the librarians in mainland China about the copyright of the digital libraries, we need to choose a group of reference systems for comparison so as to determine the degree of such perception and the direction for making improvements. Although the mainland China, Taiwan of China and HK SAR share the same motherland, they have been developing along different courses in modern times for special historical reasons and developed legal systems with respective characteristics in the field of



CJLIS  
Vol. 2 No. 4, December 2009  
pp 79–89  
National Science Library,  
Chinese Academy of  
Sciences

<sup>①</sup> This work is supported by the Ministry of Education of China (Grant No. 06JA870001).

\* Correspondence could be addressed to Zhan Qingdong (Email: zqd@fzu.edu.cn).

copyright<sup>[2]</sup>. Since the beginning of the 21<sup>st</sup> century, the mainland China, Taiwan, China and HK SAR have kept revising the copyright law for the purpose of joining the WTO and it can be said that for any clause relating to the *Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)* and *Berne Convention*, efforts have been maximized to refer to these conventions in legislation and be in line with the requirements of these conventions. As a result, there is a growing trend that the copyright laws in mainland China, Taiwan, China and HK SAR will converge gradually and therefore they are comparative. Hence, this paper uses the perception of the librarians in Taiwan, China and HK SAR about the copyright of the digital libraries as the reference system of the study.

## 2 Content and scope of the survey

The survey was carried out by means of questionnaire survey by collecting the emails of digital library builders and librarians of 18 universities from mainland China, 7 universities from Taiwan, China and 5 universities from HK SAR ranked among top 500 of the 2008 Academic Ranking of World Universities (hereinafter “ARWU”) (compiled by Shanghai Jiao Tong University Graduate School of Education) from September 22, 2008 to October 18, 2008<sup>[3]</sup>. The survey lasted nearly one month from the sending-out of the questions until the return of the email questionnaires. A total of 153 questionnaires were sent out in two batches and 140 of them were returned, representing a return rate of 68%; 84 questionnaires were sent out in mainland China and 66 of them were returned, representing a return rate of 79%; 34 questionnaires were sent out in Taiwan, China and 23 of them were returned, representing a return rate of 68%; 35 questionnaires were sent out in HK SAR and 15 of them were returned, representing a return rate of 43%.

The questionnaire began with the following given scenario, “I am a librarian engaged in the development of digital libraries in the Library of Fuzhou University. I have encountered several problems relating to copyright those have puzzled me a lot during my work. The problems are listed as below. Please help me make a choice”. The key points of 10 cases that may be encountered in the development of digital libraries and yes-or-no questions were listed as the contents of the questionnaire to explore the current awareness and degree of perception of the librarians about the protection of copyright in the development of digital libraries. For language reasons, the return rate of the samples in HK SAR and Taiwan, China was relatively low and therefore they could serve as a reference system only.

## 3 Analysis of the survey result

The survey result may be either “Yes” or “No”. A few respondents refused to give their answers as they thought that certain questions and topics were ambiguous or not clear. So, there are certain cases in which the number of “Yes” or “No” is less



than the total number of respondents surveyed. The detailed survey results and analysis are given as below:

**3.1 Question 1: To create a joyous and festive atmosphere during the Olympic Games, the library plays songs that greet the Olympic Games including “Beijing Welcomes You” through the background music system of the library. Do you think it is a “proper use”? The survey result is given in Table 1:**

Table 1 The survey result of the Question 1

Mainland China		Taiwan, China		HK SAR		Total	
Yes	No	Yes	No	Yes	No	Yes	No
52	13	3	20	6	9	61	42

The key to this case lies in the “background music system of the library”—is it broadcasted publicly or on the Internet? The procedures of playing the background music are as follows: the librarian inputs the programs (music, voice) into the system through the microphone, CD and USB, etc. and stores them in the system. After pre-programming, the central controller shall control the automatic operation of the broadcast system to start up, shut down and play stored music programs on a regular basis<sup>[4]</sup>. Hence, the play of the background music in the library shall be treated as “being broadcast publicly” and therefore is subject to Article 10 of the *Copyright Law of the People’s Republic of China*, which provides that the copyright holder shall have the right to control the broadcast right of its copyrighted works.

