

The Influence of Intellectual Property Rights on Chinese Education

By Guo He

Prepared for the Access to Knowledge Research Series

Information Society Project at Yale Law School

2009

I. Introduction

Intellectual property rights can serve as a mechanism to encourage intellectual production. The accompanying controls on reproduction rights, however, can also restrict the freedom to disseminate knowledge. This can be contrary to the mission of education, the essence of which is precisely the dissemination of knowledge. As Zhu Xinpei has observed, “Education and knowledge have a natural relationship. The bestowing and reception of knowledge are the mode and objective of the existence of education.”¹ Of course, historical experience indicates that education also possesses the function of producing knowledge.² Therefore, the relationship between education and intellectual property rights is a very complicated one. They exist in tension and conflict, yet they also can complement one another. In addition to influencing education directly, intellectual property rights penetrate more deeply into Chinese society, acting as a sort of social regulatory tool that assumes the burden of still broader social goals.

It is difficult, however, to measure the influence of the intellectual property system on Chinese education. Because the Chinese intellectual property system has developed over a relatively short period, the implications of its implementation have not yet been fully manifested. Moreover, there are many elements that influence education, each of which produces effects that interact with those of others, which makes interpreting the impact of intellectual property rights more complex.

While there has been an extraordinarily rapid development of higher education founded on intellectual property in China over the past twenty years, this article is not limited to intellectual property rights in education, but also addresses their broader implications.

¹Zhu Xinpei, *Zhishi yu quanli: gaodeng jiaoyu zhengzhisue xinlun* [Knowledge and rights: A new political theory of higher education], (N.p.: Jiaoyu Kexue Chubanshe, March, 2007), p. 80.

²*Liji: Xueji* [The Book of Rites: On Learning]: “For this reason, it is not enough to study and to know thereafter. It is difficult to teach and to know afterwards, but afterwards one can strengthen oneself.”

II. The General Tension between Intellectual Property Rights and Chinese Education

Intellectual Resources for Chinese Education

The dissemination of knowledge is the most fundamental form of education, and the development and “perfection” of men and women are the goals of contemporary education. The objectives of Chinese education include not only disseminating knowledge in order to realize the comprehensive development and self-actualization of the individual, but also the progress of society as a whole. In addition, the concrete goal of Chinese education is to respond to the crisis that Chinese civilization has confronted since the late Qing era by attaining modernization through the study of other civilizations.

Realizing these objectives remains a difficult mission for China. Education has assumed the burden of diffusing greater aspirations among the poor—first by enhancing the character of individuals through the dissemination of knowledge, and then by making equal opportunity a reality. In their right to existence and human dignity, individuals are equal; but the abilities of individuals to realize fully their own resources and opportunities are not. Contemporary civilized society should make every effort to eliminate this kind of inequality—this point is at the core of Rawls’s theory of justice. Through education, it is possible to achieve mobility among the social strata in order to support rising social dynamism and progress. The spread of education and knowledge can enable individuals to advance, which moderates the inequalities in status that result from unequal distribution of wealth, thereby supporting social harmony.

Education can also permit the development of skills, knowledge, and the consciousness of members of society required for progress. The dearth of high-level technical and creative talent in China has become a bottleneck that is obstructing improvements in industrial and social development. Education can open the way to the development of human resources, thereby shifting the foundations of long-respected economic development models. The quantity of natural resources that the Chinese people possess per capita is extremely low. We can attain modernization only by mobilizing the production capabilities of people. Developing education and disseminating knowledge is fundamental for accomplishing such objectives. However, the current level of Chinese education cannot bear the burden of achieving these goals. According to population census data for 2000, there are 85,070,000 illiterate Chinese over the age of 15—an adult illiteracy rate of 6.72 percent. This is far higher than the adult illiteracy rate of less than 1 percent in developed countries. The dissemination of rural compulsory education lingers at an especially low level, and it is neither comprehensive nor consolidated.

A major factor contributing to this state of affairs is inadequate public investment in education. The 1993 “Outline for the Reform and Development of Chinese Education” proposed that, by the end of the twentieth century, expenditures on state-funded education should comprise 4 percent of the gross domestic product (GDP)—a goal that has still not been attained. The 6th Plenary Session of the 16th Central Committee of the Chinese Communist Party has repeatedly written this goal into its decisions, yet it still has no timetable for achieving it. The aggregate debt for universal compulsory education in China has reached 50 trillion yuan, and the shortfall between supply and demand for funds for rural

compulsory education is more than 100 trillion yuan. This figure exceeds the total investment in rural education in the 2002 national budget (99 trillion yuan).³ Funding for educational expenditures remains an enormous problem. Even if China were to realize the goal of investing 4 percent of GDP in education, the level of educational funding per capita would still be far below the world standard.⁴ indeed, were China to use its entire income for education, it would still lag far behind the developed world. The expenditures that China makes to support education cannot provide relief even over a relatively long period.

