

Viewing International Copyright from the History of Chinese and English Copyright Development

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Abstract

As a right closely related to cultural heritage, copyright can be traced in the history of every country in the world. In contemporary times, the protection of copyright can be seen in a country and even the international community that attaches great importance to innovation and development. As the two main legal systems today, the civil law system and the common law system have a great influence on the formation and development of the current international legal system. The signing of intellectual property-related agreements such as the Berne Convention for the Protection of Literary and Artistic Works, the Universal Copyright Convention, and the Agreement on Trade-Related Aspects of Intellectual Property Rights can be seen as the synergy of the improvement of domestic copyright-related laws in the two major legal systems. This article first takes China and the United Kingdom as representatives of the civil law system and the common law system to compare the process of development of their copyrights, explore their similarities and differences, and then analyze the reasons and influences on the formation of today's international copyrights. Finally, take the Berne Convention for the Protection of Literary and Artistic Works as the main analysis point to observe the governance of the current international copyright legal system.

Keywords

Copyright; China; UK; International Protect.

1. History of China's Copyright Development

1.1. The Development of Copyright before Modern Times

The Chinese people's awakening to the protection of works can be traced back to the Spring and Autumn and Warring States period in 770 BC. In the Chinese literary world during the Spring and Autumn Period and the Warring States Period, a hundred schools of thought contended, and the contending of various countries brought to that era not only gunpowder and artillery fire, but also cultural blending. Legalists, Taoists, Mohists, Confucianists, etc. have written books and essays, trying to spread their thoughts using works written on bamboo slips and lobbying. The widespread use of signatures and seals indicates that the ancient Chinese have begun to consciously protect their identity as the authors of works.

In the Eastern Han Dynasty, when Cai Lun made paper and in the Northern Song Dynasty, Bi Sheng invented "clay movable type", which is called movable type printing in later generations. Cultural works have been spread more widely and quickly, but plagiarism also followed. According to the Southern Song Dynasty King's "Eastern Metropolis Strategy", "Meishan Cheng Sheren published it, and he has already applied to his boss, so it is not allowed to reprint." [1] At the end of the Ming Dynasty and the beginning of the Qing Dynasty, Jinchang's "Yongwantang" bookstore was also stamped with a red seal on the cover page of the "Book of Filial Piety" issued by it [2]. But so far, the protection of copyright is not mainly for creators, but more for preventing random piracy, copying and dissemination, and protecting the economic interests of publishers. Moreover, this kind of protection comes more from private individuals

or non-governmental organizations. The specific official documents issued by the government and the announcement of related laws and regulations must start from the reform of the legal system in the late Qing Dynasty after the Opium War.

1.2. China's Copyright Law Since Modern Times

After the Opium War in 1840, the nature of Chinese society gradually became a semi-colonial and semi-feudal society, but its feudal laws still maintained the form of the Chinese system that has been passed down for thousands of years. In order to solve the internal and external troubles, the rulers of the Qing Dynasty believed that "[3]the laws and regulations will not be changed, and the habits will not be broken; if they want to cheer up, they must be discussed and changed", and began to modify and reform the original legal system.

Based on the Berne Convention for the Protection of Literary and Artistic Works, China's copyright system began to gradually integrate with the international copyright legal system. The Qing Dynasty Copyright Law promulgated and implemented on January 1, 1910 was the first copyright law in Chinese history. This law has made more detailed descriptions of the definition of copyright, the scope of the copyright, the term of copyright, the "Cheng bao" specification (registration) of the copyright, the scope of copyright and the punishment system for violation of the law, etc. Regulation[4]. Since the Qing government declared its collapse in the next year after the law was promulgated, this law is still only a law on paper and has not played a major practical role. However, as the first copyright law in Chinese history, it had a greater impact on the copyright laws of the Beiyang government and the Guomintang government, and even the embryonic form of contemporary Chinese copyright law can be seen.

In the "Copyright Law" promulgated by the Beiyang government in 1915, its content is very similar to the "Copyright Law of the Qing Dynasty". Compared with these two laws, the new "Copyright Law" promulgated in 1928 and revised in 1949 during the rule of the Kuomintang government not only expanded the scope of protection of the law, but also carried out the content of copyright more detailedly. The most important feature of this law is that it provides for the first time the protection of foreigners' copyrights. "Foreigners who have works exclusively for Chinese use must be submitted for registration in accordance with this law." People, to the extent that their own country recognizes that the Chinese people can enjoy copyright in that country"[5].