Many librarians hold that the play of background music in the library may be considered as a “proper use” pursuant to Article 7 of the *Ordinance on the Protection of the Right to Network Dissemination of Information*. In my opinion, this article specifying that the digital works collected in the library (including CD, DVD, etc.) may be provided to users in the library through the “information network” is applicable to the VOD system, but not applicable to this case.

In contrast, the public dissemination right in the copyright law of Taiwan, China means “the right to provide works to the public in audio or visual manners by means of cable network, wireless network or through other communication means so that the public may receive the contents via the above manners in the time or location they choose”. It holds that the play of the music in the library is “public broadcast” of the music or sound recordings. Such use of music cares nothing about whether the films or music are obtained from the TV, radio, or DVD and CD, but whether the films or music are used. If yes, it is necessary to obtain the license of the copyright holder of the music or audio-visual works, which means that fees shall be paid. As to the sound recording works, the copyright law sets lower protection standards for them and fees shall still be paid although it is unnecessary to obtain licenses. However, if the librarians themselves or the readers listen to the



**Research Papers**

non-pirated music collected by the library in an closed environment without being heard or seen by others, it is not a public behavior, nor does it involve the “air in public” or “public broadcast” of the copyrighted music and therefore it is a “proper use”<sup>[5]</sup>.

**3.2 Question 2: The library turns all written works collected into digital works and provides them to the readers to be used in their campus network. Is it a “proper use”? The survey result is given in Table 2:**

Table 2 The survey result of the Question 2

Mainland China		Taiwan, China		HK SAR		Total	
Yes	No	Yes	No	Yes	No	Yes	No
37	28	2	21	0	15	39	64

“Digitalization” means “copy”. Only the digitalization of works that are damaged, on the verge of being damaged, lost or stolen, in obsolete storage formats, not available in the market or may be purchased at a price obviously higher than the nominal price only stipulated in Article 22 of the *Copyright Law of the People’s Republic of China* and the *Ordinance on the Protection of the Right to Network Dissemination of Information* may be considered as a “proper use”. Only digitalization of the ancient books, extinct books or books that have entered the public domain by the library may be considered as a “proper use”. The library may not digitalize all works collected, nor disseminate them over the campus network.

The colleagues in HK SAR and Taiwan, China have a clear perception about this case because the laws there give clear interpretations, the copyright knowledge is popularized properly and their governments enforce the laws in a strict manner. In contrast, the protection awareness of copyright of the libraries in mainland China in terms of photocopy, copy and network dissemination, etc. is yet to be enhanced.

**3.3 Question 3: The property right may be transferred to others or be inherited by the heir by law. Once an author deceases, his works are still copyright protected within a certain period of time, is it true? The survey result is given in Table 3:**

Table 3 The survey result of the Question 3

Mainland China		Taiwan, China		HK SAR		Total	
Yes	No	Yes	No	Yes	No	Yes	No
64	1	23	0	9	6	96	7

Pursuant to Article 21 and 19 of the *Copyright Law of the People’s Republic of China*, the protection period of the property right shall be the life time of the author



and 50 years after his death and the copyright may be transferred in accordance with the requirements of the *Law of Succession* during the protection period specified in this law. Therefore, this case is the correct interpretation of the copyright law. Some readers hold that the copyright enters the public domain with the death of the author, which, however, is wrong.

Article 101 of the *Hong Kong Copyright Ordinance* provides that “the copyright may be transferred as non-land property or movable property by means of transfer, will-like disposal or other lawful implementations... (3) the transfer of copyright shall be in written form, be signed by the transfer or other people on his behalf, otherwise, the transfer is invalid”. Article 17 provides that “once the author deceases in a calendar year, the copyright shall expire upon the expiration of the 50-year period starting from the end of that year”, indicating that the copyright may be inherited, but shall be in written and is valid only with the signature of the transferor.