If we adopt information technologies to implement remote education, however, it is possible to disseminate knowledge inexpensively and conveniently. Remote education is useful in rural western areas to overcome time and human resource constraints. The Chinese government is already working hard to construct modern remote education projects for elementary schools in the countryside, and has attained good results.⁵ But these achievements remain far from fulfilling the needs of the population. In fact, even where remote education hardware is now in place, problems in funding the acquisition of software have become more prominent. There is a serious shortage of software for educational activities, and there are no funds to purchase such resources. Without software, informatization remains an illusion. Because of these funding obstacles, Chinese education must rely on cheaply priced knowledge and large-scale distribution. The fundamental solution lies in reducing the cost of disseminating knowledge, which requires the consideration of intellectual property rights.

The Influence of Intellectual Property Rights on Educational Resources

Currently, public investment in education in China is inadequate to pay for copyrighted educational resources. In comparison with the developed countries, the disparity in China's ability to meet the costs involved in supporting intellectual property rights is incalculable. For this reason, achieving China's educational goals is closely related to the issue of intellectual property rights.

Intellectual property rights are a tool for stimulating new ideas by sufficiently compensating those who produce knowledge. They also serve, however, as a vehicle to profit off of humanity's inherent nature to create knowledge. By controlling the dissemination of knowledge, capital is in command of the wealth that knowledge brings and thereby determines the rate of return that knowledge can bring. What is noteworthy under the

³Xiang Xuquan and Yuan Fangcheng, *Shuifei gaige beijing-xia de nongcun yiwu jiaoyu: dangqian nongcun yiwu jiaoyu de caizheng kunjing yu zhengce xuanze* [Rural compulsory education against the backdrop of fiscal reform: Financial predicament and policy choice in current rural compulsory education], <http://www.xuanju.org/NewsInfo.asp?NewsID=46969>.

⁴According to 2001 statistics: Within public finance, elementary and intermediate educational expenditures comprised the following proportions of gross domestic product: France – 4%, United States of America – 3.8%, England – 3.4%, Korea – 3.5%, Germany – 2.9%, Japan – 2.7%. See Zhu Xiaoman, ed., *Duice yu jianyi—2006-2007 niandu jiaoyu redian, nandian wenti fenxi* [Countermeasures and recommendations: Analyses of hot-points and difficult issues in education during the 2006-2007 Year] (N.p.: Jiaoyu Kexue Chubanshe, January 2007), 1st ed., p. 425.

⁵At the end of 2007, total investment in Chinese distance learning projects was 11.1 trillion yuan; allocated educational compact disk broadcast facilities numbered 401,028; satellite education observation systems totaled 278,737; computer classrooms and multimedia facilities totaled 44,566; teaching points covering central and western villages totaled 78,080; there were 250,552 rural elementary schools; and there were 29,729 rural elementary and middle schools. See Lang Zhou, *Yuandu jiaoyu wei yi yi nongcun wa tian ping “Hong Gou”* [Distance education is the 100,000,000 dolls to fill a ditch “Yunhe” {canal}], *Zhongguo jiaoyubao* [Chinese Education News] (October 8, 2007).

contemporary intellectual property system is not only the cost of development, but also the tremendous opportunity for profit. China has contributed much knowledge to human civilization over its history, but no mechanism exists in the intellectual property rights system to compensate China for these past contributions. Now, when China must rely on contemporary technology and knowledge to develop, it must pay a high price for that knowledge.

Because of the globalization of intellectual property rights, the Chinese people feel severe economic pressure in the educational sphere resulting from the need for books and pedagogical tools that are protected by intellectual property rights. Studies show that the influence of economic conditions and educational investment on opportunities to obtain knowledge is enormous.⁶ For the vast majority of those in China, the level of educational funding received is relatively low. The propagation of knowledge is increasingly urgent for the development of Chinese education, particularly in comparison with developed countries, and yet, under the intellectual property rights system, China's ability to compensate creators properly is very limited. Without the ability to pay the price for current intellectual property rights, the dissemination of knowledge fails to reach the masses in China. If this situation is ignored, education cannot fulfill its function properly. Although one cannot say that the situation of backwardness in Chinese education is a result of the intellectual property rights system, the system has certainly made the cost of disseminating knowledge more onerous, exacerbated the imbalance in the distribution of educational resources, and produced a Matthew effect, whereby the rich get richer and the poor get poorer. Thus, with the goals of education left unfulfilled, there is no way to support the dynamic of social progress.

