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**A Book's Journey Towards China:**  
**Managing copyright in the practice of international contracts**

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## Acknowledgements

This thesis is about a journey, and not only about the journey of a book towards China, as the title recites. It is also about a journey that started 18 years ago, when a bored little girl picked up a book for the first time, embarking on the most magical, breath-taking and captivating of all adventures. They say that when you find the book you truly love, the one you call “my favourite book”, you unconsciously keep on reading other books just to seek out traces of that book into the others, searching for the words that made you fell in love in the first place. And this is exactly what happened to that little girl: from that moment, she started devouring book after book, and “the books transported her into new worlds and introduced her to amazing people who lived exciting lives. She went on olden-day sailing ships with Joseph Conrad. She went to Africa with Ernest Hemingway and to India with Rudyard Kipling. She travelled all over the world while sitting in her little room in an English village”, as Roald Dahl once wrote in his *Matilda*, one of the best books I have ever read.

Perhaps it was back then that she developed the fascination with the idea of the journey that still accompanies her in today’s life, and perhaps it was the insatiable curiosity that books instilled into her mind, and taught her to always satisfy that made her choose to embark on the journey of Chinese studies, when she was 19 years old.

From that day, every success I achieved and every time I failed each served to add a small piece to the puzzle I completed today. It has not been all sunshine and rainbows; I must admit it. There have been days when I wanted to quit so badly, and days I thought I could never make it to the end, until I did it. As I write the acknowledgements to this thesis today, I cannot help but think of how the last five years just rolled by, and how they have been the most intense, emotional and amazing years, full of laughs and tears, and above all full of people that made university the time of life. This thesis is for you guys.

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## 前言

意大利作者 Umberto Eco 有一段很著名的话：“不看书的人的生命只有一次。看书的人的生命有五千次。阅读就是不朽的生活之中的旅行”。像他一样，很多作家学者经常用旅行来形容读书：自我发现的旅行、历史上的旅行、想象之中的旅行、向虚构以及真正人物的世界的旅行。

我们已经知道下列的故事。当我们在喜爱的书店里踱来踱去、从书架上挑选书的时候，我们已经殷切地期待回家之后，沏一杯茶，穿着最舒服的衣服、披着最喜欢的毯子躺在沙发上，小心翼翼地打开新买的书，让旅行开始。

不过，我们是否考虑过，在我们到家之前，我们手里拿着的这本书也曾经历过一段旅行？有些书的旅行比较短：例如，本土书籍很可能就是在自己国家的领土完成并出版的。然后，这些书送到本地的书店，我们得以买它们。这平常是在本土书籍的旅行，那么，由国外作者写的书呢？在这种情况下，问题更复杂。从书架上挑选我们长久希望看的那本书时，我们并不能想到那本书的漫长旅行：这是一个涉及到作者、代理人、国外法律、国内和国外出版者之间的错综关系的旅行。

写这篇论文的灵感来源于我常去参观的一家书店。那一天，我从书架上挑选了一本十分吸引我的书。但是，我没有一开始就看它讲的故事，而是打开了第一页，看了它的出版信息。我希望对那本书的故事有更深入的了解：原来的出版者是谁？在本国的出版和我国的出版其间多长时间？两个出版者怎么互相介绍？那本书怎么到达外国？最后，对外国出版图书留下了哪些影响？

为了回答这些问题以及挤进我头脑的其它问题，我决定在我的论文里讲一本外国书在中国出版的旅行，尤其是在这个“长途”中作者和出版者怎么处理著作权的。我希望我的分析可以帮助外国出版者在评估在中国出版图书时更清楚他们有哪些选择和机会。

为了完成这个目标，我首先研究了著作权的基本概念和历史，尤其是出版者当初如何在本国出版稿件。因为中国的地理距离和法律文化都与西方非常不同，只有有了这个初步的了解，我才能集中注意力分析中国的出版环境。

这篇论文的结构仿建我研究的流程，因为我跟那本书作为这个故事的主角一起一步一步地发现了这个旅行的下阶段。那时，我不知道我会找到什么，但是跑着一个悍

勇的旅行者的信念我就继续研究了。因此，这篇论文的三章我常常用旅行作个比喻，主要是为了给读者展示那本书走进中国的漫长旅行。

第一章说明著作权的基本概念是知识产权的一部分：著作权（或者版权）构成了那本书的旅行的许多阶段以及出版业利害关系的基础。在这章中，我们将探究著作权的来源和根本原因。我们将发现著作权在大部分欧洲叫做“authors’ rights”（按照字面翻译成“著作权”），而在美英世界叫做“copyright”（按照字面翻译成“版权”）。这两个定义不但表达了两个不同的说法，而且体现了两个不同的法律文化：一方面，“authors’ rights”模式寻求给作文艺作品发放最高的保护；另外一方面，“copyright”模式的重点放在促进文艺作品的流通，以满足读者的要求。

不过，“authors’ rights”与“copyright”之间的这个分裂无法生存在一个日益全球化的世界里。因而，十九世纪以来，许多国际公约被签署了，试图达到两个模式的协调化。最起码的版权保护不仅被规定在会员国边界之内，而且在会员国边界之外。

即使在最近一百五十年里很多国际公约被批准了，不同国家的版权法也表现出一些区别。因此，为了发现出版者如何出版本国的稿件，在第一章的第二个部分里我们举了意大利版权法的例子，尤其是图书出版合同的规定。显而易见，每个合同是按照作者与出版者的具体需要定做的，但是还有一些义务双方必须遵守。另外，每个合同都有基本条款，这些条款的内容，我们之后会具体介绍。

第一章最后涉及到的国际图书博览会是为了让读者了解我们以前提出的书正在走向的那个国际景观。即使我们的世界越来越数字化，国际图书博览会也成为了与国外的出版者见面、版权贸易讨论、国际伙伴关系构建最理想的会址。换言之，国际图书博览会是那本书的国际旅途最自然的道路。

那本书的最后目的地是一个很复杂的国家。很多学者已经提出了中国有多种多样的抵牾层面。中国的出版业也是一样的。那本书是一个悍勇的旅行者，但它也是一个慎重的旅行者：准备去国外时，本书想知道在中国会找到什么。这篇论文的第二章表明怎么胜利“突破长城”，并且给我们具体地介绍中国出版业的机会和威胁。

第二章的第一个部分分析中国的版权保护最新的发展趋势。首先，本章调查有助强制推行第一个版权法（1910年）的因素，然后本章给我们介绍1990年版权法主要规定以及中国走向推行国际公约弯弯的小路。

不过，为了在中国顺利出版书籍，中国法律给作者和版权持有人提供最起码的版权保护不够。我们提出的那本书还需要了解当地环境，发现让出版业运动的机构有哪

些。为了完成这个目的，第二章的第二个部分会详细分析中国的出版业。首先，我们探讨当地图书市场的“数字”，例如图书市场的体积、中国读者们最喜爱的文学类别、当地图书市场对国外书的兴趣。然后，我们的注意力会集中在目前中国出版业的规定上。我们将发现出版业由中国政府严格监察：在中国每家新的出版社必须得到国家新闻出版广电总局的认可，被认可的出版社收到国家新闻出版广电总局发出的国际标准书号。在国际标准书号制度的基础上，中国政府顺利控制了所有出版的资料，并且有效加强了私人出版社与官方出版社的合作。在本文进一步的探讨中，我们会发现私人出版社和官方出版社的这个关系是有争议的。

虽然第二章大部分集中在中国大陆的出版业上，但是我们不能忘记中国大陆不是唯一的中文出版中心。第二章最后的部分讨论了台湾与香港出版业的特点，特别是台湾和香港地区政府的管制比中国大陆低，市场开放。这是台湾和香港作为进入中国大陆的门道的根本原因。

第三章讨论了一个比较有争论的问题，以引发读者的思考：那本书在走了千万步以后、在本国出版、并详细研究中国出版业的特点以后，真的会在中国出版吗？

这篇论文的第三章说明了那本书的旅行最后的阶段。本章分析那本书向中国图书市场可选的三个“运输工具”，即：图书出口、版权销售和中外合作企业（或者中外合资企业）。每个选择有自己的特点、机会和问题，所以我会按照我可利用的资料把他们具体地介绍。

第三章的另外一个部分探讨了那本书到达外国时经历的本地化。这个本地化是为了给世界各国的读者们提供跟本国一样的文学经历。在本地化的过程中，那本书的内容为了适合目标市场的特点而改写，目的是避免由文化差异造成的误会。为了清楚地说明图书本地化的问题，我采用《哈利·波特》系列小说作为例子。因为这个系列的小说构成了一个著名的国际文学案例，对我们的谈论非常合适。但是，按下个部分讲的“四个审查制度的故事”表明，国外图书的本地化在中国经常陷入审查制度。

最后，虽然我们希望故事的结局是“公主和王子从此一直生活得很幸福”，但是那本书的旅行还可能结束在逆心的目的地，也就是说书籍盗印者的黑暗领土：例如一些国外图书版权被盗的案例。这个问题还会重重地影响中国的出版业。讨论有关中国法律的时候，“书面的法律”与“现实强制的法律”的分裂经常被提到。这部分《哈利·波特》系列小说的例子是一个具体的版权冒用的案例。

基于此，虽然我们可能已经猜上述问题的答复，但是我们暂且不会回答，因为由第三章负责做这个工作。毕竟，没有一点儿悬念的故事怎么能行呢？

# Introduction

“The person who does not read lives only one life. The reader lives five thousand. Reading is immortality backwards”, the Italian writer Umberto Eco once observed. Like him, many other writers and intellectuals have often and deeply debated the theme of the book as a journey throughout oneself, throughout history, throughout imagination, and throughout one million lives of fictional and real characters. This is a story we already know pretty well, and when we wander about in our trusted bookstore picking up books from the shelves, we already foretaste the moment when we will be back at home, we will wear on our comfortable clothes, and we will lie down on the couch, with our favourite blanket, maybe a cup of that tea we bought the other day and were expecting the right moment to try. It is in that very moment that we open our new book and let the journey begin.

But have we ever thought about the fact that the book in our hands has had a journey of its own before it reached our home? The journey of some books is pretty short; for instance, we know that books in our language must have been written and published somewhere in our country, and then they were shipped all the way to our local bookstore for us to purchase them. What about books written by foreign authors? In this case, the matter is slightly more complicated, and involves an intricate tangle of relationships between authors, agents, domestic and foreign publisher, foreign laws and regulations that we cannot even imagine, when picking up from the shelf that famous international bestseller we craved to finally have available in our country.

The inspiration for this thesis has come to me during one of my frequent visits to a bookstore, when I opened a book that had caught my eye, but instead of starting to read the story, I went to the very first page and started to read the publication information. I wanted to know more about its own story: what was the original publishing house? How much time has passed between the first publication in the country of origin and publication in my country? How did the two publishers find each other? What are the ways in which books reach foreign countries? And what does bringing a book abroad entail for authors and publishers?

In order to answer to these and several other questions that crowded my mind in that moment, I decided to dedicate my final thesis to tell the story of a book’s journey towards China, focusing on the aspect of copyright management throughout the several stages of this long journey, to discover what are the opportunities and the different choices publishers are offered to when deciding what is the best way for them to enter the Chinese book market with their domestic publications.

In order to do so, my research was first focused on achieving a deeper understanding of the concept and history of copyright, and on discovering how unpublished works are published in their country of origin in the first place. Only after having explored these preliminary stages, I could focus on the Chinese publishing environment to discover how our book could reach a destination so far away from the West, in terms of both geographical distance and legal culture. The structure of this thesis reflects the flow followed by my research, as I, together with the book that constitutes the main character of this story, discovered the following stages of this journey step by step, without really knowing what I would find next, but with the same insatiable curiosity that motivates an intrepid traveller. For this reason, throughout the three chapters that compose this thesis, I also make constant use of sentences and words connected to the metaphor of the journey, in the attempt to convey to the reader a visual image of the itinerary pursued by the book in its long journey towards China.

The first chapter focuses on the concept of copyright as a specific declination of the broader umbrella term of intellectual property, since it constitutes the basis for understanding the following stages of the journey, and the keystone of the relationships connecting the several actors of the publishing industry. We will investigate the origins of copyright and the reasons that brought to its rise, as well as the different paths that it took in Continental Europe and in the Anglo-Saxon world, being called “authors’ rights” in the former, and “copyright” in the latter. We will discover that these two different definitions are not just a matter of wording, but rather they embody the differences that compose the two legal models: on the one hand, the focus is on granting the maximum possible protection to the rights that authors deserve to own for the creation of a literary work; on the other, the accent is put on promoting the dissemination of the work to satisfy the claims advanced by the audience.

However, this schism between copyright and authors’ rights could not work in a world that was more and more directed towards globalisation, therefore starting from the end of the 19<sup>th</sup> century, harmonisation between the two models was attempted in the form of several international conventions, until a minimum level of protection granted to authors and copyright holders was set for all member States within and also beyond national borders.

Notwithstanding the adoption of international conventions, national copyright laws still present some differences. This is why, in order to discover how our book moves its first steps towards publication, in the second half of the chapter the Italian Copyright Law is analysed as an example, specifically focusing on how it regulates the book publishing contract. Clearly, each contract is tailored according to authors and publishers’ specific needs and will, yet there are

some obligations that both parties need to abide by in any case, and some clauses that recur in every contract, which we will therefore examine in detail.

Finally, as the first chapter heads toward its end, the inclusion of a concluding section presenting international books fairs allows the reader to already taste a bit of that international landscape our book is marching towards. Even in a world that is becoming more and more digitalised, international book fairs hold tight onto their status of preferred venue for meeting foreign publishers and discussing the sale of book rights, or testing the waters for potential international partnerships, representing the natural path that paves the way for our book's journey.