### 3.4 Question 4: The licenses of both the author and the publishing house are needed for use of electronic books and it is likely to violate the copyright law if there is only one license from the author or the publishing house, is it true? The survey result is given in Table 4:

Table 4 The survey result of the Question 4

Mainland China		Taiwan, China		HK SAR		Total	
Yes	No	Yes	No	Yes	No	Yes	No
48	18	18	4	12	3	78	25

A few digital library content vendors (such as Superstar, Apabi, Digital Library of China and Sursen) have emerged during the development of digital libraries in mainland China. The collection of the electronic books by copying the hard copies of the books has not only greatly facilitated the development of the digital libraries, but also posed potential risks of copyright protection, resulting in many cases in which the authors and publishing houses sue the content vendors, who turned out to be the losing party in most cases. The main reason is that the content vendors are not licensed or licensed by only one party, either the author or the publishing house. Pursuant to the requirements of Article 35 of the *Copyright Law of the People's Republic of China*, the publisher owns 10-year long layout design right and exclusive right to publish for an agreed period. It would be safer if the electronic books are licensed by both the author and the publishing house.

Article 41 of the *Copyright Law of Taiwan* provides that “unless otherwise indicated, in the event that the property right holder contributes works to the newspapers, magazines or authorizes public broadcast of the works, it is permitted



**Research Papers**

to publish or broadcast to the public only once and other rights of the property right holder shall not be affected”. In accordance with this provision, if the publishing house or magazine company expects to publish electronic books or periodicals of the same contents as the hard-copy books or periodicals itself again, it needs to sign an agreement with the author; otherwise, the publishing may be treated as infringement. This may serve as reference for the mainland when revising the copyright law.

**3.5 Question 5: The master’s thesis/doctor’s dissertation is finished by the student under the guidance of the mentor, so its copyright is shared by the mentor and the student, is it true? The survey result is given in Table 5:**

Table 5 The survey result of the Question 5

Mainland China		Taiwan, China		HK SAR		Total	
Yes	No	Yes	No	Yes	No	Yes	No
23	43	4	19	7	7	34	69

According to the *Copyright Law of the People’s Republic of China*, the copyright belongs to the author that creates the work. Article 3 of the *Implementation Regulations of the Copyright Law of the People’s Republic of China* specially provides that “providing consulting opinions, material support or other supports to the creation works of other people shall not be deemed as the creation himself”. Hence, although the mentor has provided certain thoughts, viewpoints and appropriate guidance, the copyright shall belong to the author only as the degree paper is completed by the student only. Some degree papers are created in the research work of the mentor and some are still created under the special technical conditions of the laboratory of the mentor, should they be classified as “works in the course of employment” or “commissioned works”? I think the thoughts in the degree papers may be from the research, the data may be from the laboratory, but the main design and text body of the paper are created by the student, so the copyright shall still belong to the student.

The survey data of HK SAR indicated that the librarians had misunderstandings about the ownership of the copyright of the degree papers mainly because the universities in HK SAR have considerable rights to specify the ownership of the copyright of the degree papers. Although the *Hong Kong Copyright Ordinance* provides that “in the *Ordinance*, for the purpose of the work, the “author” refers to the person that creates the work. Unless otherwise indicated in Article 14, 15 and 16, the author of the work is the first owner of any copyright of the work”, but the ownership of the copyright depends on the policy of respective universities.



**3.6 Question 6: Is it a “proper use” if downloading and printing the entire electronic book(s) over the network of the library for use at the classroom so as to save the expenses of purchasing textbooks? The survey result is given in Table 6:**

Table 6 The survey result of the Question 6

Mainland China		Taiwan, China		HK SAR		Total	
Yes	No	Yes	No	Yes	No	Yes	No
25	41	0	22	0	14	25	77

The “proper use”, as interpreted in the *Copyright Law of the People’s Republic of China*, includes “translating or copying a small quantity of the published works for use by the teaching or scientific research personnel for the purpose of teaching at the classrooms or scientific research rather than publishing and distributing them”. As to how many copies or printouts for teaching or scientific research purposes may be considered as a proper use, the copyright laws of mainland China, Taiwan, China and HK SAR require “small quantity” or “a single work of the periodical or collection of seminar papers already published shall be limited to one copy one person”.

Presently, the libraries in mainland China impose no restrictions on copying and the electronic book databases may be downloaded and printed in full for free, which poses many potential copyright risks. It is necessary to develop some highly operable regulations such as the *Hong Kong Copyright Ordinance, Guidance for Students and Teachers* as a reference for librarians and readers.

