

Protection of Intellectual Property Rights in the Development and Utilization of the Dissertation Process

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Received 5 August 2012; accepted 24 October 2012

Abstract

This paper explicitly identifies the copyright subject of the dissertation, and focuses on intellectual property rights issues of dissertation; and the author as its copyright owner, in the commercial development and feasible solutions.

Key words: Dissertation; Subject of right; University; Paper development agency; Commercial development; Authorization; Royalty

ZHU Yujing (2012). Protection of Intellectual Property Rights in the Development and Utilization of the Dissertation Process. *Cross-Cultural Communication*, 8(5), 127-131. Available from: <http://www.cscanada.net/index.php/ccc/article/view/j.ccc.1923670020120805.2444> DOI: <http://dx.doi.org/10.3968/j.ccc.1923670020120805.2444>.

Dissertations are research papers, written by postgraduates, who worked under the guidance of supervisors, referred to a large number of documents, and repeated experiments, in order to obtain a doctor's or master's degree. So, under normal circumstances, dissertations represent the direction of the latest academic development of the discipline, with high academic and reference value. With the advancement of science and technology, dissertations have not only the form of a printed version, but also the electronic version, in particular, in the form of network version. And the electronic version increasingly demonstrates its strong advantage in the way of convenient, fast, ease of custody, ease of use, ease of circulation. Since ease of downloading is also one of its characteristics, it had caused widespread concern of the copyright protection for dissertations in society when 482 masters and doctors sued Beijing Wanfang Company for

copyright infringement in 2008.

According to the statistics from www.chinacourt.org, at least more than 1100 masters and doctors have filed the similar lawsuits in Beijing, Shanghai and other places of the country. The fundamental reason of massive paper infringements is the copyright defects in its database: Information services providers are often faced with hundreds of millions of information, but the situation of the copyright owners of the information are very complex, and even the subject of rights is not clear. Moreover, the current law also does not provide an effective licensing model, which makes information services providers almost impossible to solve this copyright issue. With the gradual strengthening awareness of intellectual property rights protection, rights holders' long-term accumulation of disputes will be collective outbreak.

1. THE IDENTIFICATION OF RIGHTS SUBJECT OF DISSERTATIONS

Because copyright related provisions of dissertations are not clear and also is the legal ownership of dissertations in the state, the legal ownership of dissertations correspondingly becomes complicated. If the legal ownership of dissertations keeps uncertain, there will be a great risk of intellectual property rights infringement in development and utilization of dissertations. From the view point of *Copyright Law of the PRC*, clarification of rights ownership, exactly the subject of copyright, is the premise of protection, license or transfer of rights. Then, it can be said that the most important issue need to address in the discussion on the protection of the rights of dissertations is to determine the rights ownership.

The main sources of dissertations in our country are the following: 1) Optional Subjects, the contents of the dissertation are neither a part of research projects from mentor, nor from university scientific tasks; 2) Research Tasks, research tasks need participation of postgraduates

in the mentor's research projects or university scientific tasks, and thus the results of the projects are made as the contents of dissertations; 3) Dissertations Submitted by Equivalents Applying for Graduate Degree, these are their accomplishments completed independently in their work practices (Li, 2005, pp. 20-21).

For the first type, the completion of the dissertation is an independent behavior of a student. Although in the process of determining topics and writing, there may be some guidances generally from experts, professors, and in particular, from supervisors, they only work as references. According to Article III of *Regulations for the Implementation of the Copyright Law of the PRC*, any organizational activity, consultation, material support or other auxiliary activities conducted or offered for other person's creative work, shall not be deemed as creation. Therefore, the copyrights of dissertations shall not belong to the supervisors and postgraduates altogether, but the postgraduates themselves. In fact, this is common accepted in the world. For example, Cambridge University's Copyright Agreement provides that, "The author is the copyright owner of the dissertation and the abstract, and the author retains the copyright of the dissertation except for transferring the copyright to others."¹

For the second type, dissertations as part of the outcomes of the subjects, sometimes the project contracts set that the copyright of the subject outcomes belongs to the entrusting party of the subject, and the author only enjoys the right of authorship. These contracts are legal on the ground of *Copyright Law of the PRC*, and Article 13 of *Colleges and Universities Intellectual Property Protection Regulations* "During the learning in colleges and universities, in advanced studies or cooperation research projects, inventions and technological achievements of students and researchers, completed in participation in university research projects undertaken by their mentors or the task of university arrangements, unless otherwise agreed, shall belong to colleges and universities for enjoying and holding." Therefore, the copyright of dissertations based on such topics or tasks created by students shall be owned by colleges and universities.

For the third type, the selection of subjects by education postgraduates directly comes from the work practice or a clear work background or having application value. Without commitment to research topics for universities or institutions, dissertations are completed by self-summary and self-research. Since practices of the work come from the authors themselves, and basically use their spare time to complete the dissertations, which are not tasks assigned by institution, the copyright is supposed to be owned by the author.