Social harmony and justice require wealth, knowledge and rights to be distributed evenly throughout society and not unduly monopolized by a minority. Intellectual property rights undoubtedly link them all. The acceleration of social stratification arises out of efforts to maintain social mobility and the reactive forces hindering it. According to Zhu Xiaoman, this has intensified "the respective difficulties of Chinese girls who have received middle and lower education in the household in receiving higher education and middle education and actual inequality since the reform and open policies."⁷ It is also noteworthy to Li Qiang that in China "there are gradually beginning to emerge exclusionary effects of property rights and diploma credentials. . . . There has been a relative decline in the upward mobility of those in the lower strata of society."⁸ By raising the cost of education, intellectual property rights have increased the difficulty of using education to attain equality, making education a means of reinforcing social hierarchy and further narrowing the doorway to upward mobility.

⁶ Among different types of regions, in the eastern region and cities proper the number of elementary school student books per capita is the largest, 18.5 and 25.3, respectively; but in the western and rural areas, there are only 8.1 and 12.3 books per capita, respectively. At the junior high school stage, in the eastern and city areas, the numbers of books per student are 18 and 23.4, respectively; but in the western and rural areas, the numbers of books per student are only 9.1 and 15.7, respectively. In compulsory education levels, the amounts of money per capita expended to purchase books in the 2002-2004 period were 23.4 yuan and 41.1 yuan per capita in the eastern and urban areas, respectively, but only 9.9 and 11.3 yuan per capita in the Western and rural areas, respectively. Sources of data: Jiaoyu-bu, Yiwu Jiaoyu Jiance Xiangmu Bangongshi [Education Department, Compulsory Education Project Monitoring Office], 2005; *Zhongguo liushi-ge xiangmu xian yiwu jiaoyu jieduan xuexiao bangong tiaojian jiance baogao* [Chinese report on the monitoring of working conditions in district compulsory education levels in 60 projects]. See Zhu Xiaoman, ed., *Duice yu jianyi*, p. 138.

⁷Zhu Xiaoman, ed., *Duice yu jianyi*, p. 37.

⁸Li Qiang, *Zhuanxing shiqi—Zhongguo shehui fenceng* [Period of transformation: Chinese social strata] (Liaoning Jiaoyu Chubanshe, December 2004), 1st ed., pp. 51-52.

This troublesome situation is not new. At the beginning of the twentieth century, in the late Qing and early Republican periods, the newly transplanted intellectual property rights system aroused heated debate in China. As Li Yufeng observes, at the time, some argued that: to benefit the world of learning, our country's publishers should continue to translate foreign books and sell them at cheap prices. If we join a copyright organization, it will inevitably lead to the prohibition of the publication of translated works. Thus, the intellectual world will be unable to pay high prices for books from abroad, and the consequence will be the suppression of the development of Chinese culture. . . . The exchange of rights internationally is based on the principle of mutual benefit. Sales of Chinese works abroad are extremely low, and thus China cannot enjoy the profits to be gained from preserving and producing copyright.⁹

More recently, in an electronic message to Liu Kunyi, Zhang Zhidong, and Sheng Xuanhuai, Qingguan School Chancellor Zhang Baixi wrote:

If you listen to contemporary discussion in the United States about requesting a copyright for a Western work, every country must assist in requesting that interest be shared evenly in this manner, thus making it difficult for China to publish various translations of the works of individual countries. Today China is promoting education, research, and knowledge, and it is bound to engage broadly in the translation of Western books; only then can it develop knowledge among the people. Every country is observing China's economic and political reforms, looking for us to attain civilization together. In China today, only by opening schools can there be enlightenment. In China today, there is a glimmer of hope for the future—this, too, has been terminated. How then can we encourage people to train and leave them without the necessary resources? As for the copyright of individual countries, their sources are publicly documented; but China belongs to an unnamed category of its own in terms of what has been implemented recently. If we look at China's development in this manner, it is hindered with every start, until finally the number able to read Western books is diminishing every day. Even if an individual country establishes copyrights, in the final analysis what is the benefit?¹⁰

In fact, when Chinese representatives discuss the judgment of copyright issues with American representatives, they basically employ this argument, recognizing that protecting copyrights may thereby raise the prices of books to the point that finally people cannot buy books.”¹¹ To date, the flow of knowledge from China and developed countries remains unchanged. Previous authors argue that the reason for this is that the current international environment is harsher.

It is often asserted that stimulating the production of knowledge is the objective of the intellectual property rights system. Objectively speaking, however it would be more accurate to characterize this result as a by-product. The fundamental objective of intellectual property

⁹Li Yufeng, *Qiangkou-xia de falü—Zhongguo banquan shi yanjiu* [Law at gunpoint: Studies in the history of Chinese copyright] (Beijing: Zhishi-chanquan Chuban-she, August, 2006), 1st ed., p. 122.