The land that constitutes the final destination of the book is a complex one indeed. Many before me have already highlighted China's several contrasting and contradictory facets and realities, and the Chinese publishing industry is by no means different. Our book surely is an intrepid traveller, but also a careful one, and as it prepares to go abroad, it also wants to make sure of what it will find when it finally lands in China. The second chapter of this thesis will illustrate how to successfully "break through the Great Wall", giving us a closer look of what to expect and what to pay attention to when deciding to publish in China.

The first half of the chapter will provide a discussion on the latest developments of copyright regulation in China, first analysing the factors that brought to the enforcement of the first copyright law in 1910, and then examining the main provisions of the Copyright Law of 1990 currently in effect, with a brief focus on China's tortuous path towards compliance with international conventions after years of closure.

However, in order for our book to be smoothly published in China, it is not enough to be assured that its author and copyright holders will be granted a minimum level of protection; it also needs to dive into the local environment and find out what are the mechanisms that make the Chinese publishing machine move. In order to fulfil this purpose, the second half of the chapter will be dedicated to a detailed analysis of the Chinese publishing industry, first exploring the "numbers" of the local book market, i.e. the volumes of the market, the readers' preferences in terms of literary genres, and the market interest towards international publications; then, we will focus on the current regulation of the publishing industry. We will discover that publishing is one of the most tightly supervised sectors, with every new publishing house in China being subject to state approval before they can be issued official ISBNs, a mechanism that has proven successful in exercising a capillary control over the contents that are published, and that force private publishers to collaborate with state publishers in a controversial relationship made of both division and interdependence.

Although the whole chapter will be devoted to exploring the specificities of Mainland China's publishing industry, we must not forget that this territory is not the sole centre for Chinese-language publications. The concluding section of this chapter will therefore focus on introducing briefly the features of Taiwan and Hong Kong's publishing industries, with a special mention to the role they play as gateways to Mainland China due to lower state control and a more open market.

The third and last chapter opens with a rather provocative question aimed at making the reader stop for a while and think: after all the steps our book has already covered since its very first day of life, when nobody if not its author knew it yet, after having made it to its first publication in the country of origin, after all the research conducted to secure a deeper knowledge about the Chinese publishing industry, is China really an open land for foreign publishers?

This chapter will explore the final stage of our book's journey, analysing the three main "means of transport" available for it to finally reach the Chinese book market, namely book export, rights sales, and co-publishing via the establishment of a joint venture. Each of these entry modes present their own peculiarities, opportunities, and risks, and each will be examined as thoroughly as possible according to the resources available.

A further section in this chapter is dedicated to the adaptations a book is subject to when landing to another country, in order to offer the same literary experience as the country of origin's edition to all readers around the world, with contents that are appropriate to the target market and that avoid the misunderstandings often created by cultural differences. The issue of book localisation will be explored with concrete examples drawn from the *Harry Potter* book series, which constitutes an indisputable case of international literary phenomenon, and seems therefore appropriate to our discourse. However, in the case of China, adaptations made to foreign books often degenerate into real cases of censorship, as the four different "tales of censorship" described in this section will highlight.

Finally, while most of the characters in the stories that we know "lived happily ever after", our book's journey might also end up to undesired destinations, i.e. the obscure and dark lands of book pirates, as are defined here all those cases in which a foreign book is hit by the plague of copyright infringement. As we will discover, the issue represents one of the major problems still affecting the Chinese publishing industry, providing a concrete instance of that separation between "the law in the books" and "the law in action" that is so often mentioned when making reference to the Chinese law. Also in this section, an example drawn from the *Harry Potter* series will be presented as a concrete case study of the problem of copyright infringement in China.

To conclude, although we may already guess the answer to the question raised above, for the moment being it will remain with no answer, as it is the final chapter's job to provide it to the reader. After all, what is a story without a hint of suspense?



# CHAPTER 1

## Once Upon a Book

«Only when media technology and market conditions made piracy available could copyright arise.»<sup>1</sup>

### 1.1 The Rise of Copyright<sup>2</sup>

Stories, poems, and every other kind of narratives have always been passed on across generations and disseminated from mouth to mouth across countries' borders. In oral cultures, transfer of such works was linked to the artistic capabilities of the person narrating or interpreting that particular piece of art. Not crystallising performances into any written form, authors and creators of oral works tended to realise inimitable and often varying productions, retaining a certain degree of mystery about what they put into that oral culture. Even when it became possible to fix words into paper, the duplication process was limited by the scribes' copying ability. There was, therefore, a lack of technological and economic premises to make the legal protection of a literary work necessary.

This is the reason why I decided to start this chapter with the above-mentioned quotation: it emblematically summarises the two main cornerstones of copyright protection, i.e. technological advancements in print together with the development of market mechanisms. Before stepping into the several stages of our book's journey towards China, it seems reasonable to briefly delineate the origins of the concept of copyright, the different paths it followed in Continental Europe and in Anglo-Saxon countries, and the attempts made to reach international harmonisation, as these elements will be the fundamental basis of the following discourse on the management of copyright when publishing a book in China.

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<sup>1</sup> Paul Edward GELLER, "Copyright history and the future: What's culture got to do with it?", *Journal of the Copyright Society of the USA*, 47, 2000, p. 210.

<sup>2</sup> Copyright is a legal concept used to describe the rights that creators have over their literary and artistic works, ranging from books, music, paintings, sculptures and films to computer programs and databases. In almost every jurisdiction, the local copyright law grants the author a bundle of exclusive rights such as: reproduce a work in copies, distribute copies of a work to the public, make translations or adaptations of a work, make the work available on the Internet. The category of copyright falls under the umbrella term of "intellectual property", which generally defines any creation of the mind and, in addition to copyright, also includes patents, trademarks, industrial designs and geographical indications.

### 1.1.1 The Battle between Copyright and Authors' Rights

The concepts of “intellectual property” and “copyright” saw their birth after the invention of the printing press by Johannes Gutenberg; until copies of literary works were realised by amanuenses in a limited number, there was no need to control and regulate through legal mechanisms such activity of handcrafted reproduction.<sup>3</sup> Due to the substantial costs, in terms of both time and expenses, originating from amanuenses' work, that one single copy often used to remain the only manuscript available of a given literary work and was therefore considered as an object of inestimable value, destined only to the highest social classes.

However, in the 15<sup>th</sup> century, a revolutionary invention was bound to change deeply the book industry: industrial printing made it possible to realise serial reproductions of literary works, reducing production costs and increasing revenues at the same time. Thanks to Gutenberg's creation, books were no more luxury goods whose purchase was restricted to the upper class, but they became more and more common until they reached mass distribution.

Due to mass production and spread of printed books, circulation of information and ideas evolved into a much faster process. For the first time in history, technological improvements allowed a wider range of readers to access multiple copies of a work at lower costs; but this also imposed the need of controlling this increasingly rapid flow of information and ideas.<sup>4</sup> In order to manage the results produced by this new technology, European monarchies implemented a system aimed at controlling proactively the publishing industry's contents. It was at this time that licensing became a consolidated practice in the form of royal privileges granted especially to publishers and more rarely to authors: these privileges gave booksellers and printers the exclusive rights to exploit literary works, favouring their interests at the detriment of the authors.<sup>5</sup>

The first regulation ever existing on the matter dates back to 1474, under the name of *Atto al Senato Veneziano*; 13 years later, this was followed by the first royal privilege given by the Republic of Venice to the historian Marcantonio Cocci, with which the author was entitled to print and sell copies of his work “*Rerum Venetarum ab urbe condita ad Marcum Barbaticum*”, setting a model for the following concession of privileges. The regulation in question, although containing in embryonic forms some aspects of the modern concept of copyright (e.g. attribution and exploitation of works, elements of property law etc.), only considered the mere

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<sup>3</sup> Simone ALIPRANDI, *Capire il copyright: Percorso guidato nel diritto d'autore*, Ledizioni, 2012.

<sup>4</sup> Michele LO FOCO, Raffaella CROPANESE, *Il diritto d'autore. Storia, evoluzione, regole, futuro.*, Narcissus.me, 2013.

<sup>5</sup> Laura MOSCATI, “Intellectual Property in the European Legal Context: Tools and Perspectives”, *European Business Law Review*, 1, 120, 2011, pp. 79-92.

economic and commercial aspects of the work, protecting in its early stages just the interests of the publishers, without even mentioning authors' rights over the outcome of their creative genius.<sup>6</sup>

Throughout the years, the abuses of this exclusive right exercised by booksellers and printers led to the establishment of actual literary monopolies and censorship systems. For instance, a decree issued by King Charles IX of France in 1566 ordered that royal privileges in France were to be handed out no more on an elective but on a mandatory basis, establishing therefore a centralised control based on a system of preventive censorship.<sup>7</sup>

It was not until 1709 that this situation started to change: aiming to reduce censorship, replace royal privileges, discourage piracy and encourage people to write, the Statute of Queen Anne of England “An Act for the Encouragement of Learning”<sup>8</sup> finally acknowledged the right of reproducing copies to the authors of the said work, which could be transferred to publishers under payment of a fee.<sup>9</sup> However, the ultimate objective of the said Statute was not to benefit authors, but rather to reduce the monopolistic power granted to publishers. The author served therefore as a sort of weapon to fight this monopoly<sup>10</sup>: although declaring that printing of unpublished books could not be done without the consent of the author, the Statute does not recognise the author as the sole owner of their work. Instead, other recipients such as printers, publishers and purchasers of the copies are mentioned as beneficiaries of an exclusive right over the work. In this way, one might say, the work is assimilated to any other commodity that authors are deprived of the moment they sell it. Even if for the first time authors are invoked, no reference is made to the importance of protecting their hard work and the outcome of their creative genius.<sup>11</sup>

In this context, we can identify three main actors emerging as the main stakeholders of the book industry, i.e. the author, the publisher and the audience. “These three actors, each with their own concerns, negotiate a delicate dance”<sup>12</sup> and all must be kept content. Therefore, in order to

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<sup>6</sup> Alessandro FERRETTI et al., *Rivoluzione d'Autore. Il diritto d'autore tra presente e futuro*, Primiceri Editore, 2015.

<sup>7</sup> Laura MOSCATI, “Alle radici del *Droit d'auteur*”, in Liotta F. (ed.), *Studi di storia del diritto medioevale e moderno*, Bologna, Monduzzi Editore, 2007, pp. 261-341.

<sup>8</sup> The official heading actually recited “An Act for the Encouragement of Learning, by Vesting the Copies of Printed Books in the Authors or Purchasers of Such Copies 8 Anne, c. 19 (1709)”. Full text of the Statute of Queen Anne is available at: [http://press-pubs.uchicago.edu/founders/print\\_documents/a1\\_8\\_8s2.html](http://press-pubs.uchicago.edu/founders/print_documents/a1_8_8s2.html).

<sup>9</sup> FERRETTI, *Rivoluzione d'Autore...*, 2015.

<sup>10</sup> Laura MOSCATI, “Lo Statuto di Anna e le origini del copyright nell'Inghilterra del Settecento”, in Vv. Aa. (ed.), *Fides. Humanitas. Ius. Studii in onore di Luigi Labruna*, Napoli, Editoriale Scientifica, 2007, pp. 3672-3687.

<sup>11</sup> *Ibidem*.

<sup>12</sup> Peter BALDWIN, *The Copyright Wars: Three Centuries of Trans-Atlantic Battle*, Princeton, Princeton University Press, 2014, p. 14.

protect the interests of these subjects, and to avoid favouring those with greater economic power, legal relationships between these actors started to be established.

The above-mentioned developments laid the basis for the new-born regulation of the book industry and the legal protection of literary works. It was in this era of technological advancements in print and consequently increased economic interests on the book market that the English copyright and the French *droit d'auteur* began to take shape as legal models for the protection of creative works.

Although these two concepts developed according to two different paths, both can be considered as arising from the revolutionary spirits that took over Europe in the 18<sup>th</sup> century. On the one hand, encouraged by the achievements of the Industrial Revolution, the already mentioned Statute of Queen Anne, also known as the “Copyright Act 1710”, marked the day of birth of copyright in England, a model later adopted also by the United States, the Commonwealth countries and the majority of Anglo-Saxon countries.

On the other hand, the accomplishments of the French Revolution and the concomitant affirmation of the Enlightenment principles led to the draft of “Le Chapelier Law 1791”, which paved the way for further developments on the matter of intellectual property in France. Moving from the Statute of Anne, Le Chapelier Law in addition defines intellectual property as “the most sacred, the most legitimate and the most irrefutable of all properties”<sup>13</sup> and stresses the importance of protecting authors and their works. Although a right of exploitation of the said works is not expressly mentioned yet, their publication is not allowed without the consent of the author. Like in England, the economic and commercial aspects of the work are therefore considered and taken care of in the law of 1791. What the French legislation introduces in addition to the English one, even if in an embryonic form, is the predominance of authors, considered as the sole owners and beneficiaries of their works. In 1793, Le Chapelier Law was followed by another law concerning authors’ rights, which this time clearly defined books and other literary works as authors’ property; as such, the author is the only one who has the exclusive right to commercially exploit their work, and, after their death, their heirs would be granted this exclusive right for 10 years. Nonetheless, moral rights<sup>14</sup> seen as personal rights

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<sup>13</sup> MOSCATI, “Alle radici del *Droit d'auteur*”, 2007.