2. INTELLECTUAL PROPERTY RIGHTS ISSUES IN DEVELOPMENT AND UTILIZATION OF DISSERTATIONS

2.1 Full Text Services of Dissertations Provided by Universities Must Be Authorized

As the copyright subjects of the dissertations, which are not based on a research project or a task, should be the authors, then higher institutions providing full text services of these dissertations is a legally reasonable use or not? Article 22 of *Copyright Law of the PRC* provides for twelve kinds of cases of using the work without the permission from the copyright owners or payment for remuneration, but should indicate the author's name, work's title, and should not infringe other rights of the copyright holders in accordance with the law. But the main argument in these situations is "a published work" (Zhou, 2005, pp. 48-51), while dissertations belong to unpublished works. Therefore, full text services of the dissertations carried out by the universities are excluded from the twelve kinds of cases in accordance with *Copyright Law of the PRC*. That is to say, if the full text services of the dissertations by the universities do not obtain the relevant authorization, the universities are at a risk of infringements of dissertations copyrights.

2.1.1 Nonprofit Development

The nonprofit development of dissertations generally refers to colleges or universities Union, which offering free of charge dissertations full text services to readers through libraries and other non-profit organizations. Within the colleges or universities range, the development and utilization of the dissertations is generally authorized by the authors. The copyright authorization was signed between the author and the college before the dissertation oral defense, generally also including the authors' agreements of the terms of colleges and universities providing full-text dissertations to other institutions (including other universities and research institutes) in the forms of Interlibrary Loan or Document Delivery Services. Although such a copyright authorization signed with certain mandatory, colleges and universities as postgraduate training institutions should enjoy the priority rights of development and utilization of dissertations. Moreover, with the increasing development of the construction of resource sharing among universities, dissertations resources sharing has become a trend. Therefore, it can be assumed that offering dissertations full text services by colleges or universities Union is in accordance with *Copyright Law of the PRC*. Since the nonprofit development of dissertations is not the focus of this article, it will no longer be mentioned at below.

¹ Board of Graduate Studies, University of Cambridge. Deposit and Copying of Dissertation Declaration. Retrieved from http://www.admin.cam.ac.uk/offices/gradstud/admin/forms/bgs_dissertation_declaration.pdf

2.1.2 Commercial Development

If dissertations are available to commercial Dissertation Full Text Database provided by colleges and universities, then it means that colleges and universities agreeing to offer dissertations services to the community through commercial Web sites. This situation is completely different from non-profit public services provided by colleges or universities Union, and would will involve the Information Network Transmission Rights of authors (Dang & Cao, 2004, pp. 23-25). For this purpose, the colleges and universities should sign a special copyright authorization with the author voluntarily. Previously mentioned Wanfang infringement dispute arising from the commercial development of the dissertations, is this paper's focusing issue. Therefore, dissertations development and utilization discussed below only involves with the commercial development and utilization.

2.2 Impacts of Current Dissertations Development and Utilization Authorization Model on Authors' Interests

Most of the commercial development and utilization of dissertations often takes the model of "Three subjects-Two layers of authorization". That is, colleges and universities firstly sign *Paper License Agreement* with the author, then with paper development agencies, authorizing development and utilization of dissertations. The *Paper License Agreement* signed between universities and authors is a formatted protocol, and the content of which is the expressions of the manner and scope of the right to use the papers by colleges and universities. These statements involves in terms of commercial development, including but not limited to: 1) colleges and universities can publish all or part of the contents of papers; 2) colleges and universities enjoy the rights to allow dissertations access to inspection, lending and copying; 3) colleges and universities can publish or disseminate all or part of the contents of dissertations in different ways through different medias; 4) colleges and universities can incorporate all or part of the contents of dissertations into database for retrieval (Zhang & Wu, 2010). A lot of authors hold that, these agreements neglect not only the creative work of the author in the process of finishing the dissertation, but also the author's personal wishes, for many of these agreements are signed without willingness of authors.

In the case of 482 masters and doctors suing Beijing Wanfang Company for copyright infringement, precisely because the related rights of the papers had already been graduated to their colleges and universities completely, finally 118 authors were ruling dismissed the claims and could not receive due compensation.

2.3 The Authorization Dilemma of Dissertations Development Agencies Facing with Massive Work

In the process of building the database by electronic database developers, a copy must be digitized, which will inevitably impair the reproduction rights of the rights holders. Besides, the sales of database content through CD-ROMs or the network will impair the issuance rights or the information network transmission rights of holders. Therefore, under the existing legal framework, dissertations development agencies generally cannot digitize the dissertations without the authorization, and even cannot publish them through the traditional channels or transmit them through the network. In other words, if the dissertations development agencies want to operate legally, they must negotiate with thousands of people to seek copyright authorization. Since in 1978 the beginning of enrolling postgraduates in China, the enrollment scale has been in a growing trend, so does the number of the dissertations. Of the three legal dissertations collecting institutions, China Science and Technology Information Institute has dissertations of more than 114 million²; Documentation and Information Center of Chinese Academy of Social Sciences has the total number of papers of more than 130,000 copies (He, 2006); National Library has nearly 120,000 kinds doctoral dissertation in 20 years (China National Library Dissertations Overview). If each the License Agreement is signed with each author, it is bound to cost a lot of time and manpower. In order to reduce the licensing costs of dissertations, dissertations development agencies choose to cooperate with colleges and universities, so that when a postgraduate student submits a dissertation, at the same time he or she shall voluntarily sign the license agreement with dissertations development agencies. However, as mentioned previously, the formatting protocol proposed by colleges and universities has actually affected the legitimate interests of author, so how to coordinate the contradiction between these two aspects?