¹⁰Li Yufeng, *Qiangkou-xia de falü*, p. 97.

¹¹Li Yufeng, *Qiangkou-xia de falü*, p. 98.

rights is to utilize control of the channels for knowledge dissemination to assure profit for capital and achieve economic circulation. Through such a distribution of rights, part of the profit is invested in the production of knowledge in order to seek even greater profits, and thus achieve circulation of capital. Intellectual property rights is not a system of intellectual production, but rather a system that takes the natural character of the knowledge produced by human beings and transforms it into a medium for the operation of capital that supports its circulation. Recognizing this point may be helpful to further our understanding of the tense relationship between educational aims and intellectual property rights, in China, the largest of the developing countries.

III. Mechanisms within the Intellectual Property Rights Regime that Alleviate the Inadequacy of Pedagogical Resources

As it has developed over the past 400 years, the intellectual property rights system has produced certain mechanisms that mitigate the tensions described above. These mechanisms create a balance by establishing some limitations and exceptions on copyright. Such legislation can moderate the enforcement of the permissions system in order to safeguard the fundamental requirements for the dissemination of knowledge and advance the public good.

Exceptions and limitations in copyright law and legislation within the concept of “reasonable use” bears positive implications for the supply of intellectual resources for education. Reasonable use, as defined according to China’s copyright law, is when an individual other than the copyright holder, under certain circumstances, uses works previously published by a third party to exercise rights that belong to the copyright holder without needing permission or providing compensation. However, the individual must clearly indicate the creator’s name and the title of the work, and may not infringe upon other rights of the copyright holder.¹² Article 22 of China’s “Copyright Law” stipulates 12 situations of reasonable use.¹³ Article 23 further stipulates a legally established permission system for

¹²Liu Chuntian, ed., *Zhishi-chanquan fa* [Intellectual property rights law] (Beijing: Gaodeng Jiaoyu Chubanshe and Beijing Daxue Chubanshe, October, 2007), 3rd ed., p. 123.

¹³This article stipulates the following:

Under the following conditions, use of a work may be made without obtaining the permission of the copyright holder, and without paying the copyright holder compensation, however, the author’s name and title of the work must be clearly indicated, and other rights that the copyright holder enjoys according to the law may not be violated:

(1) Using works that third parties have previously published for the purpose of individual study, research, or appreciation;

(2) Unavoidably re-broadcasting or citing previously published works for the purposes of a television station or other news media outlet;

(3) Unavoidably re-broadcasting or citing previously published works for the purpose of reporting news of current events in a newspaper, periodical, broadcasting station, television station, etc., or other media outlet;

(4) A newspaper, periodical, broadcast station, television station, or other media outlet publishing or broadcasting current events articles on politics, economics, or religious issues that have already been published by other newspapers, periodicals, broadcast stations, television stations, or other media outlets;

(5) A newspaper, periodical, broadcast station, television station, or other media outlet publishing or broadcasting a speech made in a public assembly, except when the author states that he does not permit its publication or broadcasting;

(6) For the purpose of school classroom teaching or scientific research, translating or making small numbers of copies of previously published works, and providing them to students or research institution personnel to use, but these may not be published or issued;

(7) Use of a previously published work by a state organ for the purpose of carrying out public duties;

pedagogical materials.¹⁴ The 2006 “Regulations on the Protection of Information Network Broadcasting Rights” extends the definition of reasonable use to the network environment¹⁵ and also provides for a legal permission system in the network environment.¹⁶ It should be noted that the design of China’s intellectual property system created special consideration for education development, sought to lower the costs of disseminating knowledge in the sphere of education, and, to a certain extent, achieved freedom of knowledge dissemination.

However, the mechanisms within intellectual property law itself that might mitigate the tension with the supply of pedagogical knowledge are completely circumscribed. Reasonable use has been subject to a variety of restrictions. Article 22, Clause 1, Sub-clause 6 of the “Copyright Law” states that a previously published work translated or copied in small

(8) A library, archive collection, memorial hall, museum, art gallery, etc., copies a work that is in its own collection for the requirements of exhibiting or preserving editions;

(9) Performing free of charge a previously published work, if said performance does not charge the public a fee and does not pay compensation to the performer(s).

(10) Conducting the copying, painting, photographing, or videotaping of a work of art in a public place outside the place of the installation or exhibit;

(11) Translating into a minority people’s language a work created in the Chinese language that has previously been published by the Chinese people, a legal entity, or other third-party organization.

(12) Converting a previously published work into a Braille publication.

The stipulation in the previous article applies to limitations on the rights of publishers, performers, creators of recordings and videotapes, broadcast stations, and television stations.