<sup>14</sup> The question of moral rights and how they differ from economic rights will be discussed further in this chapter. To give a preliminary definition, moral rights relate to the author’s most personal sphere of rights and recognises to their work a value added that goes beyond the mere economic exploitation. These are defined as non-transferable, perpetual rights, meaning that after the author’s death they are managed by their heirs.

separated from the economic ones were still far from being recognised at the time, and would emerge only in the mid-19<sup>th</sup> century.<sup>15</sup>

Throughout the centuries, authors' rights would establish itself as the leading model in Continental Europe as opposed to the English model. The two models developed following parallel paths, but in the 20<sup>th</sup> century signs of convergence started to appear, blurring in this way the demarcation line between common law and civil law dispositions on the matter; according to scholars, this tendency towards harmonisation is to ascribe to their common European origin.<sup>16</sup>

Before examining the efforts made to achieve a universal copyright regulation, allow me to introduce the main differences between the two systems of copyright and authors' rights. Semantically speaking, the two words are often used interchangeably. However, taking a closer look, the word formulation per se reveals a substantial difference. Indeed, "copyright" literally means "right of copying" and, having received the impact of the Statute of Anne, it merely refers to the right of producing and distributing copies of a given work. On the other hand, the concept of "authors' rights", as the definition itself illustrates, encompasses all the rights recognised to authors of creative works. Moving from this semantic analysis, we can therefore say the difference between the two concepts is a matter of emphasis. "Emphasis on what?", one might arguably ask. This is a matter of emphasis on how the aforementioned relationship between authors, publishers and audience is handled:

Seen historically over its long development, copyright has focused on the audience and its hopes for an expansive public domain. Authors' rights, in contrast, have targeted creators and their claims to ensure the authenticity of their works.<sup>17</sup>

Authors' rights can be defined as a set of rights protecting the creative activity of the author including, as we will see, moral rights, which instead are poorly protected by the Anglo-American copyright model. Thanks to moral rights, the author maintains in any case a certain degree of control on their work, protecting their vision from commercialisation and exploitation. According to this view, the private interests of the author prevail on the public interest, in an attempt to protect the outcome of their creative genius. On the contrary, the copyright system tends to give priority to publishers over authors, transferring rights management to the formers,

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<sup>15</sup> MOSCATI, "Alle radici del *Droit d'auteur*", 2007.

<sup>16</sup> MOSCATI, "Intellectual Property in the European Legal Context...", 2011.

<sup>17</sup> BALDWIN, *The Copyright Wars...*, 2014, p.15.

which are in charge of producing and distributing copies of the work. We can therefore affirm that copyright follows market dynamics by treating the author as an entrepreneur and the work as a product that can be sold and exchanged exactly like any other property.<sup>18</sup> Copyright's main objective is to promote dissemination of the work in order to benefit the audience and serve the public interest, reserving little attention to the author's claims over their own work and protecting them only as necessary to keep them productive.

Among the concrete ways in which the two systems differ, three elements are particularly worth mentioning. Firstly, the duration of the protection has historically been more extended in Continental Europe rather than in Anglo-Saxon countries, due to the belief that granting the maximum possible protection would enhance creativity and the development of culture. Secondly, in those countries following the Continental approach, the work is given protection starting from the very moment of creation, with no need for formalities of registration, and any trace of the author's creative genius, even in its most embryonic form, is protected as a complete work. This is connected to the idea, prevailing in the authors' rights system, that literary works are subject to the author's natural property rights and are therefore considered as private property since their first day of life. On the contrary, the English model has always been more keen on welcoming the introduction of some necessary formalities, which were also included in the Statute of Anne; in the 17<sup>th</sup> century, all books had to be entered in the registers of the Stationers' Company of London, the corporation retaining the monopoly in printing in England. Differently from the authors' right system, according to the English model once the work is born, it automatically belongs to the public domain unless the author decides to register it at the Copyright Office.<sup>19</sup>

Lastly, the Continental approach has always granted moral rights much more importance than the Anglo-American did. Recognition of some personal rights as opposed to economic ones had already been implicitly established after the invention of printing, such as the need to obtain the author's permission to print the work with indication of the author's name on each copy. However, it is only in 1900 that for the first time the French *Cour de Cassation* used the term "*droit moral*" with its current meaning, i.e. to indicate the only rights that are perpetual and non-transferable as opposed to economic rights of exploitation of the work.<sup>20</sup> By considering each piece of work as private property, the aim of moral rights is to give the author the power

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<sup>18</sup> BALDWIN, *The Copyright Wars...*, 2014.

<sup>19</sup> MOSCATI, "Alle radici del *Droit d'auteur*", 2007.

<sup>20</sup> Laura MOSCATI, "Tradizione storica e nuove frontiere della proprietà intellettuale. A proposito dell'*Avant projet du droit des biens* e dello *European Copyright Code*", *Rivista italiana per le scienze giuridiche*, Jovene Editore, 2, 2011, pp. 199-227.

to control their works even after having sold the economic rights. As we can easily deduce, moral rights constitute a further privilege granted to the author to the detriment of publishers and the audience. This is the reason why moral rights have always played a smaller role in the Anglo-American copyright system.

This diverging attitude towards works creation and dissemination has often been referred to as a “clash of civilisations”.<sup>21</sup> With the advent of globalisation and, as a consequence, the increasing tendency to disseminate ideas and works across countries, several attempts to reach harmonisation have been made to reduce differences between these two prevailing models, mainly in the form of international conventions and treaties.

### 1.1.2 Towards International Harmonisation

In the previous section we saw that, since the invention of industrial printing, improvements on copyright protection at the country level have been successfully achieved. However, international copyright protection and rights transfer at the time were still hindered by the variety and diversity of country laws related to the subject. Although bilateral treaties among countries already existed, these were not comprehensive enough and did not provide a uniform pattern for mutual recognition of rights.

One important step towards the internationalisation of copyright regulation is represented by the 1858 Brussels Conference and the 1878 Paris Literary Conference, aimed to eliminate national differences in the copyright legislation and to establish some common principles regarding the matter of intellectual property. The two conferences clearly could not act as a legislator per se, but they served the purpose of individuating the thorniest questions on copyright. Among the principles set forth we find the assimilation of foreign writers to national ones, the international recognition of intellectual property, and reference to the formalities required by the country of origin.<sup>22</sup>

The matters highlighted by the Brussel and Paris conferences paved the way to all the following international conventions on copyright; below, we will briefly examine three of them, in order to understand how international trade and rights transfer of books were eased thanks to their implementation. Indeed, adoption of these conventions has resulted in three main outcomes: it contributed to extend the protection of creative works beyond national borders; it set and

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<sup>21</sup> BALDWIN, *The Copyright Wars...*, 2014, p.16.

<sup>22</sup> MOSCATI, “Tradizione storica e nuove frontiere della proprietà intellettuale...”, 2011.

progressively increased a minimum level of protection granted to authors under which member States cannot go; it spurred harmonisation of different national copyright laws.

### *The Berne Convention*

Although all countries participating to the Brussels and Paris conferences essentially agreed on the major principles outlined in those occasions, promoting an international regulation of copyright that would take into account the needs and requests of all countries turned out to be a very long and complex process. This is mainly due to the resistance carried out by some countries that would not accept further rules delaying or even hindering free access to information, such as the United States: the new-born country strongly defended its right to deliberate on the national copyright law, with no willingness to adhere to international agreements that would limit in any way free access to literary works.<sup>23</sup>

Nonetheless, a first effort towards international convergence between the copyright and the authors' rights models (and consequently between the different country-specific regulations deriving from adherence to one or the other model) managed to come into being in the form of the "Berne Convention for the Protection of Literary and Artistic Works", an international agreement first signed in Berne in 1886<sup>24</sup> at the instigation of the French writer Victor Hugo. Initially signed by only nine countries (among which we find Italy), this convention was bound to become the most ancient source of international law on the matter of copyright.

As recited in the preamble, the aim of the convention was "to protect, in as effective and uniform a manner as possible, the rights of authors in their literary and artistic works"<sup>25</sup>. Art. 3 of the agreement immediately clarifies that translations, adaptations and other forms of transformation of the work also receive protection.

By analysing the principal provisions of the agreement, we can see that the Berne Convention seeks to draw closer the three major points of divergence between the two systems previously mentioned. Indeed, moving from the territoriality principle<sup>26</sup> (reaffirmed in art. 5 of the Paris Act), the text of the convention immediately poses the question of the protection of foreign works, stating that the dispositions of the convention apply with regard to authors of member

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<sup>23</sup> Maria Iolanda PALAZZOLO, *La nascita del diritto d'autore in Italia. Concetti, interessi, controversie giudiziarie (1840-1941)*, Viella, 2013.

<sup>24</sup> The Berne Convention has been later revised several times: in Berlin (1908), in Rome (1928), in Brussels (1948), in Stockholm (1967) and in Paris (1971). Every one of these Acts constitutes an autonomous international convention. Since 1967 the Berne Convention is administered by the World Intellectual Property Organization (WIPO).

<sup>25</sup> WIPO, *WIPO Intellectual Property Handbook: Policy, Law and Use*, 2008, p. 272.

<sup>26</sup> According to this principle, each member State regulates copyright and the related questions as it is disposed by the national law, and decides the categories of subjects that are granted protection inside the national territory.

States, regardless their work is published or not; authors of States that are not members to the convention, but whose work is published for the first time in a member State or simultaneously in a member State and a non-member State; authors of non-member States but residing in a member State. In order to settle this matter, three main principles underlying the agreement are particularly worth mentioning:

- national treatment, mentioned explicitly in art. 5 and according to which works originating in one of the member States receive the same protection the other member States grant to the domestic ones;
- automatic protection, according to which no formality of registration or deposit is required for protection and it is also forbidden to member States to require foreign authors to accept formalities impeding the exercise of their authors' rights;
- independence of protection, according to which protection is granted independently of the existence of protection in the country of origin of the work.<sup>27</sup>

Furthermore, the duration of protection is set to cover the entire life of the author plus fifty years after their death, even though member States are free to extend this term (art. 7).

Arts. 8, 9, 11-*bis* and 12 concentrate on the important matter of the exclusive rights authors are granted and specific cases of exceptions and limitations due to public interest's needs to access certain information. In particular, authors of literary and artistic works have the exclusive right to authorise and exploit:

- reproduction of their works in any form and manner;
- translations;
- adaptations, variations, and other transformations;
- radio broadcasting or any other form of communication to the public through any means that is suitable to broadcast signs, sounds or images;
- public performance conducted through any means.<sup>28</sup>

To conclude, after the Rome revision of the convention in 1928, art. 6-*bis* of the agreement also recognises the twofold nature of the exclusive right, granting the author moral rights and conferring them the same duration of protection as economic rights.<sup>29</sup>

Participation in the convention is opened to all countries and there are currently 176 member States. As already mentioned, at first the United States hesitated to conform to the convention,

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<sup>27</sup> Marco SCIALDONE, "I profili internazionali del Diritto d'Autore", *Altalex*, <https://www.altalex.com/documents/news/2010/03/24/i-profil-internazionali-del-diritto-d-autore>, 2008, accessed 20-04-2019.

<sup>28</sup> *Ibidem*.

<sup>29</sup> MOSCATI, "Tradizione storica e nuove frontiere della proprietà intellettuale...", 2011.

due to the major changes that its copyright law would undergo in terms of acceptance of moral rights and removal of registration. Nonetheless, with the Copyright Act of 1976, the United States moved closer to the Berne Convention's dispositions, by extending the terms of protection to fifty years after the author's death and by giving up the registration and deposit of copyright as a compulsory condition to protection. In 1989, the USA finally adhered to the Berne Convention, and, according to scholars, this event marked the real starting point of international convergence of copyright regulation.<sup>30</sup>

### *The Universal Copyright Convention (UCC)*

Developed by the UNESCO and adopted in Geneva in 1952, the "Universal Copyright Convention" responded to authors' demand for a uniform copyright protection in the highest possible number of States. As a matter of fact, the system created by the Berne Convention had become excessively complex due to the variety of texts simultaneously into force, as each of the Acts modifying the convention did not abrogate the previous one. Furthermore, many countries were not ready yet to guarantee the minimum level of protection as disposed by the Berne Convention, resulting therefore in a proliferation of bilateral rather than multilateral agreements.<sup>31</sup> The UCC aimed to propose them an alternative form of participation to multilateral copyright protection.

Art. 1 declares that each member State is required to ensure a minimum and efficient level of protection to authors and any other owner of the work's rights. The authors' exclusive right to commercially exploit their works is also protected in the same terms of the Berne Convention, and member States can set exceptions and limitations according to their national legislation, provided that they still grant a reasonable level of protection. Like the Berne Convention, the UCC mentions the principles of territoriality and national treatment accorded both to published and unpublished works, yet the latter guarantees a minimum level of protection that is inferior to the Berne Convention. Indeed, art. 3 of the UCC requires compliance with formalities such as registration and deposit as prerequisites for a work to be protected, if national law of a member State includes such disposition; while art. 4 sets the entire life of the author plus twenty-five years after their death as the minimum term for the duration of protection, remitting further extension of these terms to member States' country law.<sup>32</sup> It is also worth noticing that

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<sup>30</sup> MOSCATI, "Alle radici del *Droit d'auteur*", 2007.

<sup>31</sup> Luigi C. UBERTAZZI, "Diritto d'autore", *Digesto delle discipline privatistiche. Sezione commerciale*, Torino, UTET, 1989, pp. 366-463.

<sup>32</sup> SCIALDONE, "I profili internazionali del Diritto d'Autore", 2008.

the agreement does not make any reference to the matter of moral rights, giving it little importance as typical of the Anglo-American approach to copyright.

Member States of the UCC include developing countries, the United States, and the majority of South American countries.<sup>33</sup> In order to be granted copyright protection in non-Berne Convention States, the Berne Convention's member States also became parties to the UCC.

