

# THE SINO-AMERICAN COPYRIGHT ISSUE: A TAIPEI VIEW

*Ch'iu-lang Chi*

*Professor of English and Comparative Literature  
Dean, College of Liberal Arts  
Tamkang University  
Taipei, Taiwan, R.O.C.*

## Abstract

It can be argued that in most cases the Chinese publishers on Taiwan are not "infringing" on the copyright of the American publishers or authors because (1) The Republic of China has not joined the Universal Copyright Convention; (2) the copyright laws of both countries make registration with the government in the country mandatory for legal protection; (3) since the majority of Chinese publications are not published in the United States or in a member country of the Universal Copyright Convention, they are not eligible for copyright protection according to the "manufacturing clause" of the American law; (4) Strictly speaking, the word "piracy" or "infringement" can be applied only to those cases in which the concerned titles are duly registered for protection in accordance with the Chinese law, and the flowing back of unauthorized reproductions to countries of origin.

Ploman and Hamilton state ironically that there is nothing universal about copyright. Indeed, one can even say that what is universal is the so-called book "piracy" problem, and the desire of all peoples to be educated and to participate in cultural life and scientific advancement (Universal Declaration of Human Rights, 1948). Importation and exploitation of scientific and cultural materials from a developed country to a developing country is a common phenomenon, and one may well call in question whether it is really unethical. It is indeed unethical not to

give credit and encourage authors and artists, but it can be more unethical to consider knowledge as commodity or as monopoly of publishers and authors. What is needed is a more open attitude towards cultural materials which, as in the ancient noncommercial oriented societies like China and India, should be in the public domain as much as possible.

The traditional concept of copyright originated in the fifteenth-century west. Its resultant system has grown rigid and outworn jacket for this Information Age. It is high time that we review it in the light of the pressing needs of cross-cultural communication. The Sino-American copyright issue in particular is such a problem. It can be satisfactorily resolved only by giving more consideration to the needs of the people for information and culture than those of the authors or the publishers.

The current Sino-American copyright issue consists mainly in the Taipei publishers "infringing" on the "copyright" of American publishers or authors. The United States became a member of the Universal Copyright Convention (UCC) in 1956, while the Republic of China has never subscribed to the Berne Union or UCC. In both countries copyright protection may begin on the date of first publication, but both sets of Copyright Law (*American Copyright Act of 1976*, amended 1980; *Copyright Law and Its Enforcement Rules of The Republic of China*, amended 1985) still stipulate that to institute effective infringement lawsuits, the copyright has to be duly registered (Miller 48-49; Copyright Law [of ROC], Art. 16). Without going through registration, therefore, complaints against copyright offense can be lodged through diplomatic or commercial channels, but no effective legal sanction can be leveled against it.\*

As it is, American law does not protect a work by a Chinese national unless it "is first published in the United States or in

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a country that is a party to the Universal Copyright Convention" (Copyright Act, Sec. 104; Miller 76). On the other hand, since the majority of American titles are not registered with the Ministry of Interior, the 'competent' authority according to Chinese Law, one may say that the reprinters of unauthorized copies are unethical, but not illegal. The damage to the economic interests of American publishers, however, is real and the situation needs to be remedied or improved in some way. The official position of the American State Department has been that of encouraging registration with the R.O.C. Ministry of Interior. At the same time, American publishers began to consider authorizing reprinted Taiwan or Asian editions with a special consideration for the economic conditions of those countries (Kaser 57). Yet, not many American publishers have actually taken this step chiefly because they do not want to go through the red tape and incur the expense of registration for their many titles.

An 'ideal solution to the issue can be reached only by considering both its economic and cultural aspects. It should protect, to a reasonable degree, the economic rights of American authors and the commercial interests of their publishers. On the other hand, it should also satisfy the desire of the Chinese, especially their educational and research communities, to have access to fresh cultural and technological information products at an affordable price. Such a solution, however, is difficult because there are various interest groups, different views about copyright itself, diverse philosophical persuasions and opinions about the cultural, economic, political circumstances involved in the issue.