¹⁴This article stipulates the following:

Editing and publishing a textbook in order to implement nine-year compulsory education and state education plans except when the author has in advance stated that he will not permit use, can be used without obtaining permission of the copyright holder, within textbooks, compiling into a textbook a passage of a work or a short written work that has previously been published, musical work or individual piece of a work of art, or a photographic work of art; however, compensation must be paid as stipulated, the author’s name and the title of the work must be clearly indicated, and other rights that the copyright holder enjoys according to the law must not be violated.

The stipulation in the previous article applies to limitations on the rights of publishers, performers, creators of recordings and videotapes, broadcast stations, and television stations. Compiling into a textbook a passage of a work or short previously published written work, musical composition or individual work of art, or photographic work.

¹⁵Clause 6 of this Article stipulates the following:

Offering through an information network a work of a third party that falls into any of the following situations may be done without obtaining permission of the copyright holder and without paying compensation to the copyright holder:

(1) Appropriately citing a previously published work in a work offered to the public in order to introduce or critique a certain work or to explain a certain issue;

(2) For the purpose of reporting current events news to the general public, unavoidably re-broadcasting or citing a previously published work;

(3) For the purpose of school classroom instruction or scientific research, offering to a small number of students or research personnel a small quantity of a previously published work;

(4) A state organ, providing to the public within a reasonable limit previously published work for the purpose of performing its official duties;

Offering to a minority people within Chinese borders a written work created with the Chinese language that has been published previously by the Chinese public, a legal entity, or other organization that have been translated into minority people’s language(s);

(6) Offering previously published written works to blind persons in an exclusive not-for-profit form that blind persons can comprehend;

(7) Offering to the public on an information network news an article concerning political and economic issues;

(8) Presenting to the public a speech that is given in a public assembly.

¹⁶Clause 8 of this Article stipulates as follows:

For the purpose of, through information networks, implementing the nine-year compulsory education or the state education plan, without obtaining the permission of the copyright holder, using a passage of a work or a short written work that has previously been published, musical composition, individual work of art, or photographic work, to make course materials, out of course material or offering lawfully obtained course materials to registered students of distance learning institutions through information networks.

quantities for use in a school classroom or for scientific research may be supplied to a school or researcher, but may not be published. Under the conditions that prevail in China, education in a “school classroom” refers exclusively to face-to-face education, and does not include correspondence courses, education through broadcast, or television education. The small quantity refers to the proportion used of the entire work. The user and the objective of use are limited to personnel for the purpose of classroom teaching and scientific research. Liu Chunda notes that adult or night school colleges that have not received permission to copy, publish, and sell teachers’ lectures to students, even if not for profit, do not fit the category of reasonable use.¹⁷ Yet a library, archive collection, memorial hall, museum, or art gallery may copy a work in its collection for the purpose of an exhibit or to preserve an edition. This allowance is limited only to the works that an institution has collected; the purpose of copying is exclusively to exhibit or preserve an edition held in the collection of an institution, and it may not be loaned out, sold, or rented.

In regards to individual study, research, or enjoyment, the conditions for such reasonable use of a work are, in practice, even more limited. For example, numerous technical measures in web sites and databases restrict the acquisition of information by the public in order to assure commercial profitability. Technical protective measures have not only narrowed the space for reasonable use; they have also limited access to knowledge without copyright restrictions or already in the public domain. Yet China’s “Copyright Law” still stipulates the principles of protective technical measures and the right to manage information, and stipulates as violations behaviors such as avoiding or destroying technical measures and deleting and changing the right to manage information. On the one hand, Article 12 of “Regulations on the Protection of Information Network Broadcasting Rights” states, “Those who fall under the circumstances listed below can avoid technological measures but may not supply to third parties technologies, devices, or components to avoid technological measures and may not violate the other rights that the right holder enjoys by law: (1) Offering, for the purpose of classroom teaching or scientific research, through information networks to a small number of teachers and researchers works, performances, sound and video tape previously published works, but said performances, sound or video tape works may only be obtained through information networks.” On the other hand, this stipulation on the use of printed products is stricter. Because of these various restrictions, reasonable use cannot relieve people’s requirements in the educational area.

Yet speaking simply in terms of reasonable use of libraries with respect to the supply of Chinese pedagogical intellectual resources fails to get to the heart of the matter. Because the number of public libraries in China is small, the opportunity that this system offers for supplying cheap, free knowledge is extremely limited.¹⁸ This also means that because the

¹⁷Liu Chunda, ed., *Zhishi-chanquan fa* [Intellectual property rights law] (Beijing: Gaodeng Jiaoyu Chuban-she and Beijing Daxue Chuban-she, October, 2007), 3rd ed., p. 123.