To conclude, one modification of the UCC following the original draft of 1952 deserves a particular mention: this is the Paris text drafted in 1971, together with the Paris Act of the Berne Convention. This concomitant revision of both conventions was made necessary by the ongoing process of decolonisation of developing countries, which started to ask for a preferential treatment that would take into consideration their "different status". As a result, the Paris revision introduced essentially equivalent principles in both conventions with regard to the protection of copyright in developing countries, such as the introduction of a system based on non-exclusive and non-transferable compulsory licenses in respect of translation and reproduction for the purpose of teaching, scholarship or research of works protected under the Berne Convention.<sup>34</sup>

### *The TRIPS Agreement*

The "Agreement on Trade-Related Aspects of Intellectual Property Rights" (also known as TRIPS Agreement) is an international agreement concerning intellectual property, signed at Marrakech in 1994 and administered by the World Trade Organisation (WTO). All WTO member States and aspiring members conform to this agreement, and as of today it is considered as the most comprehensive multilateral agreement on intellectual property.<sup>35</sup>

With respect to other international conventions concerning copyright and intellectual property in general, the TRIPS Agreement deserves a special mention because it introduces intellectual property law into the multilateral trading system for the first time, aiming to

[...] reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures

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<sup>33</sup> The USA and South American countries were already members of the Buenos Aires Convention, a multilateral copyright treaty signed at Buenos Aires in 1910. As specified in art. 18 of the UCC, the Buenos Aires Convention continues to exist after the drafting of UCC, but in case of divergences with other copyright conventions between two or more American Republics, the arrangements most recently formulated shall prevail. Since 2000, member States of the Buenos Aires Convention are also parties to the Berne convention.

<sup>34</sup> UBERTAZZI, "Diritto d'autore...", 1989.

<sup>35</sup> Giuseppe MORGESE, "La normativa internazionale ed europea sul diritto d'autore", *Editoriale scientifica*, 4, 2014, pp. 569-594.

and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.<sup>36</sup>

Section 1 of Part II regulates copyright and related rights and almost all principal provisions of the Berne Convention are directly incorporated by reference in the TRIPS Agreement. In particular, members must comply with articles 1 to 21 of the 1971 Paris Act of the Berne Convention and its Appendix, but once again, following the line of the UCC, moral rights are excluded from the agreement's provisions, as this clearly states that members do not have any rights or obligation in respect of art. 6-*bis* of the Berne Convention.<sup>37</sup> Recalling the traditional distinction between form and content, art. 9 highlights that "copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such"<sup>38</sup>; while art. 13 provides limitations and exceptions to copyright in "certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder"<sup>39</sup>. We can therefore affirm that the protection granted by the TRIPS Agreement to the copyright holder assembles dispositions from the precedent regulations together with new provisions, such as the extension of the protection to software and database.<sup>40</sup>

To conclude, one last aspect worth mentioning is that the TRIPS Agreement contains the most-favoured-nation principle, stating that any advantage, favour, privilege or immunity granted by a member State to the nationals of another country (regardless their membership to the agreement) are to be accorded immediately and unconditionally to the nationals of all other members. The inclusion of such provision constitutes a new entry in the context of intellectual property rights at the multilateral level, not traditionally provided for beforehand.

## **1.2 Copyright Regulation in Italy**

### **1.2.1 Historical Developments**

The above-mentioned treaties surely eased the process of convergence between different systems of copyright protection and the results achieved by implementation of these conventions at the international level considerably fostered international book trade.

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<sup>36</sup> "Agreement on Trade-Related Aspects of Intellectual Property Rights", *World Trade Organization*, [https://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_03\\_e.htm](https://www.wto.org/english/docs_e/legal_e/27-trips_03_e.htm), accessed 23-02-2019.

<sup>37</sup> SCIALDONE, "I profili internazionali del Diritto d'Autore", 2008.

<sup>38</sup> MORGESE, "La normativa internazionale ed europea sul diritto d'autore", 2014, p. 578.

<sup>39</sup> MORGESE, "La normativa internazionale ed europea sul diritto d'autore", 2014, p. 579.

<sup>40</sup> *Ibidem*.

Nonetheless, differences at the level of national legislation still exist, and this is why, for the remaining part of the chapter, we will mainly refer to the Italian legislation.

As most of Civil Law countries, Italy is one of those that received the influence of the French authors' rights system rather than the English model, which instead became established in Common Law countries.<sup>41</sup> In Italy, recognition of copyright as of a private right worth protecting is the result of a long and draining process; prior the unification of Italy, the first law concerning copyright was emanated by the Piedmontese Government in 1799, shortly followed by the other Italian republics, which used to have each their own copyright regulation.<sup>42</sup> However, due to the political fragmentation of the Italian peninsula, these laws had quite a limited range of application, and certainly did not encourage the spread of literary works. Instead, having each republic a different regulation, it favoured the increase of piracy and cases of unfair competition, since, for instance, a work protected in the Piedmontese Republic would not be granted the same protection in the Republic of Venice.<sup>43</sup>

The very first Italian law concerning copyright dates back to 1865, four years after the unification of the various republics of the peninsula. The enforcement of the said law created a unified market in which books, magazines and other works could freely circulate without worrying about piracy and unfair competition within the national territory.

The law of 1865 remained into force until the promulgation of the decree n. 1950 of 1925, which responded to the need for a more thorough regulation that would also include the works realised through the new means of communication, such as radio and cinema. In the troubled process towards the current regulation of copyright, this step is particularly important also because, for the first time in Italy, the twofold nature of copyright as composed of economic and moral rights started to be officially recognised.

The last stage of this historical process is represented by the law n. 633 of 22 April 1941 disciplining the Consolidated Law that finally substituted the law of 1925.<sup>44</sup>

## 1.2.2 The Copyright Law of 1941

As of today, copyright in Italy is mainly regulated by the Law 633/1941 (hereinafter the Copyright Law), and dispositions about the matter can also be found in articles 2575 to 2583 of the Civil Code. At the time of emanation, the Copyright Law was essentially compliant with

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<sup>41</sup> For the sake of convenience and considered the efforts made towards harmonization of the two systems, from now on the term copyright will be used to indicate both concepts.

<sup>42</sup> LO FOCO, CROPANESE, *Il diritto d'autore...*, 2013.

<sup>43</sup> PALAZZOLO, *La nascita del diritto d'autore in Italia*, 2013.

<sup>44</sup> LO FOCO, CROPANESE, *Il diritto d'autore...*, 2013.

the Berne Convention's dispositions, even though, being emanated during the Fascist period, the text of the law still tended to stress the paternalistic role of the State in managing the relationship between the different stakeholders of the book industry. Perhaps the most evident sign of this state control was represented by the predominant role attributed to the Ministry of Popular Culture (in Italian *Ministero della Cultura Popolare*, commonly abbreviated to *Minculpop*), a political entity directly nominated by Mussolini, which substituted the legal authority in managing the relationship between authors and publishers, and between these two and the State.<sup>45</sup>

In the last years, the law disciplining copyright has been modified several times, in order to remove Fascist references and to adapt it to the new means of communication and technological environment. Implementation of the European Directives n. 91/250/CEE (concerning software's legal protection), n. 96/9/CE (concerning database's legal protection) and n. 2001/29/CE (concerning copyright harmonization) represents the milestones towards this end.<sup>46</sup> The last revision of the Copyright Law dates back to October 2017 and has been commented as an epochal change. Indeed, this modification, mainly pertaining to art. 90, eliminates SIAE<sup>47</sup> exclusive intermediation with regard to copyright and related rights.<sup>48</sup>

According to Art. 1 of the Copyright Law, in order to be granted protection, works need to satisfy some basic requirements: also mentioned by art. 2575 of the Civil Code, the aspect of creativity is one of them. That is, the work needs to possess, at least subjectively, a certain degree of creativity, even if it does not show specifically any aesthetic or artistic value.<sup>49</sup> Traditionally, creativity is further subdivided into the aspects of novelty and innovation: the former is based on the assumption that the work has to be the outcome of intellectual activity and has to reflect the author's personality; the latter is connected to the idea that the work needs to present some essential and distinguishing features that objectively differentiate the work from others of the same kind. This element turns out to be particularly important in case of disputes originated by plagiarism. Together with novelty and innovation, and with reference to art. 9 of the TRIPS Agreement, another traditional principle referred to in the Copyright Law

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<sup>45</sup> PALAZZOLO, *La nascita del diritto d'autore in Italia*, 2013.

<sup>46</sup> MORGESE, "La normativa internazionale ed europea sul diritto d'autore", 2014.

<sup>47</sup> The acronym SIAE stands for Società Italiana Autori ed Editori (Italian Society of Authors and Publishers). Until modification of the Copyright Law in 2017, this entity was recognised by the law as the only intermediary between authors and creators and those interested in exploiting economic rights of their work.

<sup>48</sup> The family of related rights is composed of exclusive rights belonging to subjects other than the author of the work. These include intellectual and commercial activities, strictly related to the work in question protected by copyright. Related rights are regulated by articles 72 to 102 of the Copyright Law and a typical example is represented by the rights granted to the producer of cinematographic or audio-visual works.

<sup>49</sup> UBERTAZZI, "Diritto d'autore...", 1989.

is the idea that protection is granted to the actual form of the work as expressed by the author, and not to the creative idea per se.<sup>50</sup> It is also important to specify that what receives protection is indeed the intangible form of the work and not the physical, paper, or digital support on which the work is available. In other words, when we buy a book in a bookstore, we only become owners of that particular copy of the book, and there is no transfer of copyright in the mere act of buying that copy of the book.

Arts. 2, 3 and 4 of the Copyright Law enumerates the categories of creative works that can be considered subject to protection, albeit this classification does not constitute a *numerus clausus*.

In particular, among them we find:

- Literary, dramatic, scientific, academic and religious works, both in oral and written form;
- Musical, choreographic and pantomimic works;
- Sculptures, paintings, drawings, carvings, scenic designs and similar figurative arts;
- Architectural, cinematographic and photographic works;
- Software and database.
- Translations to other languages, transformations into other literary or artistic form, modifications, adaptations, compendia and collections.

A special mention is due to art. 6, reaffirming the principle of automatic protection that we also found as one of the underlying principles of the Berne Convention, i.e. the work receives protection from the moment of its very creation in any form of expression, and no formality of registration or deposit is required. As a result, the author acquires the totality of rights connected to such work. This principle had already been recognised by the copyright law of 1925, together with the dualistic perception of copyright as composed of economic and moral rights.<sup>51</sup>

Economic rights are mainly regulated by arts. 12 to 19 of the Copyright Law as exclusive rights granted to the author and, as such, include among the others the previously mentioned rights to reproduce a work in copies, distribute copies of a work to the public, make translations or adaptations of the work, make the work available on the Internet. Their protection presumes the publication of the work.

Unlike moral rights, economic rights have a limited duration: art. 25 of the Copyright Law sets their duration at the entire life of the author plus seventy years after their death. Until 2017, protection was granted for the life of the author plus fifty years as established by the Berne Convention, but the terms were then extended with a sentence pronounced on the 27<sup>th</sup> of

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<sup>50</sup> ALIPRANDI, *Capire il copyright...*, 2012.

<sup>51</sup> UBERTAZZI, "Diritto d'autore...", 1989.

January 2017 by the Supreme Court of Cassation, implementing in this way the European Directive n. 93/98/CEE.

Art. 2581 of the Civil Code legally recognises the transfer of economic rights, specifying the need to crystallise such transfer in a written form.<sup>52</sup> Economic rights can be transferred by the author to other subjects, such as publishers, which can in turn license or sell them as disposed by the contract and the applicable law. Being independent from one another, the author can also exercise and transfer them singularly. As we will see in the following section, transfer of these rights from the author to the publisher that will manage the publication of the work is normally accomplished by means of a publishing contract.

Moral rights are constantly referred to in both the Copyright Law and the Civil Code (art. 2577). These pertains to the author's most personal sphere of rights and can be defined as non-transferable, perpetual rights, meaning that even after the author's death they continue to belong to the author and are managed by their heirs. As already mentioned, in the Italian copyright law, reference to moral rights appeared for the first time in the 1925 revision, thanks to the contribution of Edoardo Piola Caselli, an Italian intellectual property scholar. Rejecting the many dualistic theories that existed at the time, he elaborated a unitary theory of copyright as a right with a twofold nature (economic and personal), whereby personal rights were provided with their own autonomous configuration. This definition of moral rights was crystallised in art. 16 of the copyright law of 1925 and was bound to receive immediate confirmation in the international scene.<sup>53</sup> At the Rome Conference for the revision of the Berne Convention in 1928, it was indeed the Italian delegation that proposed the introduction of a specific article concerning moral rights, destined to become the today well-known art. 6-*bis*. Through this article, for the first time moral rights received protection at the international level, and not only at the national one. The Italian delegation proposed a draft that would take care of the author's specific powers over their own work in the fields of paternity, publication, integrity and rights regulation after their death. However, art. 6-*bis*' final draft is rather general and it explicitly protects only the rights of paternity and integrity, referring to national legislations for a more specific regulation.<sup>54</sup> Perhaps the most vaguely-drafted provision of the article concerns protection of moral rights after the author's death, which is only granted "at least until the expiry

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<sup>52</sup> FERRETTI, *Rivoluzione d'Autore...*, 2015.

<sup>53</sup> Laura MOSCATI, "Creatività e diritti morali nella tutela delle opere dell'ingegno. Modelli europei e innovazione del sistema italiano", in Piro I., *Scritti per Alessandro Corbino*, Libellula Edizioni, 2016, pp. 207-235.

<sup>54</sup> Laura MOSCATI, "I diritti morali e la Conferenza di Roma del 1928 per la revisione della Convenzione di Berna", in Cazzetta G., *Quaderni fiorentini per la storia del pensiero giuridico moderno*, Giuffrè Editore, 2015, pp. 465-484.

of the economic rights”.<sup>55</sup> For this reason, we need to take a closer look to the text of the Copyright Law to fully understand how the question of moral rights is handled in Italy.

