



# Copyright Protection in China—Taking CNKI Incident as an Example

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**Abstract.** The enactment of China’s Copyright Law in 1990 has brought significant changes to all aspects of Chinese society. CNKI, as the largest academic resource platform in China, has played an important role in the development of China’s copyright system. However, in December 2021, CNKI lost a lawsuit in a copyright dispute over the unauthorized inclusion of several papers, accumulating more than 700,000 yuan in damages [1]. This article will cite the recent hot events about CNKI, briefly describe the development of China’s copyright system, analyze the legal and judicial aspects, and discuss the dilemma of China’s copyright protection.

**Keywords:** Copyright · CNKI · Copyright Protection · China

## 1 Introduction

### 1.1 Background

With the support of relevant government departments, academia and education, the “CNKI Digital Library” with the largest amount of information in China has been built after years of efforts [2]. The development of CNKI has gone through the era of the CD-ROM version, the era of the online version, and the era of the knowledge service platform. In the rapid development of global informatization and networking, CNKI has fully grasped the opportunities and achieved leapfrog development, forming CNKI, the largest full-text academic information website in China [3].

CNKI, the largest academic electronic resource integrator in China, collects more than 95% of officially published Chinese academic resources. By the end of 2017, CNKI had more than 20,000 institutional users, more than 20 million individual registered users, 2 billion full-text downloads per year, and more than 150,000 simultaneous online users. Due to its large and comprehensive advantages in academic resources, all university libraries in China are customers of CNKI [4].

## 1.2 Event

Dexin Zhao, a retired professor at Zhongnan University of Economics and Law, found that more than 100 of his papers were collected and distributed by CNKI without authorization after they were published in journals. While readers and even the author were required to pay when downloading articles, Professor Zhao did not receive any royalties. Therefore, Professor Zhao sued the operator of CNKI because he believed that his copyright had been infringed. Finally, he won all his lawsuits and received a total of more than 700,000 yuan in compensation [4].

The court held that the works involved in the case were written works and were protected by the Copyright Law. Based on the attribution and publication of the works in this case, it can be concluded that Zhao Dexin is the author who has the right to disseminate information about these works while there is no evidence to the contrary. In this case, China Academic Journals (CD Edition) Electronic Publishing House published the works involved on the “Mobile CNKI” software operated by it. It allowed internet users to download the works, which has constituted an infringement of the right of communication through the information network of Dexin Zhao’s works. Article 48 of China’s Copyright Law stipulates that those who disseminate the copyright owner’s works to the public through the internet without the permission shall bear liabilities such as stopping the infringement, eliminating the influence, making apologies and compensating for the damages according to the situation [5].

## 1.3 Issues and Views

In this case, CNKI believes that it has already obtained the authorization of the publisher of the journal and does not need to obtain the authorization of the original author. However, this is a misunderstanding and improper use of the copyright of compilation works by CNKI. In fact, the compilers have copyright in the compiled works only after they have obtained the permission of the copyright holders of each work and compiled each work through original selection or arrangement. However, this kind of copyright does not extend to the single compiled work itself. Therefore, when CNKI hopes to use a single work that is included in a journal, it should obtain dual permission from the copyright holder of the compiled work and the copyright holder of the single work in the compiled work. In other words, the license granted by Academic Monthly as the compiler to CNKI to use the compiled work is not a substitute for the permission of the copyright holder of the single work in the compiled work.

The *CNKI* case reflects two obvious features. First, public awareness of copyright protection is not strong. Professor Zhao in this case has been working in the academic world for many years and has a strong awareness of protecting his works, thus finally choosing to protect himself with legal weapons. However, in China, more individuals believe that the judicial threshold is too high when facing such infringement and therefore avoid judicial proceedings. Second, the crackdown on pirated works in China has long been challenging to enforce. Piracy has not been effectively prohibited due to the high profits of pirates and the fact that purchasers can buy expensive intellectual products at significantly lower prices. In the short term, it seems to satisfy the needs of most people. However, in the long run, this will discourage creators, thus making China forced to

accept cultural imports from other countries. Therefore, it is necessary to analyze the deep social causes of this phenomenon in the context of Chinese history to solve the problem.