**3.7 Question 7: Is it permitted by the copyright law if copying the full texts of blog articles of a subject over the network through RSS, compiling them into full text databases and providing them on the websites for use by the readers? The survey result is given in Table 7:**

Table 7 The survey result of the Question 7

Mainland China		Taiwan, China		HK SAR		Total	
Yes	No	Yes	No	Yes	No	Yes	No
13	52	1	22	0	15	14	89

Pursuant to Article 2, 3 and 9 of the *Copyright Law of the People’s Republic of China*, the blog owners own the copyright of the blog articles, including the compiling right. To compile the blog articles into database and provide them to others, it is necessary to obtain the license and pay fees.

As blog is a new type of web media and most of the blog owners write blogs to convey their thoughts and are anonymous, it would be quite difficult to obtain



## Research Papers

licenses from the blog owners for the purpose of compiling the blog articles. This goes against the spirit of Article 1 of the *Copyright Law*: Encourage the creation and dissemination of the works. The *Copyright Law* of mainland China needs to be revised appropriately depending on progress of the society and development of the technologies. The copyright laws of HK SAR and Taiwan, China have been revised many times since 2002, while only two regulations: the *Collective Management of Copyright Regulations* (2004) and *Ordinance on the Protection of the Right to Network Dissemination of Information* (2006) were added in mainland China during the same period of time.

**3.8 Question 8: Is it permitted by the copyright law if recording the TV commercials, compiling them into video databases and providing them to the students for viewing and learning? The survey result is given in Table 8:**

Table 8 The survey result of the Question 8

Mainland China		Taiwan, China		HK SAR		Total	
Yes	No	Yes	No	Yes	No	Yes	No
42	23	20	3	4	11	66	37

Do TV commercials have copyright? Pursuant to the requirements of Article 3 and 47 of the *Copyright Law of the People's Republic of China*, it can be inferred that the TV commercials also have copyright and the recording of TV commercials violates the copyright law. It shall be deemed as a "proper use" if recording in small quantities for teaching purposes, but the compilation of them into databases violates the copyright law.

**3.9 Question 9: Is it permitted by the copyright law if collecting the entrance examination papers of a university over the years and providing them to the students inside and/or outside the university for downloading? The survey result is given in Table 9:**

Table 9 The survey result of the Question 9

Mainland China		Taiwan, China		HK SAR		Total	
Yes	No	Yes	No	Yes	No	Yes	No
25	39	10	13	9	6	44	58



The entrance examination papers are a type of works created in the course of employment and shall be handled in accordance with the requirements of Article 16 of the *Copyright Law of the People's Republic of China*. The university shall have

the right to allow the postgraduate school or library to collect and provide the exam papers. Due to different policies adopted by different universities, the choices are diverse.

**3.10 Question 10: Is it permitted by the copyright law if creating a “free download” page on the library’s website, having links of such common software as Adobe reader, SS reader, Windows XP and Photoshop for readers to download? The survey result is given in Table 10:**

Table 10 The survey result of the Question 10

Mainland China		Taiwan, China		HK SAR		Total	
Yes	No	Yes	No	Yes	No	Yes	No
30	34	1	22	0	15	31	71

Adobe reader and SS reader are free and shared software and all users may use them without paying any fee. But, Windows XP, Photoshop and other software are paid software that need payment during the copyright protection period. Pursuant to Article 5, 17 and 24 of the *Protection of Computer Software Regulations*, a library shall avoid storing copyrighted software on its website for downloading, and shall only use non-pirated or free software in its server OS, commercial database, desktop OS and various desktop applications.

**3.11 Question 11: Do you think the copyright law holds back the development of the digital libraries? The survey result is given in Table 11:**

Table 11 The survey result of the Question 11

Mainland China		Taiwan, China		HK SAR		Total	
Yes	No	Yes	No	Yes	No	Yes	No
19	42	18	4	7	8	44	54

Generally speaking, the copyright law is developed to safeguard the copyright interests of the author, harmonize social public interests and promote the cultural development of the country. If the copyright interests of the author are protected strictly, it is inevitable that the use and dissemination of the works may be hindered, as is the true of the construction of the digital libraries. If the copyright law developed is not observed and many acts of violating the copyright law take place without being penalized, the development of the digital libraries may be to some extent benefited at the beginning; however, in the long run, the cultural development of the country may come to a standstill, it is impossible to encourage the authors to create high-level works and the social public interests may lose balance.