### Pirates or Patriots

The piracy problem is generally difficult to deal with

especially when it concerns cultural materials imported from a developed country to a developing country. Pirate-type businessmen in the book industry thrive because the consumers grab at the materials with little qualms. The fundamental aspiration for education and culture always seems to weigh more heavily than ethical considerations for the property right of the original authors and publishers in distant lands. Pirates no doubt to the American publishers, those businessmen serve those people's needs, which are none but their basic human rights. As is often the case, justice is difficult. Not clearly a black and white problem, the case has to be weighed carefully and explored from various angles.

The problem may be likened to the frequent quarrels between Parisian publishers and provincial publishers in France. The underprivileged local publishers, according to Ploman, "invoked what today would be called the public domain in support of their argument, while the Parisians found it expedient to use the concept of authors' rights to defend their privileged position" (Ploman 10).

David Kaser, author of *Book Pirating in Taiwan* (U of Penn. P, 1969; the present writer is using a 1969 Mei-ya edition which is "for sale in Taiwan only; not for export"), a pioneering work of its kind, ironically begins with an extended account of the speed and volume of early (pre-1891) American piracy of British and European books. It is well known that Charles Dickens was appalled by the situation ("A Trip to America") and Emerson was most apologetic to Thomas Carlyle for unabashed American piracy of the latter's works (*The Portable Emerson*, Viking, Sept. 13, 1837 letter to Carlyle). Meanwhile, giant American writers such as Mark Twain, Longfellow, Holmes, Whittier, and Emerson complained bitterly about "the unfair competition of the large and accessible number of English works in the U.S. 'public domain' " (*Encyclopedia Americana*, 1978 ed., VII, 773).



Similarly, Chinese authors have also been complaining that with the large stock of inexpensive foreign reprints, original native works have much less a chance of getting accepted by the publishers. Certainly neither Chinese nor Americans were alone in pirating foreign works. The British pirated those of Europe before 1886, Belgium and Holland those of France, and the Soviet Union those of non-Communist countries before 1973 when she became a party to the UCC.

What this may mean is that a developing country is always a zealous importer and exploiter of developed nations. A difference in viewpoint may result in totally opposed views of the clamor for cultural and technical knowledge. For instance, is the following a legitimate claim or merely an excuse for piracy? The American mind, in the words of Robert Bell of Philadelphia, a Dublin bookseller operating in 1771, was not to be "entirely starved and enslaved in the barren regions of fruitless vacuity, because he doth not wallow in immense riches equal to some British Lords, the origin of whose progenitors are lost in the chaos of antiquity" (Kaser 7-8). Such an explanation for unauthorized reproductions of foreign materials is typical of the people who will seize at anything they find good for edification — copyright or no copyright.

If, as is often noted, information or knowledge is the key resource, the have or have-not of it must depend upon the rise and fall of a nation as well as an individual. One might call in question whether Shakespeare would have written the way he did and whether the flowering of Elizabethan literature would have occurred if the United Kingdom had been a party to the present-day UCC (Ploman 19).

In this connection the special Protocol document regarding developing countries at the 1967 Stockholm Conference on the revision of the Berne Convention is worthy of mention. Consideration was given to restrict protection "with regard to

uses of protected works intended exclusively for teaching, study and research in all fields of education." There were also special provisions for a right of translation and reproduction in return for equitable payment (Ploman 62). How these progressive ideas can benefit the less privileged nations depends on how the controversies which ensued are to be resolved.

The Republic of China's non-participation in any international copyright agreement is a matter of expedience that satisfied the cultural and intellectual needs of its students, researchers, and even the poor villagers. Easy access to foreign published materials has contributed significantly to the education of college students, paved the way for researchers, and the growth of their national strength. One can even point out that the phenomenal economic progress of the Republic owed in part to this apparently dishonorable practice.