¹⁸According to statistics: England has 5,183 public libraries. This also means that there is a library for every 10,000 residents... In Germany, there is a library for every 6,600 people; in Finland, one for every 5,000 people; in Austria, one for every 4,000 people; in Norway, one for every 4,000 people; in Switzerland, one for every 3,000 people... There is a public library for every 22,000 Frenchmen and one for every 26,000 Italians. See Zhao Yiheng, “Wuchu dushu—Zhongguo ren xu bu xuyao tushuguan?” [No place to read books: Do Chinese people need libraries or not?], Originally in *Nanfang zhoumo* [Southern Weekend], Xinhua Network: <http://www.meide.org/wenzhai/3/12/122.html>. In the United States, there are a total of 117,859 public libraries, which is one library for approximately every 2,000 people. Japan’s 1950 Library Law authorized local governments to establish public libraries and prohibited public libraries from collecting fees. In 1954, the Japanese Library Association also adopted a proposed Library Rights Law to guarantee the right of the people to access materials. By 1989, Japan’s public libraries had already grown in number to 1,843. Japan’s current

investment in public libraries is inadequate, it is difficult to apply reasonable use under copyright law to libraries that supply pedagogical knowledge for the purposes of Chinese education.

To a certain degree, digital libraries can alleviate this problem. However, when we speak in terms of the operation and development of digital libraries, we immediately encounter complications with respect to intellectual property rights. For example, a digital library first needs to acquire permission for use of the works, and because copyright holders are many and dispersed, the task of obtaining such permissions is often very complicated. Although many researchers have appealed for legislation that would grant these libraries a certain kind of legal permission, or establish some sort of collective management system, there remains relatively significant debate in China today about how to obtain these permissions and compensate the copyright holders.

In addition, Article 7 of the “Regulations on the Protection of Information Network Broadcasting Rights” stipulates:

An institution such as a library, archive collection, memorial hall, museum, or art gallery may, without obtaining copyright permissions, by means of an information network, provide to a service partner within the building of the same institution a lawfully published digital work that is within that institution’s collection and a work required for making a copy in digitized form for the purpose of an exhibit or conservation, without paying compensation, but may not directly or indirectly obtain financial profit from doing so. The parties involved also have exceptions to commitments.

However, the limitation of providing works to readers within buildings restricted to the scope of a service partner constrains readers outside the buildings. This has also resulted in the utilization of digital libraries to compensate for the deficiency in China’s public libraries, an inadequate first step that is profoundly difficult to accomplish.

Of course, if we completely set aside the public good characteristics and consider technologies that transform books into digital information to connect readers with one another, it is possible to charge fees for reading or downloading materials in order to make a profit. However, this would not fall into the category of “reasonable use,” as stipulated by China’s “Copyright Law.” The 2001 case of Beijing University Professor Chen Xingliang v. The Chinese Digital Library has already reflected this aspect of the problem.¹⁹ The handling of copyright by the Chinese Academic Term Compact Disk Database developed by Qinghua

population is 120,000,000, thus there is one library for every approximately 65,000 persons. See Xie Yong, “Zhi yaoshi geren jiu you quanli zoujin gonggong tushuguan” [If only the individual person had the right to just walk into a public library], originally in *Nanfang doushi bao* [Southern Urban News],

<http://news.sina.com.cn/o/2005-01-07/08584747596s.shtml>. However, in China, approximately 500,000 people share a single library, and the majority of them charge fees. See Zhao, “Wuchu dushu.”

¹⁹A complaint on the respondent’s web site shows that only with payment of registration fees can one read and download materials, including the respondent’s works, but consent for the use of the work that is the subject of the complaint was not obtained in the complaint. For this reason, a complaint for violation of rights was brought. However, the respondent drew a distinction that a digital library is a public enterprise for the purpose of increasing convenience to readers, and falls under reasonable use as stipulated in copyright law, and thus it does not infringe on the rights of the copyright as in the complaint. Beijing Haidian Court maintained that in this case, the behavior described above that is the subject of the complaint increased the time and space of the transmission of the work, increased the number of individuals accessing the work, and changed the mode of accessing the work, and out of this, the author did not receive reasonable compensation. For this reason, it judged that the respondent violated copyright. (Beijing Haidian District People’s Court (2002), Haimin Chuizi No. 5702 Judgment Book.)

University and the database developed by the Chongqing Weipu Company has also aroused broad debate and drawn scrutiny.

Reasonable use essentially is a balance in copyright law between the public good and individual rights. It harmonizes mutually conflicting rights of parties within society in order to achieve continuity in the production of social knowledge. However, problems with the indeterminacy that confronts reasonable use further narrow the space for supplying educational knowledge. The establishment of a system of reasonable use has not significantly mitigated the obstacles that intellectual property rights impose on knowledge dissemination in Chinese education.