On the other hand, the *CNKI* case belongs to online infringements. Compared with traditional copyright infringements, they have more new features. The following will analyze the new challenges of online infringement to judicial work and how to deal with them.

## 2 The Development of Copyright System in China

### 2.1 A Bumpy Development

The copyright system's establishment is inseparable from printing technology's invention and popularity. According to records, printing in ancient China began in the Sui Dynasty and reached its peak in the Song Dynasty. Regrettably, there was no systematic management of the publishing industry in the Song Dynasty, nor the concept of "publishing rights" that was authorized and controlled by "publisher companies" similar to the British publishing privilege period. There was also no condition for the emergence of an author-centered concept of "copyright" or copyright in an entire market economy. It can be concluded that movable type printing first appeared in China and brought civilizational progress to the country during the feudal period. However, despite its significant development of productivity, it failed to become a widespread method of production at the time. Hundreds of years later, movable type printing in the modern sense was invented by Johannes Gutenberg. It was not until around 1840 that China introduced the modern movable type printing technology and established the modern publishing industry.

In December 1910, the Qing government promulgated the *Copyright Law of the Qing Dynasty*. In 1915, the Beiyang government formulated the *Beiyang Government Copyright Law* based on the *Copyright Law of the Qing Dynasty*. After the founding of the People's Republic of China in 1949, especially in the first 30 years, the copyright system was hit hard and the relevant legislation was almost at a standstill due to the basic circumstances such as changes in the economic system and the repeated policies of intellectuals [6].

### 2.2 The Official Legislation of Copyright Law

After the reform and opening up, the Chinese government implemented a new intellectual policy centered on "respecting knowledge and talents", which laid the political foundation for copyright legislation. China's Copyright Law was adopted at the 15th meeting of the Standing Committee of the Seventh National People's Congress on September 7, 1990, and took effect on June 1, 1991.

The establishment of China's copyright regime is supported not only by domestic policies but also by external factors. The Copyright Law was enacted in 1990 to establish an internationally compliant copyright regime to fulfill the commitments made in the U.S.-China IPR negotiations. The first amendment to the Copyright Law in 2001 was

made to comply with international treaties such as the TRIPS Agreement and to meet the needs of China's accession to the World Trade Organization. The second amendment in 2010 was the direct cause of the WTO dispute over intellectual property rights in China and the United States. Article 4(1) of the original Copyright Law provided that it did not protect works whose publication and dissemination was prohibited by law, while a WTO panel ruled that it was inconsistent with the Berne Convention and the TRIPS Agreement [7].

### **3 Reflections on China's Copyright Legislation and Judiciary**

#### **3.1 Issues in the Legislation**

The current copyright law is affected by both internal and external factors, while the internal factors mainly reflect in social and ideological aspects. Although the reform and opening up established a market economy and strengthened international exchanges, concepts such as socialist public ownership and planned economy have taken root. Due to the need to combine actual national conditions and consider agreements with other countries and international organizations, national policies and laws have been in the process of adjustment and change.

##### **3.1.1 Social Causes**

Chinese society in 1990 was relatively closed. Although China joined both the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention in 1992, people in China knew minimal information about the outside world. During the planned economy period, legislators ignored the economic attributes of creative and production activities such as literature, art and film. They did not fully realize that these economic industries could generate enormous wealth [8].

##### **3.1.2 Ideological Shackles in Historic Perspectives**

The copyright system is based on private rights. In China, due to more than two thousand years of royal autocratic rule, and the matching ideology, culture, customs, and habits, a rigid and unequal identity society was formed, so the concept of private rights was weak. Under the influence of Confucian orthodoxy in China's feudal period, the monarch had the power to life and death over his subjects, and even fathers over their children, let alone personal property. Under such a regime, even if there was a possible private property regulation, private rights were unstable. Until modern times, these traditional concept of society has not been completely changed [6].