Shortly after the Republic of China ceded its government seat to the Communists and settled in Taiwan in 1949, the reading public began enjoying many inexpensive reproductions of English-language books, tapes, phonographs, graphic materials, and, more recently, computer software as well. One of the enticing purchases of many Western visitors to Taiwan was these unauthorized reproductions. Cheap books of general as well as academic interest delighted their eyes when they sauntered along the bookstores on the busy streets of Taipei. During the Korean and Vietnam Wars, piles of best-sellers in Taiwan reprint were carted away to enlighten GI's at their rest and recreation. Some "pirates" built up considerable fortunes, but competition for the rather limited market was always there and most American publishers considered their losses still negligible or tolerable.

The situation came to a head in 1959 when the twenty-four volume *Encyclopedia Britannica* was pirated and sold for only US\$55 or less (Kasey 42; Li Ao 31 ff.). What further aggravated the situation, to an alarming degree for the American publishers

of course, was the flowing back to the countries of origin of these pirated materials. In the same year unauthorized Taiwan reprints began to appear in London, major cities in the U.S. and southeastern Asia. In February and March of 1960, pirated textbooks were found on the campus of Iowa State University at Ames, Colorado State University, North Dakota Agricultural College, Princeton University, University of Wisconsin, University of Minnesota, M.I.T., Johns Hopkins, etc. In at least the case of Iowa State, a sudden decline in campus bookstore sales was traced to the appearance of cheap Chinese reprints (Kasey 53, 56). Obviously, such a blatant commercial invasion could no longer be tolerated. That those products had come from a developing non-member country of the UCC was no excuse whatsoever.

The American publishers were made acutely aware that, if they continued to remain silent, they would have to confront their serious business competitors. Their complaints were repeatedly brought to Congress and the State Department, and this issue along with a number of others resulted in the Mutual Security Aid discontinuation, IMG curtailment, and a customs ban against all Taiwan reprints (Kasey 67-71). By 1957 negotiations between Taipei booksellers and American copyright owners brought about many authorized Taiwan editions with advanced royalty payment to the copyright owners. Regrettably, however, steps had not been taken to regularize this as the norm (Kasey 39).

In 1979 the United States severed her diplomatic relations with the Republic of China. Yet, in order not to strain further her unofficial, cultural and economic ties with her former ally, the Chinese Government on Taiwan did its best to stamp out illegal smuggling of books out of the island and accepted registration of such important research sources as the *Britannica*.

The Chinese Copyright Law has gradually reduced the



registration fee from its original twenty-five times the set price to only three times the set market price of the material, and greatly simplified its procedure. Still not a member of any international copyright agreement, the nation's Enforcement Rules of the Copyright Law, which became effective on June 18, 1986, does provide for effective protection of foreign copyright. Had the American trade groups not pressed the issue further, the problem might be considered to have reached its temporary settlement.

The United States had stayed away from the 1946 Pan-American (Copyright) Union because of its lack of "any form of formalities." Her copyright law has a manufacturing clause that requires the product's being manufactured in the United States as one of the necessary conditions for copyright protection. It seems fairly reasonable, therefore, for the Chinese to demand that, to gain legal protection in the Republic of China, the American publishers need to comply with the Chinese law by registering their titles.

The last (and who knows but that there may not be another last) crisis came when the copyright issue was treated on purely commercial terms. Seeing that ROC's per capita GNP has steadily increased nearly ten times since 1950s to the present US\$3,100 last year (as compared to the American US\$12,000), the United States trade delegation threatened a heavy economic sanction if the Government did not take drastic measures against piracy. Pirated books began to disappear from the shelves of leading western-language bookstores in Taipei in the spring of 1986. Many panic-stricken college students pathetically walked round the bookstores searching in vain for their desperately needed textbooks. Some professors were worried that they might have to be facing students without textbooks when the new semester began.

Although very few college students are really rich anywhere



in the world, the following figures may give some idea as to what may be their approximate allowance for book purchases. In the 1986 academic year at a privately endowed university like Tamkang, a liberal arts student pays for his semester tuition NT\$12,580 plus other fees NT\$4,020, totaling about US\$477. A science or engineering student pays NT\$13,350 with other fees averaging NT\$7,200. Evening College students pay NT\$420, or US\$11.4 per credit. At a national or public university, the tuition and fees are about one-third of the above sums.