A new kind of moderating device is also in development, viz., the Creative Commons (CC) movement, that seeks to achieve sharing of educational resources. CC originated at the Massachusetts Institute of Technology, and it developed the “China Open Resources for Education” (CORE) program, which in Chinese is named “Zhongguo Kaifang-shi Jiaoyu Ziyuan Gongxiang Xiehui” (中国开放式教育资源共享协会). CORE believes that “open enjoyment” of resources is the optimal channel for expanding the public that receives education and for raising the quality of education. “Open” is defined as “public, free of charge, and voluntary,” and its premise is to assure quality and respect intellectual property rights. CORE also refers to “common enjoyment,” which it defines as “taking one’s share of and giving others their share of” the object in question. The organization’s developers “not only want to give one’s own resources to the public to share, but also wish to help our cooperative partners distributed throughout the world achieve even more efficient utilization of the resources that they share in common.”²⁰

Because of restrictions with respect to copyrights, patents, etc., through the reasonable use system, people cannot use course materials and other resources of educational knowledge freely or cheaply. As a result, CC relies on a series of memoranda to obtain a more extensive degree of common enjoyment of resources.

The development of CC has already drawn attention in China’s pedagogical circles: thirty-one educational institutions, including Beijing University, Qinghua University, Beijing Jiaotong University, and Chinese People’s University have already become association member schools. CORE has had an effect on disseminating knowledge and raising the level of the quality of education.

The CC system certainly does not call into question the intellectual property rights system, but rather emphasizes the meaning of its call for “openness.” It is “public, free of charge, and voluntary,” and respects intellectual property rights. Therefore, the CC system is not the intellectual property system taking the initiative to bring improvement and benefits to education, but rather an attempt to reduce the barriers for the public use of resources, based on the globalization of the intellectual property rights system. Thus, rather than saying that the development of the CC’s open educational resources and its advocacy are efforts to accelerate the development of education, it is better to argue that it is an unavoidable response to the monopolization of educational knowledge resources.

²⁰See the official web site of China Open Resources for Education: <http://www.core.org.cn>.

IV. Positive Influences of the Intellectual Property Rights System on the Development of Chinese Education

The intellectual property rights system has also exercised positive influences on Chinese education. First, the regime is beneficial to non-governmental investment in education. The inadequacy of investments in Chinese education is due to the simple fact that sources of funds are declining. Non-governmental capital is a major supplementary force. To secure such capital, since 2002 China has promulgated the “Law Concerning Non-government Operated Education” and the “Regulations on Schools Operated Jointly by Chinese and Foreigners,” along with regulations for their implementation. The protection of intellectual property rights from such investments could then guarantee this sort of input so that it could be compensated fully and stimulate further investment.

Secondly, intellectual property rights have encouraged an increase in education on intellectual property rights themselves. The June 2008 “Outline of a National Intellectual Property Rights Strategy” proposed large-scale training in intellectual property rights at every level for every type of individual, drafted a training program for intellectual property rights education, and pushed for widespread advocacy of intellectual property rights. In schools of higher education, it established intellectual property rights courses and incorporated it into core curricula. It also spread intellectual property rights education to elementary and middle schools throughout the country.

Moreover, the intellectual property rights system has stimulated the commercialization of intellectual creativity. This is accelerating a change in the role of universities, now stimulating the intellectual production function of education, and constantly strengthening science and technology research and the developmental capacities of educational structures. According to the 2003 annual report of the National Intellectual Property Rights Office, “The rate of growth of applications for patent posts in higher education has been the fastest, reaching a national average of 55.2%; over a five-year period that number increased by 8,483, among which the proportion of invention patent applications reached 79.2%. The yearly rate of growth in the number of scientific research academies is 23.1%, increasing by 3,950 over a period of five years, with the increase in the number of invention patents comprising 83.5%.”²¹

Higher education personnel in China have already gradually raised consciousness in support of intellectual property rights and made various initial efforts to commercialize the products of intellectual production. Educational departments, such as administrative management, are also reexamining intellectual property rights. According to Lu Jianyin,

The methods of supporting the network curriculum construction projects include three types: full subsidies, partial subsidies, and policy support. A full subsidy refers to putting the entire quantity from the investor into the funding of the project; the copyright to the product of the project is owned by the investor, with the individual undertaking the project having the right to affix his signature to the work. A partial subsidy refers to the situation in which the investor and the individual undertaking the project each invests project funding according to a specific ratio, with the copyright to the product of the

²¹Lin Binghui, ed., *Zhonghua Renmin Gonghehuo guojia zhishi-chanquan nianbao* [People’s Republic of China national intellectual property rights yearbook], 2003, p. 16.

project being shared by the investor and the individual undertaking the project.²²

Guidance is provided for intellectual property rights issues that may arise within higher education. Li Qun notes that we can also recognize that, on the whole, the productivity of intellectual property rights in Chinese education is gaining strength.²³

However, the trigger effect of intellectual property rights on Chinese education is by no means limited to this. The intellectual property rights strategy, the economy of creativity, and the vigor of higher education all demonstrate that intellectual property rights have made many contributions to Chinese education by creating a new consciousness of this issue.