The Copyright Law mainly regulates moral rights between arts. 20 to 24. No limit of duration is set for the protection of the said rights, which are retained by the author even after the transfer of economic rights, and perpetually managed by their heirs after the author’s death (art. 23). In particular, the Copyright Law specifically mentions:

- the right of paternity, i.e. the right to claim authorship of the work with no time limit (art. 20);
- strictly connected to the previous one, the right of publishing the work under their own name, under a pseudonym or as an anonymous work (art. 21);
- the right of integrity, i.e. the right to object to any distortion, mutilation or other modification of the said work, which would be prejudicial to the author’s honour or reputation (art. 20);
- the right of keeping their work unpublished, in which case the work would be still granted protection (art. 24);
- the right to remove the work from the market, if serious moral reasons exist and provided that they refund those who hypothetically acquired the rights to reproduce or distribute the said work (arts. 142-143).<sup>56</sup>

### **1.3 The Book Publishing Contract**

Until now, we primarily focused on the figure of the author by defining how their work is granted protection in Italy and at the international level, without considering their relationship with the other two main stakeholders of the book industry, i.e. the disseminator and the audience. As a matter of fact, the process through which a book comes to life involves an intricate tangle of legal relationships among several actors, each constituting a different stage of the book value chain. By working together, creators, publishers, distributors, booksellers and many others make it possible for a book not only to be merely published and sold to the local audience, but also to fully exploit its potential and embark on an international journey by means of export to other countries; international rights sales; co-publication across different countries.

We can easily individuate how managing copyright transfer, thought of as the bundle of exclusive rights granted to the author, represents the common thread that runs through all the

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<sup>55</sup> Art. 6-*bis* of the Berne Convention.

<sup>56</sup> “I diritti morali”, *SIAE*, <https://www.siae.it/it/diritto-dautore/diritti-morali/i-diritti-morali-0>, accessed 29-04-2019.

stages of the book's journey towards cross-border lands, affecting how all the different actors of the industry are linked to each other. The importance of correct management of rights is so crucial that today several publishing houses have a rights department with a full-time staff devoted to making the most of the rights given to the publisher. Indeed, the transfer of rights from the author to the publisher represents the starting point of this long and complex journey. Therefore, it seems reasonable to focus now on the mechanisms governing this stage of the process, in order for the book to be finally published and made available to the audience.

As already mentioned, the relationship between author and publisher is usually regulated by means of a publishing contract.

According to the definition of the Italian Civil Code (art. 1321), a contract is an agreement between parties made in order to establish, regulate or extinguish an economic relationship and, as such, it determines the legal rights and obligations parties have to each other. Contracts exist both in the oral and in the written form, and in some cases, they can also be implied. However, according to the Copyright Law, any form of transfer of copyright has to be proven in a written form (art. 110).

In particular, the publishing agreement is regulated as a typical contract by Section III (arts. 118 to 141) of the Copyright Law, where it is defined as “the contract through which the author grants the publisher the right to publish at their own expenses the author's creative work”<sup>57</sup>. By analysing this first definition, we can immediately figure out that the essence of the publishing contract is built upon an exchange: intellectual property rights against the risk undertaken by the publisher to manage publication and distribution of the book for the sake of commercialisation.<sup>58</sup> This is what distinguishes a publishing contract from other similar contracts implying publication, such as a distribution contract, where publication is accomplished by selling copies of the book (already printed at the author's expense) to a distribution agency.<sup>59</sup>

In light of the above, we can therefore affirm that the publishing contract outlines the transfer of all or some of the exclusive rights the author has in relation to publication and on what terms. In this sense, we can say that the exclusive rights recognised to the author are “severable”, meaning that the author can choose which rights they want to give away and which ones they want to retain, and that transfer of one or more rights does not imply the transfer of other rights

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<sup>57</sup> Art. 118 of the Copyright Law.

<sup>58</sup> Mario FABIANI, “Contratto di edizione per le stampe ed e-book”, *Il diritto di autore*, Giuffrè Editore, 3, 2011, pp. 1-17.

<sup>59</sup> Mario FABIANI, “Edizione (contratto di)”, *Digesto delle discipline privatistiche. Sezione commerciale*, Torino, UTET, 1989, pp. 209-220.

not strictly related to those given to the publisher. One interesting case is represented by the so-called “joint works”, i.e. works realized by more than one author and whose copyright is co-owned, provided that their contribution is merged together into an indistinguishable and indiscernible whole.<sup>60</sup> In this case, the work cannot be published, modified or used in any form that differs from the first edition (if already published) without the consent of all authors. The only exception mentioned by the law is one of the authors’ unjustified refusal, in which case publication or modification of the work can be authorized by legal authorities.<sup>61</sup>

As disposed by the Copyright Law at art. 122 and by art. 2581 of the Civil Code, the publishing contract between the author and the publisher can take two forms, i.e. by edition and by deadline. The publishing contract by edition gives the publisher the right to realise one or more editions of the book within twenty years since the author has delivered the final manuscript. This kind of contract needs to specify the number of editions agreed upon and the number of copies for each edition. If this information is not provided, it will be implied that the contract provides for only one edition with a maximum number of copies of 2000. The publishing contract by deadline differs from the previous type in that the publisher is not bound by the number of editions, but only by a deadline that in any case cannot exceed twenty years. This kind of contract does not provide for a limited number of editions, but must specify the minimum number of copies per edition, otherwise the contract will be declared void.<sup>62</sup>

The Copyright Law and the Civil Code also regulate specific rights and obligations of the parties.<sup>63</sup> Despite the existence of some general provisions and typical clauses for this kind of contract that we will analyse in detail below, it is important to remember that there is no such thing as a “standard” publishing contract, as each contract is tailored according to the parties’ needs and the organisation of provisions and the language of the contract vary greatly. Moreover, we need to keep in mind that formulation of a contract’s terms is the result of the previous experience of the publisher in negotiating with other authors, and that might have highlighted the need to add specific clauses, in a sort of continuously updating process.<sup>64</sup>

The publishing contract represents the starting point of a relationship between the author and the publisher that will last for years, and runs this relationship throughout its duration. For this

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<sup>60</sup> Brianna L. SCHOFIELD et al., *Understanding and Negotiating Book Publication Contracts*, Authors Alliance, 2018.

<sup>61</sup> Art. 10 of the Copyright Law. The law also specifies that defence of the moral rights can be exercised individually by authors.

<sup>62</sup> Mario FABIANI, “Contratto di edizione per le stampe ed e-book”, *Il diritto di autore*, Giuffrè Editore, 2, 2010, pp. 329-341.

<sup>63</sup> Most of these rights and obligations will be outlined during our following analysis of the typical clauses of a publishing contract. For more information, see arts. 124-126 of the Copyright Law.

<sup>64</sup> SCHOFIELD et al., *Understanding and Negotiating Book Publication Contracts*, 2018.

reason, it requires the parties to carefully establish the terms of this relationship. As in many other complex contracts, before the signing of a definitive written agreement, at least two main stages can be identified, and these are negotiation and drafting of the agreement.

Negotiation (or pre-contractual phase) can be defined as “the whole of preparatory activity carried out by the parties before reaching the agreement”<sup>65</sup>. This is a very delicate stage of the contract formation, as parties need to balance their interests and reach a mutual understanding of their rights and obligations.

At this stage, parties’ respective bargaining power plays a fundamental role. The publisher is usually the actor retaining a higher bargaining power, especially if the author is not well-known or has never published any work before. As the author needs to build their reputation from scratch, this implies for the publisher a much more consistent investment in terms of promotion and advertising of the author’s book. In this case, it is likely the publisher will then try to impose their conditions and that the author’s ability to obtain the terms they hoped for will be very low. On the other hand, when the author is rather famous and experienced, the publisher will be more willing to accommodate the author’s needs, desiring to make the most out of their established reputation and also considering that the need to invest in promotion is not that high.<sup>66</sup> Nonetheless, both parties bring something of value on the table (the work and copyrights in the case of the author; and expertise in editing, distributing and marketing in the case of the publisher), and negotiation is aimed at building trust between the parties in order to exploit the value arising from the agreement in the best possible way. In this process made of proposing changes, accepting or refusing suggestions, the author might resort to the assistance of an agent or a literary lawyer, in order to better conduct negotiation of terms.

### 1.3.1 The Journey from the Author to the Publisher

During the negotiation, it is not unusual for the contract to undergo several provisional drafts, where parties modify and adjust the terms included in the template contract the publisher usually proposes to the author. Once the negotiation phase is terminated and parties have found a balance to their interests, the outcome is the final draft of the publishing contract.

We are now entering a stage where parties definitively crystallise in a written form their respective rights and obligations, therefore, it seems necessary to introduce a clarification. The publishing industry is composed of several distinct businesses and when it comes to the draft

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<sup>65</sup> Renzo CAVALIERI, Vincenzo SALVATORE, *An introduction to International Contract Law*, Torino, G. Giappichelli Editore, 2018, p. 18.

<sup>66</sup> CHIMIANTI, Laura, *Il diritto d’autore nella prassi contrattuale*, Giuffrè Editore, 2003.

of a publishing agreement, provisions can vary greatly depending on the publishing category<sup>67</sup> the book belongs to. For this reason, the following sections in this chapter will mainly refer to trade publishing.

As previously stated, there is not a “standard” contract that will apply to any author indistinctly, yet some typical clauses do exist in a publishing contract and concern two large categories of rights: primary rights, i.e. rights tightly connected to publication and commercialisation of the work; and subsidiary or secondary rights, which are connected to other forms of exploitation of the book. If not retained by the author, subsidiary rights are usually exploited by the publisher through licenses to third parties rather than to the publisher’s own activities.<sup>68</sup>

In particular, secondary rights might pertain to other formats in which the book can be published and sold, such as:

- Digital rights, i.e. the rights to publish and sell e-book versions of the book, multimedia versions enhanced with videos and other digital contents, etc.
- Audiobook rights, which usually cover all audible retail versions of the book, including several formats (e.g. abridged, unabridged and author-narrated) and media (e.g. CDs and digital downloads).
- Paperback rights, which would allow the publisher to print and sell the book in paperback form or to license this right to others.<sup>69</sup>

However, the secondary rights that interest us the most are those involving the cross-border commercialisation of the work:

- Foreign rights: although often used interchangeably with the term “translation rights”, foreign rights actually cover international uses of the book in its original language, such as book export to other countries, or reprint rights, i.e. the right to reprint or reproduce a work already published and sell it in its original language outside the country of origin.
- Translation rights: if transferred, these rights enable the publisher to translate the book into another language.<sup>70</sup>

Because they are closely related to foreign rights, these two sets of rights are usually taken care of within the same section of the contract. As a matter of fact, they are connected to different versions and editions of the same book, and should therefore be negotiated separately.

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<sup>67</sup> The three major publishing categories are: trade publishing (it includes fiction and non-fiction books for general audiences and children’s books); educational publishing (it includes materials realized for elementary and secondary students and for higher education); professional publishing (it includes materials addressed to post-graduate education, scientists, researchers and other professionals).

<sup>68</sup> WIPO, *WIPO Guide on the Licensing of Copyright and Related Rights*, 2004.

<sup>69</sup> SCHOFIELD et al., *Understanding and Negotiating Book Publication Contracts*, 2018.

<sup>70</sup> *Ibidem*.

As far as primary rights are concerned, a detailed analysis of the main clauses dealing with this category of rights is provided below.

### *Grant of Rights*

The grant of rights clause is usually the first clause to be listed in a publishing contract, right after the identification of the parties and the preamble, where the parties introduce their selves to each other and make the respective declarations. In particular, the author is required to guarantee that they are indeed the author of the book and the only owner of all economic rights pertaining to the work in question. Being the owner of these rights, the author also need to spell out their permission to the publisher to exploit the rights in question, and the legal authority to do so is provided to the publisher in the grant of rights clause.<sup>71</sup>

It is extremely important that the clause specifies all the primary rights subject to transfer. As the ultimate objective of a publishing agreement is the commercialisation of the book, the author clearly needs to consent to the realisation of a first edition, if the book is still unpublished, and to the reproduction and distribution of the work to the public, in order provide the publisher with the legal means necessary for the publication. In addition to these primary rights, the author may also want to transfer other subsidiary rights that allow further financial exploitation of their work. If not specified by the contract, the transfer does not include secondary rights, but parties might also decide to make this clear by inserting a rights reservation clause stipulating that all rights not specifically granted to the publisher are reserved to the author.<sup>72</sup>

Although the Copyright Law is rather generic on defining the ways in which the author can transfer economic rights to the publisher, we can affirm that there are three main choices available:

- **Assignment:** the use of this word in a grant of rights clause involves the transfer of ownership of one or more copyrights to a new owner. This means the author is not just giving the publisher permission to exploit economic rights, but they are actually handing over ownership to their copyrights, and the rights subject to the assignment can no longer be reverted to the author of the work, which cannot therefore exercise those rights anymore or license them to someone else.<sup>73</sup>
- **Exclusive license:** used extensively in book publishing contracts, an exclusive license gives the publisher the sole right to exercise the licensed rights. This solution is the most common

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<sup>71</sup> CHIMIENTI, *Il diritto d'autore nella prassi contrattuale*, 2003.

<sup>72</sup> FABIANI, "Edizione (contratto di)", 1989.