In the course of American protests, official and unofficial negotiations, the Chinese businessmen and users of unauthorized reproductions of American cultural and technological works became increasingly apprehensive of their ethical and legal stand. The majority of the people — if they can afford certain books at all — may be ready to accept imported books at a reduced price or authorized reprints. Some extremists, on the other hand, berated the government officials for their readiness to make what they considered obsequious concessions to American pressures (Li 27-41, 52-53). In one of Li Ao's outspoken articles, the translated title of which is "Goldwater, the Nationalist Party, Pirates," he calls the violators of American copyright laws "patriotic businessmen" instead of "pirates." He thus offended both American businessmen and Chinese officials, but his argument is only a twentieth-century Chinese version of Robert Bell's. The pervading sentiments among the Chinese nationals seem to be that they should wait and see how much more they will have to pay for the foreign books, phonographs, music and video tapes, and computer software they used to enjoy so much more cheaply and freely.

In dealing with the problem of information and cultural flow, Article 27 of the Universal Declaration of Human Rights, adopted by the United Nations in 1948, presents the inherent difficulty. It maintains both the authors' right of protection

for their works, and the public's right for access to their products. There is the need to encourage artistic and intellectual production by rewarding its authors, and there is the right of the people to education, "to participate in the cultural life of the community; and [the] right to enjoy the arts and to share in scientific advancement and its benefits" (*Enc. Brit.*, 1978 ed. Micropedia, X, p. 278).

### Commercial Goods vs. Cultural Resources

Are information and knowledge to be treated as commercial goods or cultural resources? Such a question immediately gives rise to various conflicting answers. Not too many people, however, are aware that the notion and practice of copyright is a modern invention that originated in the West after the Industrial Revolution and developed in a society with a market-oriented economy. The system has come to be widely practiced with its complicated legal intricacies, but it does not seriously take into consideration the needs of a nation struggling to advance its industry, technology, and culture in general to survive in the present world.

Africa and India need to control their famine problems, and Taiwan, like many other areas in the world, needs to fend off a totalitarian threat and stay free. Does copyright serve its original function of harmonizing social interests within a country and among the international community? Now that the Industrial Revolution has ended and an Information Age has begun, it is quite necessary to examine thoroughly whether the whole concept of copyright and its resultant system — the control of copies for the sake of rewarding authors and stimulating competition — is already outmoded.

An interesting backdrop to Chinese copyright system is that although China had pioneered and developed methods of

printing texts, the concept of intellectual property never took its root in her history. With a traditional concept of government by morally and intellectually superior men, humane studies or the pursuit of book knowledge in general was considered the highest of all human occupations. Contempt of professionalism and commercialism persisted up to a fairly recent time. Confucius is still revered today partly because he democratized education and decentralized cultural activities. The *Tso-chuan*, an ancient Chinese historical classic posits "li-yen" (literally, the establishment of "sayings," or the creation of literary or philosophical works) as one of the three immortal tasks of man (*san pu-hsiu*). Yet, in ancient China and India many great literary and philosophical works were anonymous. The underlying idea had been that since nothing under the sun is really new, it was not the man who said it, but what is said and how it is said that mattered. To gain currency for their creations, quite a few authors would even falsely attribute their works to the past masters. The same openness about transmitting knowledge is by no means absent in the West.

Matthew Arnold conceived of all critical endeavor to consist in the acquisition and propagation of "the best that is known and thought in the world" (Arnold 245). Although he might not have had a copyright issue in mind, he would certainly sanction the view that literary work is part of the cultural heritage of all men and should be freely available to everyone (Ploman 206-07). What Arnold calls "the best" is really the same thing as T. S. Eliot's "tradition" in his famous essay "Tradition and the Individual Talent." Eliot says that a poet [in its widest sense] of any significance should always write with a sense of the traditional past, and he continues with the following observation:

No poet, no artist of any art, has his complete meaning alone. His



significance, his appreciation is the appreciation of his relation to the dead poets and artists. You cannot value him alone; you must set him, for contrast and comparison, among the dead. (Eliot 38)

It is certain then that without knowing what is common cultural heritage of humanity, we may not value and appreciate a work of art properly, and presumably the same statement goes with works of technical knowledge. Whether information is a common cultural heritage of mankind or a product of an individual's creative labor is a controversial question that will always lead to different answers. Arnold's and Eliot's views, however, show how important it is to have people — writers or readers, actors or audience — share alike in our cultural heritage that has to be kept constantly flowing and growing.

