

12. INDUSTRY-FRIENDLY REGULATION FOR THE DEVELOPMENT OF A SHARING ECONOMY FROM THE PERSPECTIVE OF CHINESE COPYRIGHT LAW

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ABSTRACT

The accelerating pace of technological innovation has important implications for the regulation of the copyright sharing economy, since a number of new business models amasa good portion of their value by depending on an increasing number of consumers' utilization of copyrighted goods. The Chinese government learns from the experience of the United States, which recognizes the important role that the 'innovate first, regulate later' model has played in the innovation policy. It may seem surprising to find that Chinese judi( C)-18ti jd9.4 ( 5nau6.7 (r TJ/CS0 cs 0 scn 0 Tw 7.573 0 Td ( )Tj EMC /P <</MCID 6 >>B



balance the purpose of copyright law, encouraging the creation and dissemination of works which would contribute to the construction of socialist spiritual and material civilization, and 'promotin

through case law and is codified in Section 107 of the 1976 Copyright Act.<sup>20</sup> Section 107 lists four factors for courts to weigh in determining fair use: (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.

The central advantage of the fair use doctrine is flexibility. Within a flexible framework, the courts can adapt the copyright exception infrastructure to new circumstances. There is no need for constant amendments to legislation that may have difficulty keeping pace with the speed of technological development.<sup>21</sup> Consequently, courts and legal scholars have long sung the praises of the fair use doctrine, which is understood to allow creators to build on the works of their predecessors by permitting a framework for the authorized use of copyrighted works that would otherwise be unlawful.<sup>22</sup>

## B. CHINESE COURTS LEARN FROM THE U.S.'S FLEXIBLE FAIR USE DOCTRINE: THE GOOGLE CASE AS AN EXAMPLE

In 2004, Google announced the Google Books Project to scan books under agreements with several major research libraries throughout the United States and other countries. Google has provided digital copies to participating libraries, created an electronic database of

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<sup>20</sup> 17 U.S.C. § 101 (2006).

<sup>21</sup> Pamela Samuelson, 'Justifications for Copyright Limitations & Exceptions' in Ruth Okediji (ed.), *Copyright Law in an Age of Limitations and Exception* (2015).

<sup>22</sup> <http://ssrn.com/abstract=2476669> accessed 17 October 2018.

<sup>23</sup> von Lohmann (n 2) 1.

<sup>24</sup> *Authors Guild v. Google*, 1054 F. Supp.2d 282, 285 (S.D.N.Y. 2013).

<sup>25</sup> See Supreme Court Order List, 578 U.S.-815 (2016).

<sup>26</sup> [http://www.Tj0.001\(e\)JT4](http://www.Tj0.001(e)JT4)

uses listed in copyright law cannot exempt Google's activities.

In ordinary interpretation of the text of the copyright law, Google would fail, since copyright infringement is the use of copyrighted works without copyright holder's permission, infringing certain exclusive rights. However, both the court of first instance and the appeal court did not stop here: they introduced innovative tests to discuss whether an activity is free use or not.

The First Intermediate Court of Beijing introduced a new reading of the three step test in special cases, use of a copyrighted work without permission from the copyright holder may be considered to be free use, if such a use neither conflicts with a normal exploitation of the work, nor unreasonably prejudices the legitimate interests of the copyright holder.<sup>29</sup> It means there are three conditions to be satisfied before a new exception (provided for in Article 22 of the Copyright Law) is permissible: (1) it is confined to special cases; (2) it does not conflict with a normal exploitation of the work; and (3) it does not unreasonably prejudice the legitimate interests of the right holder.

The Chief Judge who wrote the trial court opinion emphasized in an article that in certain circumstances, when the activities in issue concern public interest, even if they do not fall under any specific category of copyright exceptions in the copyright law, the courts may conclude

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RPRCIN Article 14 stipulates in great detail the elements that a notification of daimed infringement must contain to be effective. To be effective, a notification must be in writing<sup>53</sup> and include a statement of certification of the notification's accuracy<sup>54</sup>. In addition, the notification must include: (1) the name (appellation), means of contact and address of the right owner; (2) the title and network address of the infringing material which is



From the adopted text, it is clear that Article 8 includes two parts. The first part (before including) is aimed to



investment, and accordingly it may bear a high amount of damages.

## 5. CONCLUSION

The American legislative and jurisprudential experiences recognize the important role that the 'innovate first, regulate later' model has played in U.S. innovation policy. Copyright holders, the NSPs, and the public have all enjoyed the benefits of this policy, despite the fact that it has not been expressly articulated by the courts or legislators.<sup>97</sup>

At first glance, it seems surprising to find that Chinese judiciary and legislatu