For a period of time after the founding of New China, the protection of copyright only remained at the level of payment of author's remuneration. For example, the "People's Publishing House Publishing Contract" stipulated by the People's Publishing House in the 1950s, the Ministry of Culture's "Notice on Correctly Implementing the Author's Remuneration System and Properly Mastering Author's Remuneration Standards" in 1961, and the "News and Publishing House" issued by the National Publishing Bureau in 1977. Trial Measures for Author's Remuneration and Subsidy, etc.[6]

Until April 12, 1986, the "General Principles of the Civil Law of the People's Republic of China" was revised and adopted by the Fourth Session of the Sixth National People's Congress and came into force on January 1, 1987. Article 94 of the law "Citizens, Legal persons enjoy copyright (copyright), and have the rights to sign, publish, publish, and receive remuneration in accordance with the law", which indicates that China's copyright development has entered a new stage. On September 7, 1990, the 15th meeting of the Standing Committee of the Seventh National People's Congress passed the "Copyright Law of the People's Republic of China" and implemented it on June 1, 1991. This is the first comprehensive report since the founding of New China. And the systematic regulation of copyright laws is also the beginning of China's modern copyright protection.

2. History of Copyright Development in the UK

2.1. Star Court Act

The Star Court was a royal publishing court directly under the Queen, formed by the reorganization of the Judicial Committee of the Privy Council by Elizabeth I in 1570. It was used to strengthen feudal rule and supervise the news and communication industry at that time. The special decree issued by the Star Court is the "Star Court Act". As the first law regulating the publishing industry in British history, it strictly controls publishing activities. From the strict control of the import and export of publications to the registration of the Royal Publishing Company for printed materials, to the Royal Chartered Publishing Company's monitoring of illegal publications and the right to arrest suspects, the British Royal Family regards the publishing house as a private institution of the Royal Family, so as to achieve national publishing control. The decree lasted until 1640 and severely hindered the development of press freedom in Britain's emerging bourgeoisie. As Milton expressed in "On the Freedom of Press", "The power to decide what should be published and what to prohibit publication should not be placed in the hands of a few censors who inspect books, but should be decided by the author or the publisher himself." [7]

2.2. "Anna Act"

The Anna Act, also known as the "Act for Encouraging Intellectual Creation to Grant Authors and Purchasers the Right to a Certain Period of Printed Books", was the first copyright law in the world passed by the British Parliament in 1709. Although the law is a copyright law, its function is not basically to protect the moral rights of creators, but to safeguard the economic interests of all parties. According to the law, the author has the exclusive right to reprint a book that has been published at that time for a period of 21 years from the date of promulgation of the law. For works that have not yet been published at that time, the copyright protection period is 14 years. Death can be postponed for 14 years. [8]

When movable type printing was introduced to the United Kingdom, works were published and printed in large numbers, which greatly affected the interests of publishers, causing publishers and publishers to demand the British royal family to enact laws to protect their publishing rights. As the British philosopher John Locke wrote in his "On Government", "Labor distinguishes them from public things. Labor adds something to the work done by nature, the mother of all things. , So that the two of them become his private rights", "My labor has taken them out of the common state (natural state) they were in, and confirmed my property rights over them." Locke's statement of "rights obtained through labor" has made people pay attention to the rights of publishers while also beginning to realize that the interests of publishers come from the reproduction and distribution of works, so the rights of the creator as the source of the work are shouldn't be ignored, the "Anna Act" was born. The emphasis on the existence of creators in copyright protection is a major step forward in the history of the development of copyright law in the "Anna Act". The law states in the preamble that "the main purpose of the legislation is to prevent printers from printing, reprinting or publishing the author's work without the author's consent, so as to encourage knowledgeable and knowledgeable people to create works that are beneficial to society."