With their sympathy visibly on the side of information as resource, Ploman and Hamilton ironically negate the universal nature of copyright at the outset of their great work on copyright:

There is nothing universal about copyright. As any other social institution, it evolved in response to specific challenges in a specific environment. Its origin is Western and its parentage multiple: the invention of the printing press and the advent of the industrial revolution, the philosophy of the market place and that of natural rights, the rise of bourgeois society and the spread of literacy, the social attitudes towards art and the artist. (Ploman 1)

Indeed, one can even say that what is **universal** is the so-called book "piracy" problem, which arises basically from the desire of all peoples to be educated and to participate in cultural life and scientific advancement. Importation and exploitation of scientific and cultural materials from a developed country to a developing country is a common phenomenon, and one may well call in question whether it is really unethical. It is unethical not to give credit and encourage creative artists. But is it not

even more unethical to monopolize knowledge for the commercial interests of publishers and authors?

The discussion above does not necessarily lead to the conclusion that the whole copyright system as it is practiced in the West and East should be allowed to collapse. One may maintain, however, that of the multiple purposes that copyright serves today, the educational needs of the people should weigh a lot more heavily over and against the economic demands of the authors and publishers. As a matter of fact, this latter view is winning more and more ground in the information world today.

After the copyright system started in Venice in 1476, it served primarily for the governments to exercise censorship and reap profit for the public coffers. The authors' profit was seldom considered or silently ignored. Even today, the author is often used as an excuse for monopoly and exploitation. Ploman points out clearly the pervasive "confusion between the protection of the publisher and the protection of the author, with the former being able to hide, as it were, behind the author, despite their often conflicting interests" (Ploman 177, see also 192). Seltzer follows the same line of argument in arbitrating between the authors' and the users' interests:

Within reasonable limits the interests of authors coincide with those of the public. Both will benefit from the widest possible dissemination of the author's works. But it is often cumbersome for would-be users to seek out the copyright owner and get his permission. There are many situations in which copyright restrictions would inhibit dissemination, with little or no benefit to the author. And the interest of authors must yield to the public welfare where they conflict (Seltzer 14-15).

### Conclusion

Summing up the above discussions of the issue involving the Chinese infringement on the interests of American copyright

owners, we may make the following observations:

1. A widespread and flexible use of educational and cultural products leads to a wider and higher recognition of the value of knowledge. Human knowledge enhances understanding among peoples of various cultural backgrounds and different ideological or philosophical persuasions. Since materials containing such knowledge are the means for realizing our basic human aspirations, they should be made more readily accessible, especially to the growing generation. Technological or scientific materials, on the other hand, can be more expensive because many of them may involve high laboratory costs. In both cases, however, much of the author's product results from the cooperation of various factors other than the author as an individual. The author's creativity and labor should always be recognized and rewarded, but not necessarily in the form of exclusive economical rights.

2. As traffic regulations facilitate transportation by an effective control of passing vehicles and pedestrians, so the copyright system should exist for speedier flow of more valuable ideas than otherwise. An Information gap that often spells disasters stems more from man-made laws than natural causes.

3. Both national and international organizations should be erected to prevent the formation of monopolies, especially the kinds that block the flow of information owing to discriminations with regard to race, sex, social class, religion, etc. Unduly nationalistic copyright laws, therefore, should be discouraged or even nullified through the intervention of the international court.