V. Conclusion: An Uncertain Future

The influences of intellectual property rights on Chinese education are far from constant, and a number of uncertain elements exist that make it difficult to predict which direction they will tend. This will depend on the interplay and abilities of the relevant parties; and the consequences of any system always become evident after the fact.

Thus, we can only say that in the initial stages of the accumulation and development of Chinese capital, the negative influence of the intellectual property system is relatively greater, and appears to be even more easily observed. A full manifestation of the positive aspects of the regime, ultimately, is related to whether or not the Chinese economy can attain a level of maturity, and intellectual property rights are currently, to a certain extent, hindering the attainment of this objective.

China still does not currently have adequate financial resources to implement a high level of investment, and within each short-term period, it is confronted with intense competition for high-return capital. The goal of universal basic education, then, is already worthy of the efforts that the Chinese educational system can make.

In terms of higher education, however, the logic and effects of copyright protection make one even more apprehensive. Contemporary social scientific research is even more dependent on the dissemination and retention of knowledge. Investment in higher education is unlikely to change because of its commercial rate of return; it is justified much more on public grounds. Education and science are, in their essential character, collective undertakings and missions. The effect of education on social development is fundamental and basic, and there is no way to measure directly its economic value. When using public funding, the logic of privatizing public information to be circulated and used to obtain a profit should be suspect in terms of morality and the economic effectiveness of society as a whole, and requires cautious consideration.

If the costs of monopoly profit that society pays for stimulating new intellectual production are far greater than the benefits obtained from new knowledge produced by stimulating this kind of system, then intellectual property rights are only special privileges that support private capital, but constitute heavy costs assumed by society. Of course, intellectual property rights can be effective. The development of society itself operates

²²Liu Jianyin, "Wangluo chengdu de zhuzuoquan gui [Network curriculum under the jurisdiction of copyright], http://www.chinaonlineedu.com/info/news_special.asp?id=3797.

²³Li Qun, "Zhongguo jiaoyu falü tixi jian qu wanshan zhishi-chanquan chuangaoli jinyibu zengqiang" [China's educational legal system gradually perfects moves to improve intellectual property rights, and productivity increases further], <http://news.sohu.com/20071017/n252692300.shtml>.

according to its own laws, and although people may energetically deploy their subjective initiative, it seems that it must also be understood that some things require patience. For example, if we review the history of copyrights, we can see that in 1790, the United States considered “The Statute of Anne” to be the model, yet it drafted the “Federal Copyright Act,” the core of which was economic property rights. However, in the nineteenth century, the U.S. eschewed international treaties and was widely known for piracy of European works.

From this, we can reach some initial inferences, although the establishment of a conclusion will have to await further investigation and consideration of events. First of all, intellectual property rights have promoted the development of Chinese intellectual property rights education and accelerated the formation of a consciousness of the rights of intellectual producers in the educational sphere, which, in turn, has raised the level of consciousness of the transformation of their results.

Secondly, because of the increased costs of the dissemination of knowledge through education, IP protections have diminished opportunities for developing countries to use advanced technologies “leap” through development to an advanced stage. Intellectual property rights have caused setbacks in efforts such as using education to achieve equality of opportunity, and have caused the transformation of enrichment into status distinctions to become more evident. In addition, intellectual property rights have diminished the speed and efficiency of the development of China’s human resources as the nation seeks economic transformation.

Finally, intellectual property rights have strengthened the holy trinity of knowledge, wealth, and power, and encouraged the use of the educational sphere to receive and disseminate this notion. In turn, it has accelerated, to a certain extent, a new consciousness of the knowledge economy among people. The influence of intellectual property rights as a whole on the efficiency of Chinese public knowledge production is still not fully evident and must await further scrutiny.

Of course, no matter how they develop in the future, intellectual property rights may play an educational role by propagating a type of educational content. Such education may gradually produce a new impression of the knowledge–wealth–power nexus in the minds of the Chinese people. This impression will benefit their better understanding of the substance of future economic developments. From this point of view, intellectual property rights seem to exercise an educational enlightenment effect on the economy of knowledge.

However, we cannot fail to acknowledge that what is impeding significant economic progress is precisely what is in motion under this intellectual property rights system. Because developed countries profit from capital under the intellectual property rights system, they can bear the cost of this obstacle. By contrast, because the power of the capital of developing countries is weak, their technology backward, and their foundation lags behind, such a burden may cause them to fall even further behind on the path to development.