Compared with Elizabeth I's Star Court decree, the "Anna Act" abolished the royal licensing system and recognized for the first time that the author is the subject of copyright protection and protected the rights and interests of the author. Although this protection is not yet mature, But it had a significant impact on the subsequent copyright legislation of various countries in the world.

2.3. The Current Copyright Laws in the UK

The current copyright law in the UK is the revised "Copyright, Designs and Patents Act 1988". This law is a law that is in line with modern international copyright. The law provides detailed explanations and regulations on copyright-related concepts from many aspects. The law stipulates that the objects of copyright include literary, dramatic and musical works, data, artistic works, sound recordings, movies, broadcasts, cable programs, publications, etc. For the specific rights included in copyright, the permitted use of copyright, the scope of infringement, behaviors that are manifested as infringement but the law does not infringe copyright, infringement remedies, and the acquisition and scope of copyright protection have also been clearly stipulated. For example, Chapter 3 of the Copyright Law stipulates, "The provisions of this chapter clarify the acts that can be performed on copyrighted works despite the existence of copyright; this chapter provides for acts that do not infringe copyright, or acts that may not infringe copyright, and do not make special mention of copyrighted works. It is stated that this behavior does not infringe the description of the copyright of anyone's work." [9] At the same time, in order to prevent arbitrary expansion and reduction of interpretation, a precise scope is also given for questions such as "who can be considered the author or director".

In addition, British copyright law also has concepts such as The Copyright Tribunal supported by the Ministry of Finance, Crown and Parliamentary copyright.

3. Comparison between China and Britain

In the history of copyright development in China and the United Kingdom, the source is not the legal protection of creators of works, but in the process of dissemination of works. The economic benefits obtained in the process of selling a large number of copies of works require national legislation to protect their rights. Although movable type printing was introduced to the UK from China, it seems that the UK legislation is more active regarding the rights of copyright holders, more precisely, the moral rights of copyright holders. But in any case, the development of copyright depends on the progress of people's cultural awareness, and the progress of people's cultural awareness depends on the level of economic and political development of a region and a country's society. The actual situation and development needs to protect intellectual property is the most appropriate.

Today, although there are more or less differences in the definition and protection of copyright between the two countries, this does not affect the cultural fusion between the two countries under copyright conflicts. For example, in the case of the appellant Entertainment One UK Ltd., Easley Baker Davis Ltd. and the appellee Wei Xiaohao's copyright ownership and infringement disputes [10], China and the UK, which are both members of the Berne Convention for the Protection of Literary and Artistic Works, The United Kingdom, in terms of resolving this specific case, can still reach a settlement in accordance with the provisions of the Convention.

Regarding the future, as Yu Cike, Director of the Copyright Management Department of the National Copyright Administration of China, said, "The world is currently in a new era of rapid development and changes, which poses new problems and new challenges to copyright and the environment on which copyright depends. And relevant copyright organizations have to face it, and countries should also face it and solve it together. This requires us to jointly study and improve copyright legal systems and copyright enforcement measures. Facing new problems and challenges in the digital environment, Both China and Britain not only need to seek new conceptual breakthroughs and new institutional designs on the basis of the copyright system, but also have the confidence to build a dynamic copyright interest balance mechanism in the digital environment to welcome a new era of copyright." [11]

4. Berne Convention

If the "Bern Convention" is regarded as the basis of China's modern copyright law, then the British copyright law is one of the promoters of the formation of the "Bern Convention".

In the 19th century, many great writers and artists emerged in Western Europe. A large number of well-known works created by them were spread all over the world. In view of the different nationalities of the authors or works, these Western European countries also began to pay attention to the copyright in different countries accordingly. International protection.

In 1878, Hugo hosted an important literary conference in Paris and established an international literary and artistic association. In 1883, the association handed over a draft of an international convention that had been discussed many times to the Swiss government. The Swiss government adopted it at the Third Congress held in Bern on September 9, 1886, and named it the Berne Convention for the Protection of Literary and Artistic Works. The birth of the Berne Convention marked the initial formation of the international copyright protection system.

The Berne Convention was supplemented and revised five times in the following years. The longest pause between the two revisions was in the 20 years between the Rome (1928) and Brussels (1948) Acts.[12] At the time of World War II, the chaotic international situation caused a stagnation in the pace of cultural advancement. Half a century after the Paris Act of 1971, the amendment of Berne's substantive provisions required unanimous vote, which effectively gave each member the right to veto, and as the number of members increased, the amendment became more difficult.