4. Governmental action should be taken against the abuse of copyright purely for commercial gains, especially trafficking in pirated materials back to countries of origin. To be benefited by smooth international exchange of educational and cultural products, a government is obliged to punish its delinquent nationals and make reasonable compensations to infringed parties.



5. Unnecessarily high prices of cultural materials in the publishing world block information flow within the country and across national borders. They are indexes of the kind of monopolies that are detrimental to human welfare. Both national and international organizations should regulate the production cost, product prices, and the fees charged on transmission, performance, reproduction and translation.

There are already some good examples in the copyright laws of such countries as India, Japan, and Tunisia. The Indian Copyright Act of 1957 "allows the government to play an active role in encouraging the exploitation of needed intellectual property" (Ploman 133). Similarly, the Japanese Act of 1970 gives the Agency for Cultural Affairs the power to arbitrate copyright disputes. Such agencies are authorized to issue compulsory licenses and determine compensations made to the authors (Ploman 138). It has also been reported that, in Tunisia, although under its Copyright Act of 1966, an "abjudicating" commission can issue compulsory licenses, no such compulsory case had ever been handled five years after the enactment of the law (Ploman 131). According to Ploman, these measures encourage "just and fair exploitation of cultural products" and secure the harmony needed for speedy information flow (Ploman 136, 138).

The problem as to what constitutes "justness" or "fairness" in the exercise of copyright is never purely a legal or commercial issue. More importantly, consideration ought to be given to its cultural aspect. Within a national boundary, it has to resolved with reference more to the cultural needs and development of the nationals than either those of the authors or the publishers. Stretched to the international scene, the problem still has to be settled with the large picture of global welfare in mind.

The Sino-American copyright issue can be resolved satisfactorily only in the spirit of international cooperation towards

the advance of human culture. Trafficking cultural products across the international borders for commercial gains should be effectively stopped. Likewise, commercial exploitation of educational and cultural materials by monopoly should be discouraged. An ideal solution will speed up the flow of cultural products for culture — culture that brings “sweetness and light” even to the most obscure corners of the world.

#### Sources Cited

- Arnold, Matthew. “The Function of Criticism at the Present Time,” *Poetry and Criticism of Matthew Arnold*. Ed. A. Dwight Culler. Boston: Houghton Mifflin, 1961, 237-258.
- Copyright Law and Its Enforcement Rules of The Republic of China*. Taipei: Ministry of Interior, Republic of China, 1986.
- Eliot, T. S. “Tradition and the Individual Talent,” *Selected Prose of T. S. Eliot*. Ed. by Frank Kermode. New York: Harcourt, 1975, 37-44.
- Kaser, David. *Book Pirating in Taiwan*. U of Penn. P, 1969.
- Krishnamurti, T. “Protocol Regarding Developing Countries Appended to the Stockholm Act of the Berne Convention,” *EBU Review*, no. 106B, Nov. 1967, pp. 59-68.
- Li, Ao. “Kao Hua-te, Kuo-min-tang, hai-tao” (Goldwater, the Nationalist Party, and Pirates), *An-sa, ta-t’ui, pao*. Taipei: Kui-kuan, 1982, 27-55.
- Miller, Jerome K. *U.S. Copyright Documents: An Annotated Collection for Use by Educators and Librarians*. Littleton, Colorado: Libraries Unlimited, 1981.
- Oliver, Robert. *Communication and Culture in Ancient India and China*. Syracuse UP, 1971.
- O’Neil, Robert. “Intellectual Property and Intellectual Freedom,” in White, ed., 119-21.
- Ploman, Edward W., and L. Clark Hamilton. *Copyright: Intellectual Property in the Information Age*. London: Routledge, 1980.
- Rosenberg, Stanley. “Copyright,” *The Encyclopedia Americana*. International Edn. 1975.
- Seltzer, Leon E. *Exemptions and Fair Use in Copyright: The Exclusive Rights Tensions in the 1976 Copyright Act*. Harvard UP, 1978.
- White, Herbert S., ed. *The Copyright Dilemma: Proceedings of a Conference Held at Indiana University April 14-15, 1977*. Chicago, American Library Assoc., 1978.