3. SOLUTIONS OF INTELLECTUAL PROPERTY RIGHTS ISSUES IN DISSERTATIONS DEVELOPMENT AND UTILIZATION

The dissatisfactions with the license agreement provided by colleges and universities are mainly concentrated in two areas, the one is that the author is not willing to publish the results of the research, so as not to affect the research subject value or future publishing; the other

² China Science and Technology Information Institute Resources Introduction. Retrieved from <http://168.160.16.178/ResNav.aspx>

one is that, the author do not want their own research results be possessed unconsciously and freely by other people. I believe that the former idea is not advisable. Full Internet access is an inevitable trend in the high-speed development of science and technology. And the development and utilization of dissertations is crucial for reducing research duplication; sharing resources; promoting scientific and technological progress; as well as achieving equitable access to academic information. As British scholar Thomas Joyce said “potential social and economic value of free dissemination worldwide of dissertations has not been recognized. Traditionally, these valuable researches have been closed in unpublished world. And now the technology has been able to spread them worldwide, but existing copyright law has restricted this change to a smooth development” (Joyce, 2008). The terms of the agreement proposed by colleges and universities are conducive to the development of the postgraduate education, and also to promoting academic exchanges. It is a forceful measurement to explore and take advantages of dissertations as information resources. However, the second requirement should be supported. A postgraduate’s dissertation often represents a lot of painstaking efforts, overload labor and hardships in the process of creation by the author. If the author do not want his or her own fruits of labor be used without authorization, such feeling is understandable and should be respected. In fact, this is one of the big misconducts of Wanfang Company in the case of copyright infringement. Wanfang Company has not obtained the authorization licenses of most postgraduates involved in the case, 364 precisely, and there is no content of postgraduates’ permission to delegate authority to college and universities in the license agreement. Moreover, Wanfang makes profits in dissertations download, but do not feedback any royalties to the copyright holder, which is in any case unacceptable. The difficulties of massive authorization and the copyright fees payment cannot become an excuse to avoid copyright protection.

In summary, resolving these conflicts should proceed with the standardization of authorization and copyright fee, so as to realize an interest balance between the copyright owners, dissertations development agencies, as well as the society.

3.1 Standardize the Authorization Model and Improve Efficiency

Current authorization model is delegated authority, but the licenses agreement of colleges and universities vary a lot, and related terms keep rather vague. For example, “I hereby authorize my college or university to incorporate all or part of the contents of my dissertation into the relevant database to retrieve.” But, exactly what kind of database is not clear in the agreement. This model exposes flaws of unsuitable authorization subject, and does not reflect the true meaning of the author (Yang & Zhang, 2007, pp. 70-

74), so it is prone to cause infringement disputes. There are not even detailed provisions on whether to allow the commercial electronic use of dissertations by colleges and universities, or to allow the utilization of dissertations be delegated to other institutions in a second time by colleges and universities. Learning from the practice of Europe and the United States, the dissertations development agencies should cooperate with universities, to require the degree applicants to complete the Dissertation License Agreement Table as one of the necessary procedures to apply a degree, in order to avoid the risk of infringement for future use.

3.2 Clear Royalty Distribution Method

According to *Copyright law of the PRC*, remuneration payment standard and method of licensed use should be included in the licensed use contract. Nevertheless, the license agreement of colleges and universities do not include the royalty distribution method, which ignores the legitimate rights of getting remuneration for authors, and also be prone to legal disputes. I insist that colleges, universities, as well as dissertations development agencies should develop detailed terms of payment in the license agreement to settle this problem.

At present, China has not yet formulated a unified regulations and systems of royalty’s distribution. Dissertations development agencies should negotiate with colleges and universities or the author to develop a reasonable amount of funds allocation agreement. Specific calculation of the amount of money should be based on the number of actual use of copyrighted works. According to *the Published Written Works Remuneration Provisions* issued by National Copyright Administration, the remuneration standard applying to the print media is RMB 30-100 yuan per thousand words. Although the standard of network media royalties has not yet introduced, the standard applying to the print media should work as a reference. Authorization owners can choose an annual authorization payment model or a payment for each use service.

CONCLUSION

With high academic value and practical value, the development and utilization of dissertations is conducive to social and economic benefits. As dissertations development involve multiple subjects and multi-layer structures, such as authors, degree authorized institutions, collection entities, and resource users, and relationship of them remained rather complex. Only under the premise of a clear copyright subject, in the principle of balanced interests, with appropriate reference to European and American advanced experience, standardizing authorization model and royalty fees, and strengthening copyright management, can the legitimate rights and interests of the copyright owner be fully protected, and better academic resources services be provided to readers.

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