<sup>73</sup> SCHOFIELD et al., *Understanding and Negotiating Book Publication Contracts*, 2018.

as it does not transfer ownership of copyrights, but it just gives the publisher permission to exploit economic rights. The license does not modify in any way the relationship linking authors and their work, meaning that, after the transfer, the author is not impoverished, but rather is granted the possibility to receive profit from the license.<sup>74</sup> However, for the entire duration of the license, the author cannot stipulate with other publishers a publishing contract pertaining the same book that is subject to the exclusive license, and cannot license the rights in question to third parties.<sup>75</sup> Another important feature of the licensing practice is the non-transferable nature of the licensed rights, unless the licensee has been explicitly authorised by the licensor to do so in the contract.<sup>76</sup>

- Non-exclusive license: although not commonly used in book publishing contracts, authors can also license rights on a non-exclusive basis, i.e. they retain the ability to grant these rights to as many licensees as they desire. This solution is usually not as used as exclusive licensing because as already mentioned, when accepting to sign a publishing contract, publishers undertake the risk of managing the entire process of value creation of the book (from editing the manuscript to distribution). This is the reason why they often try to negotiate to obtain as many exclusive rights as they can, in order to make the most out of the market opportunities that will occur in the future.<sup>77</sup>

In drafting the grant of rights clause, parties might also decide to limit the scope or the duration of the transferred rights, regardless of the form of the transfer. Limits to the scope of the rights granted might include specification of the medium (e.g. print book or audiobook) and what the publisher can do with that medium (e.g. if the medium is print book the publisher might have the right to only publish the book in hardback or in paperback versions), or restriction to certain languages or geographical areas of the publisher's power to publish or sell the work.<sup>78</sup> An example of a grant of rights clause including these limitations is provided below:

The Author hereby grants to Publisher ... the exclusive right to publish the Work ... in the English language throughout the United States, its territories and possessions and the Philippine Republic, and Canada, and non-exclusively throughout the rest of the world.<sup>79</sup>

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<sup>74</sup> CHIMIENTI, *Il diritto d'autore nella prassi contrattuale*, 2003.

<sup>75</sup> FABIANI, "Edizione (contratto di)", 1989.

<sup>76</sup> CHIMIENTI, *Il diritto d'autore nella prassi contrattuale*, 2003.

<sup>77</sup> SCHOFIELD et al., *Understanding and Negotiating Book Publication Contracts*, 2018.

<sup>78</sup> FABIANI, "Edizione (contratto di)", 1989.

<sup>79</sup> SCHOFIELD et al., *Understanding and Negotiating Book Publication Contracts*, 2018, p. 65.

As we can read, in this particular contract the publisher is granted the exclusive right to publish the work in the mentioned geographical areas, but the author preferred to concede a non-exclusive license for the rest of the world.

As far as limits to the duration of the grant are concerned, we already know that the Copyright Law sets at twenty years the maximum duration for a publishing contract. However, parties can also decide to reduce the length of the grant, and in this way the author gains more control over the use of their work in the future, as all the rights granted will revert to them when the grant expires.

### *Payment*

Once parties have found a balance to their interests with regard to the extent of the grant of rights, they need to discuss methods of payment to the author. As disposed by art. 126 of the Copyright Law, the publisher has the obligation to provide the author with the agreed payment. The criteria for the determination of such payment are instead contained in art. 130.<sup>80</sup> In trade publishing, the usual method is based on royalties, i.e. the amount of money the author receives from the sales of their books, expressed as a percentage. Royalties can be calculated in three main ways, that is royalties based on the book's cover price (also called published price); royalties based on the publisher's net income from sales of the book (also called "price received"); and royalties based on the publisher's net profit.<sup>81</sup>

In the first case, royalty is a percentage of the cover price of the book (usually ranging from 10% to 15% for hardback editions and from 7% to 10% for paperback editions) multiplied by the number of copies sold. This is the most common way to calculate royalties in trade publishing, and the contract must specify if this is a fixed percentage on the effective sales or if the royalty rate increases as more copies of the book are sold, e.g. the starting royalty rate might be 10%, but after 2000 copies sold it escalates to 12%.<sup>82</sup>

According to art. 131 of the Copyright Law, the cover price is decided by the publisher, who also need to notify it to the author. If the author believes such price compromises the author's interests and the book's distribution, they can also reject the price fixed by the publisher.<sup>83</sup>

Net income royalties are based on the amount the publisher receives when they sell the book to retailers or distributors (net income per book × number of books sold × royalty percentage),

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<sup>80</sup> FABIANI, "Contratto di edizione per le stampe ed e-book, 2011.

<sup>81</sup> SCHOFIELD et al., *Understanding and Negotiating Book Publication Contracts*, 2018.

<sup>82</sup> CHIMIANTI, *Il diritto d'autore nella prassi contrattuale*, 2003.

<sup>83</sup> FABIANI, "Contratto di edizione per le stampe ed e-book, 2011.

whereas net profit royalties are based on the amount of profit that is left after costs associated with production of the book, such as editing, printing and shipping, are deducted.<sup>84</sup>

PUBLISHED PRICE	NET INCOME	NET PROFIT
Alfredo Author's book sells for \$20 list price at bookstores. His contract specifies a <b>12% published price royalty</b> , meaning he will earn \$2.40 per book sold.	Bookstores buy Alfredo Author's book whole-sale for \$16 each. His contract specifies a <b>12% net income royalty</b> . Therefore, he earns \$1.92 for every book the stores buy.	Alfredo Author's book sells for \$20, but the publisher incurs \$15.20 in costs, netting \$4.80 per book. His contract specifies a <b>12% net profits royalty rate</b> . He earns \$0.58 for each book sold.

Figure 1. Source: Schofield et al., 2018.

The figure above describes a situation in which for all three types of royalty calculation, the same royalty percentage has been used. As we can easily deduce, if this was the case, the author would have no reason to consent to a definition of royalties based on net income or net profit, because their earning would be significantly lower than a royalty based on published price. The same royalty rate cannot be applied if the calculation of royalty is based on net income, because the net income the publisher receives from each copy of the book is usually less than the cover price. In the case of net profit, the basis for calculation is even lower, as all the deductible costs are not included. Therefore, if the calculation of royalties is based on net income or on net profit, the royalty percentage needs to be increased in order for the author to obtain the same earning of a cover price royalty. The figure below shows the same situation of the figure above, with the modification of the royalty rate in the net income and net profit examples.

PUBLISHED PRICE	NET INCOME	NET PROFIT
Alfredo Author's book sells for \$20 list price at bookstores. His contract specifies a <b>12% published price royalty</b> , meaning he will earn \$2.40 per book sold.	Bookstores buy Alfredo Author's book whole-sale for \$16 each. His contract specifies a <b>15% net income royalty</b> . Therefore, he earns \$2.40 for every book the stores buy.	Alfredo Author's book sells for \$20, but the publisher incurs \$15.20 in costs, netting \$4.80 per book. His contract specifies a <b>50% net profits royalty rate</b> . He earns \$2.40 for each book sold.

Figure 2. Source: Schofield et al., 2018.

<sup>84</sup> SCHOFIELD et al., *Understanding and Negotiating Book Publication Contracts*, 2018.

Whichever will be the basis for the calculation of royalties, publishers may also consider, especially in trade publishing, paying authors an advance on this royalty, as a proof of their commitment and also to support the completion of the book. This advance is not to be considered as an additional fee, but as an up-front payment made against royalties that the book must recoup before the author can receive further payment.<sup>85</sup>

Determination of the advance depends on several factors, such as the level of author's reputation, the potential market size for the book and the potential competition, but it usually does not exceed half the amount that would have been earned in royalties if the book sold out all copies of the first printing. Moreover, the advance can also be broken into more payment, e.g. parties may agree that the author receives the first half when the contract is signed and the other half at delivery of the manuscript.

#### *Manuscript Delivery and Publication*

Book publishing agreements also include a manuscript delivery and publication clause. After having outlined the main characteristics of the manuscript (such as subject matter and length), this clause typically specifies a delivery date and delivery format the author is required to conform to. Nowadays, the format most often chosen is a digital copy emailed to the publisher, but some publishers might also require a paper copy. This point is covered rather generally by art. 125 of the Copyright Law, since it just states the author is obliged to submit the work according to the contract's provisions and in a format that does not hinder the printing process. As soon as the author submits the manuscript, the work is to be considered as concluded, and delivery to the publisher automatically marks the author's waiver to the right of keeping the work unpublished.<sup>86</sup> After having delivered the final version of their work, the author can also make further modifications, provided that these modifications do not alter the nature of the work itself (art. 129). Changes to the book often occur after the editing process has been carried out, in which case, if specified in the contract, the author has the right and obligation to correct the text according to the publisher's instructions within a set date (art. 125). Clearly, the complete work delivered by the author must not constitute plagiarism of other authors' works or of other works of the author themselves and must not damage third parties.<sup>87</sup>

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<sup>85</sup> Monica SEEBER, Richard BALKWILL, *Managing Intellectual Property in the Book Publishing Industry: A Business-Oriented Information Booklet*, WIPO, 2007.

<sup>86</sup> FABIANI, "Contratto di edizione per le stampe ed e-book, 2011.

<sup>87</sup> FABIANI, "Edizione (contratto di)", 1989.

By delivering the manuscript, the author accepts the publication of the work. As stated by art. 126 of the Copyright Law, publication represents an obligation for the publisher, who must proceed to publish the work in compliance with the original manuscript and following the correct editorial rules. Parties are free to agree on a set publication date, however, art. 127 of the Copyright Law specifies that the term for publication cannot exceed two years from the manuscript submission, and any other set date exceeding these terms will be enough to declare the contract void.

### *Termination*

The most natural cause for termination of a publishing contract is the expiration of the terms agreed by the parties, even if the book still has potential in the market. At this point, parties are presented with two choices: they may either renew the contract and let the previously agreed terms to continue their effects, or they may choose to part ways.<sup>88</sup> Should they decide to follow the second option, when the contract expires all the rights transferred exclusively or non-exclusively to the publisher revert back to the author, who can then choose to stipulate a new contract with another publisher.

Apart from the natural expiration of the provisions contained in the agreement, art. 134 of the Copyright Law provides quite a specific list of cases in which early termination of the contract is contemplated. We hereby briefly report them:

- Continuation of the contract is impeded by the failure of the book on the market, not to be intended as a negative judgement by the critics or the public, but as the work being inappropriate to distribution to the public or to economic exploitation;
- The author's death before the work is completed;
- The work cannot be published, reproduced or distributed to the public following a decision by the competent legal authorities or due to legal provisions;
- The publisher fails to meet the due date for publication, in which case they are obliged to return the original manuscript and to refund the author;
- In case the author decides, if serious moral reasons subsist, to exercise their moral right to remove the work from the market.

Following these reasons for early termination, the Copyright Law also specifies that bankruptcy of the publisher does not constitute a reason for concluding the contract.

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<sup>88</sup> CHIMIANTI, *Il diritto d'autore nella prassi contrattuale*, 2003.

Whichever the cause for termination of the contract is, following the suspension of the contractual relationships the publisher no longer possesses the right to financially exploit the work in question. At this point, an important matter arises: what is the publisher to do with the remainders of the work printed before the contract's expiration?

If parties had this point covered in drafting the contract, they might have agreed on permitting the publisher to sell remainders until the author stipulates a new contract with another publisher, provided that the publisher also continues to pay the due royalties to them. However, the matter turns out to be very thorny if parties did not provide in the contract any clarification, as the question is subject to two contrasting sentences by the Court of Rome and by the Supreme Court of Cassation, pronounced respectively in 1998 and in 1977. According to the most recent of these verdicts, if the contract does not include any provision on the sale of remainders after expiration, this can be judged as an illegitimate activity as a result of the above-mentioned rights reversion to the author; on the other hand, the Supreme Court of Cassation declared it legitimate, considering it as a residual effect of the contract.<sup>89</sup>

Far be it from me to state what is lawful and what is not, I would like to conclude this section with some personal considerations: in case the author has granted the publisher an exclusive license, this means the author has the right to operate in the market with no competition. Therefore, in order to allow the new publisher to market a new edition of the same book without having competition, remainders of the previous editions should not be commercialised anymore. On the other side, however, the new publisher has to consider that they are not publishing the work for the first time and that the work has already been made available to the public in its first edition. Consequently, the market for that book has already lost some of its potentials. Unfortunately, as of today, our question has no right or wrong answer, which is why, when drafting a publishing contract, parties should always state very clearly what is to happen after the end of their contractual relationship.

#### **1.4 International Book Fairs: A Bridge Towards Internationalisation**

In the following chapters, we will examine in detail the next stages of our book's journey. By analysing the specificities of the local publishing environment, we will finally land in China, discovering how copyright is regulated there and how the country's copyright law fits in with international conventions. This is a necessary step that every author or publisher willing to commercialise a book cross-border needs to take care of: the perfect internationalisation

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<sup>89</sup> CHIMIENTI, *Il diritto d'autore nella prassi contrattuale*, 2003.

strategy entails a deep knowledge of the target country, otherwise our book is unlikely to reach its final destination. However, as in any long journey worthy of its name, our book cannot just expect to jump from Europe to China in a minute, but it needs a bridge guiding its path.

In the publishing industry, a valuable ally in encouraging the internationalisation of books and in gaining access to new markets is represented by international book fairs. Acting as a sort of international beehive, book fairs represent a dynamic “catalyst that propels rights deals towards completion”<sup>90</sup>, allowing publishers, authors, agents and other professionals of the industry coming from all around the world to conduct business and establish personal connections. The major function of book fairs is therefore to provide an international marketplace where rights deals are closed in person, and where authors and books are showcased, but they also serve educational purposes, allowing book trade professionals to catch up with the latest trends in publishing by means of seminars, panel discussions and presentations.

Book fairs come in different sizes and shapes. Some of them only allow professionals to participate, such as the London Book Fair, equipped with an International Rights Centre (shown in the figure on the right), a space entirely dedicated to conduct business-to-business negotiations; others are designed to welcome the general public; there also those fairs



Figure 3. The International Rights Centre at the London Book Fair, 2016. (Source: [www.londonbookfair.co.uk](http://www.londonbookfair.co.uk))

with a hybrid form, which alternate professional and public days or separate business-to-business and business-to-consumer activities into different areas. This is the case of the Frankfurt Book Fair, which throughout the years has established itself as the largest international book fair.