## 4 Conclusions

### 4.1 The copyright law shall evolve with the times and be revised from time to time.

In contrast with the practice of HK SAR and Taiwan, China making minor revisions to the copyright law on a yearly basis and making major revisions to it once every few years, it is recommended that the legislative branch of the State revise the *Copyright Law*, the *Protection of Computer Software Regulations*, *Ordinance on the Protection of the Right to Network Dissemination of Information* and the *Collective Management of Copyright Regulations* as well as related laws and regulations in a timely manner. It is necessary to identify the role that libraries play in social services and public welfare, and their legal status in collecting and inheriting the human civilization even in the digital era, so as to provide legal basis for proper use and legal licensing of the digital libraries. In the meanwhile, it is essential to strength the requirements of the clauses relating to the libraries in the legislation over the intellectual property rights and detail certain sensitive issues, such as electronic copy, copyright license agreement, etc. to improve the operability so that laws are available for compliance in the library work. This will not only specify the scope of responsibility of the libraries, but also perfect the rights and interests of the author.

### 4.2 It is imperative to popularize and educate in the copyright law.

The survey indicated that there existed significant differences among the librarians in mainland China in the interpretation of the copyright law. We should make great efforts to carry out the promotion and education work of copyright, enhance the awareness of copyright of the digital library industry and the entire society, and strive to build a social environment favorable for the development of copyright, uphold the moral concept of taking pride in innovation, honesty and keeping faith and being shamed of plagiarism, falsification and deception, and develop the copyright culture that respects knowledge, advocates innovation, honesty and compliance with the laws. The Library Society of China should organize related trainings, and the universities and colleges shall offer the copyright related courses to include copyright education into the information quality education system of the students of the higher learning institutions.

### 4.3 The guidelines for the use of the copyright law of the education industry shall be developed as soon as possible.

The survey revealed that different higher learning institutions adopted different practices and measures for the same case. We should learn from Hong Kong Copyright Office, develop applicable copyright regulations in the field of education,



elaborate the contents in details, clearly specify the responsibilities and standardize the behaviors of the digital library users in accordance with the requirements of the copyright law.

#### **4.4 The Collective Management of Copyright Regulations shall be enforced as soon as possible.**

It is necessary to perfect the policy of collective management of copyright and set up an intermediary organization for written works in addition to the existing intermediary organization for musical works to establish the channel for licensing and payment. With the copyright collective management organization as the intermediary organization, the rights of the authors are effectively protected and digital library builders are free from the difficulty and trouble of looking for the authors and entering into negotiations one by one. If the digital library builder trades with each copyright holder, the cost of the transaction would be enormous. With the collective management organization of intellectual property right as the intermediary organization, the digital library builder may obtain the license for the construction, dissemination and use of related information resources so as to tackle the intellectual property right problems during the development of digital libraries. This conforms to the actual conditions of mainland China and development trend of intellectual property right protection, and is an effective means for solving the intellectual property right problems during the development of digital libraries.

## **References**

- 1 Reference system (in Chinese). Retrieved on October 20, 2008, from <http://baike.baidu.com/view/84789.html>.
- 2 Wu, H. D., Cao, X. M., & Hu, K. Z., et al. The comparative research on the copyright system in different regions of China (in Chinese). Beijing: China University of Political Science and Law Press, 1998.
- 3 Shanghai Jiao Tong University Graduate School of Education. Academic Ranking of World Universities. Retrieved on October 20, 2008, from <http://www.arwu.org/rank2008/EN2008.htm>.
- 4 Shen, Y. P. & Liu, Y. M. Design of background music broadcast system. Audio Engineering (in Chinese), 2004 (12):20–21.
- 5 Zhang, Z. X. You have the right not to turn on the TV (in Chinese). Retrieved on October 20, 2008, from <http://www.copyrightnote.org/cnote/bbs.php?board=2&act=read&id=178>.

(Copy editor: Ning LI)