When the Copyright Law was enacted, China's industrialization was not yet complete and digital publishing technology had not yet emerged. Thus, the industrial context considered by the legislators was the traditional printing and publishing industry centered on government-run publishing institutions such as books, newspapers, and periodicals. At the time, it was believed that submitting books and periodicals meant surrendering all rights to the work, and that payment was all that was needed for copyright. Even the original manuscript was handed over to the publisher. Few people knew that copyright

was a form of property with multiple rights while the public's awareness of copyright was close to primitive. Under such circumstances, it is difficult for legislators to grasp the future needs of society [8].

### **3.2 Judicial Dilemma of Dealing with Online Infringement**

The *CNKI* case is a typical online copyright infringement. In addition to analyzing the difficulties brought by historical and social issues to copyright legislation, it is necessary to explore the challenges brought by online infringement to judicial work in the light of the characteristics of the internet era. In the online environment, users are most concerned with obtaining high-quality, low-cost works. The copyright information they have access to is not sufficient, and they are not very clear or concerned about who is the copyright owner and the conditions of use of their works. At the same time, it is difficult for copyright owners to understand the use of their works, let alone control the unreasonable use of their works.

#### **3.2.1 Difficulty in Producing Evidence**

Electronic evidence is an indispensable type of evidence in online copyright infringement cases. Due to the digital nature of the evidence, it can be easily copied or modified. These methods can completely change the content of the evidence, and sometimes even the traces of the changes are difficult to find. This nature makes the authenticity of electronic evidence often questionable, so they are often difficult to use as favorable direct evidence.

#### **3.2.2 Inefficient Judicial Trials**

In China, the Civil Procedure Law stipulates that only people's courts of intermediate level or above can be responsible for handling copyright disputes. Also, copyright disputes cannot be subject to summary procedures. This provision has brought judicial inefficiency. Specifically, the basic-level people's courts are unable to deal with disputes which have clear facts and specific legal provisions. In the Internet era, many online infringements are difficult to discover. Therefore, if they cannot be handled promptly, it is even less likely that the infringement can be discovered.

In recent years, the number of copyright litigation cases in China has increased rapidly. This has led to a great deal of pressure on the judges hearing the cases. Under such circumstances, there is a need to establish and improve a diversified resolution mechanism for resolving copyright disputes, thereby complementing judicial protection of copyright. At the level of the copyright system, it is necessary to add provisions for mediation and arbitration, and to provide for the interface of different forms of dispute resolution, so as to strengthen mediation and arbitration for the resolution of copyright disputes [9].

#### **3.2.3 Different Judgments of the Judicial Organs in a Similar Case**

The main reason for the judiciary to make different decisions on similar cases is the complexity of the facts and the lack of judicial guidance from the Supreme People's

Court. On the other hand, the trial of online copyright infringement cases has technical and professional requirements. In judicial practice, judges in different regions have different abilities and understandings of the same case [10].

## 4 Conclusion

Since the enactment of the copyright in 1990, China has established a market economy in the past 30 years. At the same time, it has broken away from the shackles of the agricultural society for more than 2,000 years, gradually established a complete manufacturing system, and entered the stage of the digital economy. While facing historical achievements, it is also necessary to understand that the *CNKI* case was not accidental. The infringement of individual authors' rights by China's largest academic resource platforms is the result of various factors. On the one hand, Chinese society lacks a historical basis for respecting copyright. As a new product from outside, copyright needs to be digested for a certain period before it can effectively break the fixed thinking of the public for thousands of years and gradually establish and cultivate the awareness of copyright rights. The second is the advent of the digital economy era. On the other hand, the advent of the digital economy has led to rapid changes in technology, while traditional legal thinking has had difficulty adapting to the new changes. As a result, new challenges have emerged in judicial practice. This means that it is necessary to train a judicial team that can meet the challenges of the times.

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