Italy is the home country to two of the most important international book fairs, i.e. the Bologna Children’s Book Fair and the Turin International Book Fair. The former was established in 1964, and since then it has grown exponentially until it became the most important international event dedicated to children publishing; the latter is considered the second largest book fair in Europe after the Frankfurt Book Fair, and it was founded in 1988.

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<sup>90</sup> “IPA Global Book Fair Report”, *International Publishers Association*, <https://www.internationalpublishers.org/news/industry-news/520-ipa-releases-global-book-fairs-report-2017>, 2017, accessed 13-03-2019.

On the other side, being today the second largest book market of the world in terms of publishing revenue<sup>91</sup>, China has some quite important book fairs too. In particular, the Beijing International Book Fair is the leader in the local market. Constantly adapting to the rapidly developing environment, this fair has developed throughout years a package of business networking activities to attract international publishing houses. Considering the different structure and regulation of the Chinese publishing, the fair also proposes itself as a consultant to publishers desiring to enter the Chinese market. Indeed, it offers a variety of value-added services, such as the “Enter the Chinese Market” training programme, aimed to disclose to foreign publishers the local market basic rules, including regulations, exporting to China and visiting bookstores and publishing houses.<sup>92</sup>

To conclude, in this age made of digital networking and video conferencing, one might question the value and the future role of traditional book fairs. However, according to a report released in 2015 by the International Publishers Association (IPA), international book fairs are still the pumping heart of the publishing industry, and book trade professionals still prefer to establish an eye-to-eye contact when dealing with book rights. In other words, in a world dominated by technology and business developed in remote, book fairs represent real-life moments, where relationships are formed and hands are shaken.<sup>93</sup>

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<sup>91</sup> Rüdiger WISCHENBART, “The Business of Books 2017: It’s all about the consumers”, *Frankfurter Buchmesse*, <https://www.buchmesse.de/files/media/pdf/whitepaper-the-business-of-books-frankfurter-buchmesse.pdf>, 2017, accessed 02-05-2019.

<sup>92</sup> “IPA World Book Fairs Report” *International Publishers Association*, <https://www.internationalpublishers.org/images/data-statistics/IPAWorldBookFairReport2016.pdf>, 2016, accessed 13-03-2019.

<sup>93</sup> “The Future of Book Fairs: An IPA Special Report”, *International Publishers Association*, <https://www.internationalpublishers.org/images/news/BookFairs.pdf>, 2015, accessed 13-03-2019.

## CHAPTER 2

### Breaking Through the Great Wall

Before dealing with the concrete ways in which our book lands in China, this chapter will briefly examine the developments of copyright regulation in China from the first copyright law in 1910 to the Copyright Law of the People's Republic of China, enforced in 1990 and still in effect, discussing also China's compliance with the aforementioned international conventions. The second half on the chapter will focus on the main features and regulation of the Chinese publishing environment. As already mentioned, this preliminary analysis will allow us to better understand the challenges but also the opportunities for the cross-border commercialisation of literary works, and, most importantly, what are the implications for the management of the book's rights.

#### 2.1 Copyright Regulation in China

The word *zhuzuoquan* 著作权<sup>1</sup> was first introduced in China in the early 1900s: at that time, copyright practices had already been established in the Chinese publishing industry, as a result of the emergence of commercial presses and publishing houses modelled after the Western ones, with copyright at the core of the author-printer relationship. The first Chinese publishing house to ever stipulate royalty contracts with authors or translators was the Commercial Press, introducing therefore the practice of copyright transfer agreements years before the drafting of the first copyright law.<sup>2</sup>

In order to fight the first episodes of book piracy that had started to take place, Chinese authors began to ask for protection of their rights, and copyright regulation was also supported and hoped for by scholars as a means to facilitate and encourage imports and translations of Western works to China. However, in the end it was more foreign pressure than the local one that spurred the introduction of a formal copyright regulation in 1910<sup>3</sup>: the United States and Japan started

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<sup>1</sup> In Chinese, both the terms *zhuzuoquan* 著作权 and *banquan* 版权 are used today. The first one can be translated as "authors' rights", while the second is the literal translation of "copyright".

<sup>2</sup> DONG, Han, "Can I Own My Writings and Sell Them Too? A Brief History of Copyright in China from the Late Qing Era to Mao's China", *Chinese Journal of Communication*, 3, 3, 2010, pp. 329-346.

<sup>3</sup> Lucy MONTGOMERY, XIANG Ren, "The Changing Role of Copyright in China's Emergent Media Economy", *Routledge Handbook of Chinese Media*, Routledge, 2015, pp. 315-329.

to ask for a copyright section to be included in their commercial agreements with China, as a way to protect their nationals' work due to the rampant bursting out of unauthorised reprinting and republication of Western works; in addition to this, France, together with the other Western countries, began to urge China's entrance into international copyright agreements.<sup>4</sup>

This succession of events eventually brought to the promulgation of the first copyright law in 1910, modelled after the Japanese copyright law and resembling Western laws in style and provisions.<sup>5</sup>

The copyright law of 1910 formally recognised for the first time protection of authors' copyright, including specific terms for the duration of the protection, rights granted to authors, cases of infringement and the consequent penalties.<sup>6</sup> However, the breaking out of the Xinhai Revolution in 1911 and the following collapse of the Imperial system did not let this law to really take effect. After this first attempt to regulation, other two copyright laws based on the previous one were drafted and enforced in 1915 and 1928, respectively by the government of the Northern Warlords of China and by the Nationalist government of the Guomindang.

However,

[...] the Guomindang, or Nationalist, government began to impose censorship upon the literary and artistic worlds in the 1930s, [and] it used copyright laws to prevent the dissemination of works it deemed harmful to the state and to social order. Since all works had to be registered to obtain a copyright, the process offered a natural vehicle through which the state could deny the right to publish. What started out as an idea imported from the West to protect the rights of writers and artists became an instrument through which the Chinese state limited those rights in accordance with traditional Chinese thought.<sup>7</sup>

In 1949, after having won the civil war against the Nationalists, the Chinese Communist Party (CCP) led by Mao Zedong announced the establishment of the People's Republic of China (PRC). Deeply determined to set up a regime that did not involve the protection of any property rights, Mao abolished the previous copyright law to introduce instead a limited system of "authors' rights" based on *gaofei* 稿费, i.e. royalties paid to writers and artists for publication. In this way, Mao guaranteed them a salary in exchange of works that would help to convey the ideological messages of the Party, controlling at the same time what was printed and published,

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<sup>4</sup> *Ibidem.*

<sup>5</sup> *Ibidem.*

<sup>6</sup> MONTGOMERY, XIANG, "The Changing Role of Copyright in China's Emergent Media Economy", 2015.

<sup>7</sup> OKSENBERG et al., "Advancing Intellectual Property Rights...", 1996.

since any right to exploit the published works resided with the State.<sup>8</sup> Meanwhile, the State also proceeded to nationalise all publishing houses; this is a very crucial point in our overview of the copyright developments, because, as we will see in the following sections, today all publishing houses in China are still State-run, and this kind of control clearly entails implications for local and foreign actors of the publishing industry.

The ideological role played by writers sharpened during the Cultural Revolution (1966-1976), when the only form of expression permitted was to perpetuate the Party's values, idolise the Revolution and worship Chairman Mao. Many works were considered to carry politically "wrong" ideas and were banned, coupled with the prosecution of their writers. With regard to the books survived to this literary massacre, and that conformed to the Party's expectations, they had to circulate as much as possible to spread the principles of the Revolution. In this context, there simply was no room for a copyright system based on protection of private property rights and economic exploitation of literary works for the purpose of self-enrichment, in accordance with the Socialist idea that art and literature only existed for the amusement of the masses, rather than to create individual profit. In other words, Mao's idea was that protection of intellectual property would have meant protection of a "bourgeois right" and would have marked China's embarkation on a "capitalist road".<sup>9</sup>

### 2.1.1 The Copyright Law of the People's Republic of China

Mao's prediction was not long delayed; after Mao's death in 1976, China entered a new stage of its history under the lead of Mao's successor Deng Xiaoping, whose primary objectives were the restoration of a modern legal system and market-oriented reforms aimed at re-establishing China's role in the international scene after years of closure. In 1978, Deng announced the so-called *gaigekai fang zhengce* 改革开放政策 or Open Door Policy and, in order to strengthen China's commercial relationships with the abroad, after China's entrance into the WIPO in 1980, recognition of intellectual property rights was enforced by means of a consistent array of laws and regulations.

In 1990, the Standing Committee of the National People's Congress approved the "Copyright Law of the People's Republic of China"<sup>10</sup> (hereinafter Copyright Law of the PRC), which still regulates copyright in China together with the "Regulations on the Implementation of the

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<sup>8</sup> MONTGOMERY, XIANG, "The Changing Role of Copyright in China's Emergent Media Economy", 2015.

<sup>9</sup> OKSENBURG et al., "Advancing Intellectual Property Rights...", 1996.

<sup>10</sup> *Zhonghua Renmin Gongheguo banquan fa* 中华人民共和国版权法 or *Zhonghua Renmin Gongheguo zhuzuoquan fa* 中华人民共和国著作权法 in Chinese.

Copyright Law of the People’s Republic of China” (hereinafter Regulations), issued in 1992 with the purpose of implementing the Berne Convention. The Copyright Law of the PRC has been amended two times since 1990, respectively in 2001 and 2010, whereas the Regulations count three revisions in 2002, 2011 and lastly in 2013.

Although in 1990 China had not implemented the Berne Convention yet, the first draft of the Copyright Law of the PRC was essentially in compliance with the underlying principles of the said convention, in that it confirmed the principle of automatic protection (art. 11)<sup>11</sup>, set the duration of such protection at the lifetime of the author plus fifty years after their death (art. 21) and also recognised both economic and moral rights (art. 10). With particular reference to this last point, we discover that China is unexpectedly keen on valorising moral rights, which, concerning the most personal sphere of the author’s reputation, can easily fit in a culture that has always given much importance to honour and social status. This is why in copyrights disputes in China, moral claims advanced by the author often tend to override economic and monetary claims.<sup>12</sup>

The text of the Copyright Law of the PRC is divided into six main sections, namely “General Provisions”, “Copyright”, “Copyright Licensing and Assignment Contracts”, “Publication, Performance, Sound Recording, Video Recording and Broadcasting”, “Legal Liabilities and Enforcement Measures”, and “Supplementary Provisions”.<sup>13</sup>

Serving as a sort of preamble to the following articles, art. 1 recites as follows:

This Law is enacted, in accordance with the Constitution, for the purposes of protecting the copyright of authors in their literary, artistic and scientific works and the copyright-related rights and interests, of encouraging the creation and dissemination of works which would contribute to the construction of socialist spiritual and material civilization, and of promoting the development and prosperity of the socialist culture and science.<sup>14</sup>

Echoing the ideological role that has always been reserved to art and literature, even in the text of its latest revision, the law emblematically stresses these works’ contribution to the promotion

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<sup>11</sup> As entailed by the principle of automatic protection, registration of copyright in China is not mandatory for the work to receive protection. However, it is possible to proceed to a voluntary registration and, considering the complexity of the Chinese business and legal environment, in some cases this is strongly recommended, especially when one intends to license the copyright in question. All procedures related to copyright registration in China are administered by the Copyright Protection Centre of China.

<sup>12</sup> TANG, *Copyright and the Public Interest in China*, 2009.

<sup>13</sup> “Zhonghua Renmin Gongheguo zhuzuoquan fa” 中华人民共和国著作权法 (Copyright Law of the People’s Republic of China), *Quanguo Renmin Daibiao Dahui*, [http://www.npc.gov.cn/npc/xinwen/2010-02/26/content\\_1544852.htm](http://www.npc.gov.cn/npc/xinwen/2010-02/26/content_1544852.htm), 2010, accessed 15-03-2019.

<sup>14</sup> “Zhonghua Renmin Gongheguo zhuzuoquan fa” 中华人民共和国著作权法 (Copyright Law of the People’s Republic of China), art.1. 2010.

of a *shehuizhuyi wenhua* 社会主义文化, i.e. a Socialist culture, which is a crucial trait constantly referred to in the drafting of Chinese laws. The fact that such reference is inserted in the opening article of the law can be read as a strong statement of identity from the PRC, notwithstanding its desire to open up to the rest of the world.

By conducting a comparative analysis of the 1990 draft and the last revision of 2010, we can highlight some changes that are worth mentioning. For instance, in the revision of 2010, art. 2 of the Copyright Law of the PRC extends the protection to works realised by foreigners regardless the place where the work has been published for the first time, and regardless the existence of treaties between China and the foreigner's country and membership to international conventions that China is party to. This surely represents a step forward with respect to the draft of 1990, where protection was only granted to works realised by Chinese citizens, legal persons and other organisations, and to works of foreigners provided that they were first published in the territory of the PRC or, if published outside PRC, that the foreigner's country of origin and China were parties to a bilateral agreement or co-members of an international treaty.