The current version of the Berne Convention includes four basic principles, namely, the principle of national treatment, the principle of automatic protection, the principle of independent protection, and the principle of minimum protection. The principle of national treatment refers to the "authors of citizens of any member country, whose works shall be protected regardless of whether they are published or not" in the alliance. In the 1948 amendment, the scope of application of "national treatment" was further expanded, adding the Authors who are citizens of any member of the Union and whose works are published for the first time in a member of the Union or simultaneously published in a member of the Union and a member of a non-member of the Union shall be protected." Authors who are citizens of a member country but have a permanent residence in a member country shall be treated the same as authors who are citizens of that country when applying this Convention". The so-called principle of automatic protection means that "the enjoyment and exercise of such rights do not require any formalities, and regardless of whether there are relevant protection regulations in the country of origin of the work." The principle of independent protection refers to the provisions of the first paragraph of Article 5 of the Convention, "The author of a work protected under this Convention, in all member states of the Union except for the origin of the work, enjoys the work currently or will be granted by the laws of that country. The rights of its nationals, as well as the rights specifically granted by this Convention". At the same time, this provision also embodies the principle of minimum protection limit to a certain extent. That is to say, the Berne Convention requires that the protection of copyright by member states must meet the minimum standards stipulated in the Convention, that is, the rights of the authors specified in the Convention On the basis of the sub-minimum standard, each country can protect the subject matter of copyright in accordance with its own laws.

Sam Ricketson wrote in 1992, "When faced with the problems brought about by technological progress, the old and mature regimes are now clearly beginning to show increasing pressure". He saw a lesson in a warning biblical parable: "People should not put new wine in old bottles, otherwise the bottle will break, the wine will run out, and the bottle will also break; but they put new wine in a new bottle, Both are preserved." This story references the practice of storing

wine in animal skins, which dry out with age. As the fermented wine releases gas, those old skins can no longer expand—unfortunate explosions ensued.[13]

At this point, we can conclude that, in a sense, the Berne Convention is a product of more than a hundred years ago, even after several revisions to remove the decayed shell to adapt to new changes and challenges, it still hasn't lasted for a long time. Mi Xin. We might want to abandon the Berne Convention altogether. However, this choice will obviously not be accepted, because it not only means that domestic works will lose some degree of international protection, but at the same time, given that part of the content is other conventions For example, the special provisions of the "Universal Copyright Convention" are applicable to the former Berne countries. Therefore, the invalidation of the "Bernese Convention" may lead to the collapse of the international copyright system.

5. International Copyright Legal System

The two pillars of the copyright protection system in the world today are the Berne Convention and the Universal Copyright Convention. In addition, the main ones are TRIPS (Trade-Related Intellectual Property Rights Agreement), and The World Intellectual Property Organization Copyright Treaty, the World Intellectual Property Organization Performances and Phonograms Treaty, and other international treaties related to international copyright protection.

The Universal Copyright Convention is another international copyright convention after the Berne Convention. It was signed in Geneva in September 1952 by the contracting parties.

The Berne Convention and the Universal Copyright Convention have many similarities. For example, both conventions require the basic principles of national treatment, the principle of minimum protection and the principle of independent protection. At the same time, whether it is the Berne Convention or the Universal Copyright Convention, there are provisions in the conventions that give developing countries "special preferences". However, on the other hand, various restrictions and complicated procedures are imposed on applicants for compulsory licenses. At the same time, it is also stipulated that those who use this license must pay royalties in "internationally convertible currencies." Therefore, in any respect, these two conventions are more like "developed country" conventions.

Of course, there are also differences between the two conventions. For example, on the issue of registration, the provisions of the two conventions are not the same. The Berne Convention stipulates that the copyright protection enjoyed by the works protected by the convention adopts the principle of automatically generating copyrights. It is not necessary for a work to obtain copyright protection to go through any registration and registration procedures; while the Universal Copyright Convention protects the works of the contracting parties The requirement is "From the date of the first edition, in the copyright column of all volumes, marked with the © symbol".

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