Perhaps the most impressive change to the draft of 1990 refers to art. 4. In the first version of the law, the first paragraph of this article recited that works whose publication or distribution was prohibited by law were not protected by the Copyright Law of the PRC. China has very strict rules about what that can be published and distributed to the public, rejecting in particular violent, pornographic and ideologically subversive contents. As a matter of fact, the formulation of this article raised many complaints, mainly because, as we stressed several times, works receive protection at the very moment of the creation, and the fact that one country's law prohibits their publication and distribution does not hinder their right to receive such protection.<sup>15</sup> Furthermore, the formulation of the article in question, as it was in the 1990 draft, also used to make it particularly difficult for foreign works to be published and reach the public of PRC, since historically, in the Party's view, it has always been foreign works that carried "dangerous" contents or ideas. As a result, in the revision of 2010, art. 4 has been rewritten as follows:

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<sup>15</sup> GAO, Yu 高玉, "Chilai de zhuzuoquan fa xiuding" 迟来的著作权法修订 (The Late Revision of the Copyright Law), *Caixin*, 2010, <http://magazine.caixin.com/2010-02-28/100121303.html?sourceEntityId=100408410>, accessed 1-03-2019.

Copyright owners, in exercising their copyright, shall not violate the Constitution or laws or prejudice the public interests. The State shall supervise and manage the publication or distribution of works, in accordance with the law.<sup>16</sup>

As we can read, the “incriminated” sentence has been removed and substituted by a milder one generally stating that copyright owners must abide by the laws of the PRC and, instead of precluding protection to dangerous contents, their publication and distribution is remitted to the State’s judgement.

In addition to these dispositions, it is also worth noticing that the third section of the Copyright Law of the PRC thoroughly regulates the aspects related to the licensing or assignment of primary and subsidiary rights (arts. 24 to 29), and what are the clauses that these contracts must necessarily include. For instance, in the case of a licensing contract, the draft must specify the following elements:

- the category of right licensed for exploitation of the work covered by the license;
- the exclusive or non-exclusive nature of the right to exploit the work covered by the license;
- the geographic area and term of the license;
- the standard of remuneration and the method of payment;
- the liability in case of breach of the contract;<sup>17</sup>

We can clearly notice how, with respect to the Italian Copyright Law, the Copyright Law of the PRC leaves much less room to the contractual autonomy of the parties, and tends to set specific standards for those kinds of contract involving a transfer of copyright.

A separate subsection in the fourth section is finally dedicated to the publishing contract (arts. 30 to 36), where rights and obligations of the publisher and the author are outlined, largely corresponding to those provided by the Italian Copyright Law.

### 2.1.2 China’s Compliance with International Conventions

China’s desire to regain its international role did not just result in a formal domestic regulation of copyright. As part of the Open Door Policy aimed at promoting economic development and international trade, China also entered into a series of bilateral and multilateral agreements concerning copyright.

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<sup>16</sup> “Zhonghua Renmin Gongheguo zhuzuoquan fa” 中华人民共和国著作权法 (Copyright Law of the People’s Republic of China), art. 4, 2010.

<sup>17</sup> “Zhonghua Renmin Gongheguo zhuzuoquan fa” 中华人民共和国著作权法 (Copyright Law of the People’s Republic of China), art. 24, 2010.

In 1992, the PRC signed a Memorandum of Understanding (MOU) on intellectual property with the United States, one of the countries that had pushed China the most for copyright recognition. According to the U.S., the ratio behind this agreement was that the alignment of China with the principles of the major international copyright conventions would reduce cases of copyright infringement, and consequently would encourage U.S. companies to enter the Chinese market. Therefore, as established by the agreement, China became party to the Berne Convention in 1992 and to the Universal Copyright Convention in 1993.<sup>18</sup>

In the following years, in order to meet the requirements needed to be admitted into the WTO, the PRC continued to amend and improve its copyright law; this resulted, as we have seen in the previous section, in the 2001 revision of the Copyright Law of the PRC, whose main amendments include extension of the scope of objects that are protected by copyright, a more specific classification of the rights granted to copyright owners, and provisions to regulate contracts for copyright assignment. It took fifteen years of negotiations and the drafting of a specific accession protocol<sup>19</sup> to admit China into the WTO. Finally, on 11<sup>th</sup> December 2001, the PRC finally became a member of the WTO and, consequently, also party to the TRIPS Agreement.

Since 2001, the Copyright Law of the PRC has been essentially compliant with international standards, and China's efforts to improve its copyright system are acknowledgeable.<sup>20</sup> However, while the law theoretically prohibits unauthorised use of copyright, China is simply not ready yet to really accept that protection of individual rights takes over the public interest, and tends to favour the latter at the detriment of the privatisation of intellectual property.<sup>21</sup> As a result of the attachment to such principles, copyright infringements and piracy are still one of the major plagues affecting the country. According to the "Create: U.S. Chamber International Intellectual Property Index"<sup>22</sup> realised by the U.S. Chamber of Commerce in 2018, in the category of copyright and related rights, China only positions itself as 29<sup>th</sup> out of 50 countries analysed; although its standards of copyright protection are much higher than other developing

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<sup>18</sup> MONTGOMERY, XIANG, "The Changing Role of Copyright in China's Emergent Media Economy", 2015.

<sup>19</sup> Full text of the "Protocol on the Accession of the People's Republic of China" of the WTO is available at: [https://www.wto.org/english/thewto\\_e/acc\\_e/completeacc\\_e.htm#list](https://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm#list).

<sup>20</sup> TAO Liu, BATES Benjamin J., "Copyright in China: Implementation Issues in Electronic Media", *Media and Global Divides*, 2008.

<sup>21</sup> It is interesting to notice that the Copyright Law of the PRC concretely faces the impact of such inclination to give importance more to the public interest than to individual rights. In art. 22 concerning the limitations on copyright (i.e. cases in which copyrighted material can be used without the permission of the owner), with respect to the Italian Copyright Law, the Copyright Law of the PRC provides a more extensive list of cases in which limitations on copyright apply, e.g. translations into minority languages or publication of Braille versions.

<sup>22</sup> Full report of the "Create: U.S. Chamber International Intellectual Property Index" is available at: [http://globalipcenter.wpengine.com/wp-content/uploads/2018/02/GIPC\\_IP\\_Index\\_2018.pdf](http://globalipcenter.wpengine.com/wp-content/uploads/2018/02/GIPC_IP_Index_2018.pdf)

countries, the score obtained by the PRC barely reaches 2.28 (when the maximum is 7), a clear signal that its legal mechanisms to fight copyright infringements and piracy are not up to the Western standards yet. After all, as an old Chinese saying recites, “to steal a book in an elegant offence”.<sup>23</sup>

## 2.2 The Chinese Publishing Industry

### 2.2.1 The Numbers of the Chinese Book Market

Since the beginning of the Open Door Policy in 1976, the path towards China’s internationalisation has been long and draining; several results have already been achieved, but the process is still on-going. With almost 1.4 billion people, China has not only become the largest market in the world, but has also undergone profound socioeconomic changes: its increasing interaction with the abroad propelled the formation of a confident and educated middle class craving for Western brands and culture, but at the same time aware of their cultural roots.

In this context, after the crackdown of the Cultural Revolution, the book publishing industry managed to rise again from its own ashes until China became one of the largest publishing markets in the world. In 2015, China accounted for 17% of the global publishing revenue, being second only to the United States (33%), and in recent years it is experiencing a continuous growth, both in terms of title production and in terms of publishers’ sales.<sup>24</sup>

According to the analysis conducted by *PublishDrive*, the total volume of the Chinese book market is estimated to be between 20 and 23 billion US\$ in 2016, with an increase of 12,3% in the market’s total retail sales between 2015 and 2016. Furthermore, backed up by the Government’s campaigns for the promotion of reading, 58.4% of the Chinese population regularly reads books.<sup>25</sup> But what exactly do they read?

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<sup>23</sup> William P. ALFORD, *To Steal a Book in an Elegant Offense: Intellectual Property Law in Chinese Civilization*, Stanford, Stanford University Press, 1995.

<sup>24</sup> ZHENG Liu, “A World of Division and Interdependence: A sociological interpretation of the book-publishing field in China”, *Logos*, 29, 1, 2018, pp. 7-17.

<sup>25</sup> “Chinese Book Market 2018: an Overview of Trends”, *PublishDrive*, 2018, <https://publishdrive.com/overview-chinese-book-market/>, accessed 28-03-2019.

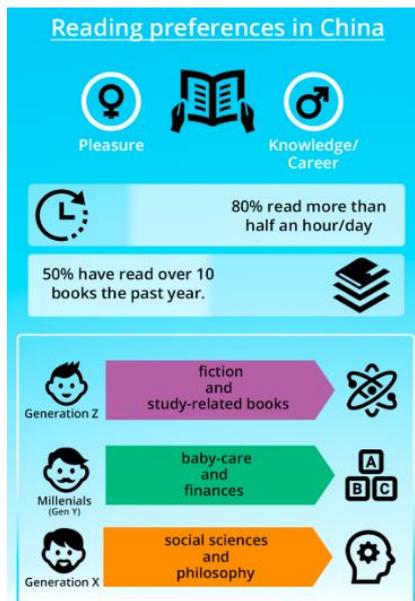


Figure 4. Source: PublishDrive, 2018.

### Brick-and-Mortar Sales

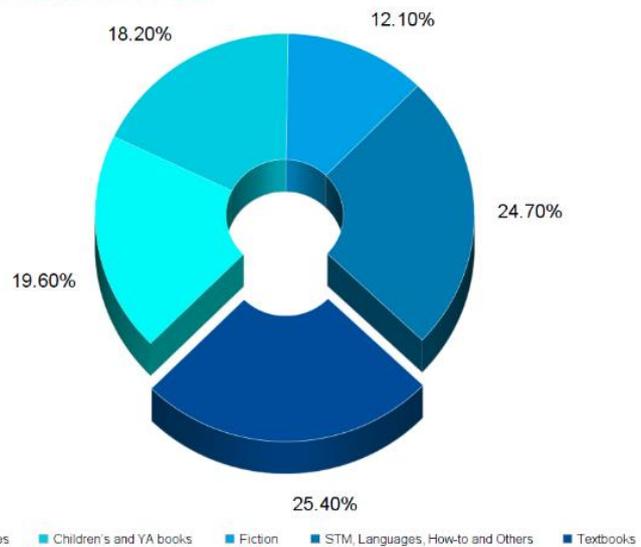


Figure 5. Source: PublishDrive, 2018.

Figure 4 above accurately summarises reading preferences in China as resulted from the survey. As we can see, China happens to have a large reading population, with 80% of people reading more than half an hour per day, and with 50% having read at least 10 books in the past year. Below, the population is divided into generations<sup>26</sup> and their preferred genres are displayed. Figure 5 shows the most popular genres for brick-and-mortar sales in China: Textbooks, Social sciences, Children’s and Young Adult books, and Fiction lead the way, respectively with a share of 25.4%, 19.6%, 18.2% and 12.1%. However, as outlined in *PublishDrive’s* survey, when it comes to online book sales, the situation is quite different: Social sciences is the most popular genre with a share of 26.6%, followed by Children’s and Young Adult books (21.9%), while Fiction (13.4%) and Textbooks (9.8%) close behind.<sup>27</sup>

Figure 5 above also allows us to collect further information: unlike Western publishers, Chinese publishing houses are not divided into the three categories of trade, educational and professional publishing. As a matter of fact, as explained by Xin, Chinese publishers are classified into eight main categories: social sciences, science and technology, literature and art, children’s books, Chinese classics, education, academic, and reference and encyclopaedias.<sup>28</sup>

According to the reports of *China Open Book*, leader data provider for the book industry, China’s interest towards foreign books is also increasing: in 2015, the percentage of foreign

<sup>26</sup> Respectively, Generation Z identifies people born between 1995 and 2012; Generation Y or Millennials identifies those born between 1980 and 1994; and Generation X identifies those born between 1960 and 1979.

<sup>27</sup> *PublishDrive*, 2018.

<sup>28</sup> XIN Guangwei, *Publishing in China: An Essential Guide*, Cengage Learning, 2010.

translated books was as high as 21%, with British and American authors alone accounting for 57% of it. Children's and Young Adult books represented the category with more translated titles, and its growing popularity also allowed Italy to access the Chinese book market, with 600 titles sold by Italian publishers at the Beijing Book Fair of 2016.<sup>29</sup>

Most of the books available on the Chinese market are sold at a price between 4.5 and 7 euros, with frequent promotions and discount campaigns.<sup>30</sup>

Despite the increasing rate at which the Chinese publishing industry is growing, there exist some serious regional discrepancies in the publishing capacity of the country, and this is due to the economic disparity and the uneven distribution of population that constitute two of contemporary China's most alarming features. Broadly speaking, the coastal area is much more developed than the central and western ones, and especially in the last 30 years, this situation has contributed to the phenomenon of fast-growing and aggressive urbanisation towards the major cities. In particular, Beijing is the centre of book publishing, with 40% of the publishing houses located in the capital and approximately 125,400 titles published every year; Shanghai follows behind with 7% of the country's total publishing houses and 17,000 published titles per year. After Shanghai, the provinces of Jiangsu, Guangdong and Zhejiang close the line of the most developed regions in publishing.<sup>31</sup>

## 2.2.2 Regulation of the Publishing Industry

Unlike other industries that have faced a progressive liberalisation throughout the last years, the publishing industry in China remains under the strict control of the State.

As of today, publication in China is mainly regulated by the "Regulations on the Administration of Publishing" (hereinafter Publishing Regulations), adopted in 2001 and lastly amended in 2011. According to this document, in order to start a publishing business, it is necessary to obtain the Government's permission, which also exercises centralised planning and control over the total number, structure, and deployment of all publishing establishments. This means that when the formation of a publishing unit is approved, the Government also sets the topics and publication types that the publisher in question is allowed to operate in, with no exception to the approved limits. Governmental control is implemented on three main levels, i.e. the State Council, the Provincial Bureaus, and the City or Prefecture Offices.

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<sup>29</sup> Antonio LOLLI, "Cina: fotografia di un mercato editoriale in continua espansione", *Giornale della Libreria*, <http://www.giornaledellalibreria.it/news-mercato-cina-fotografia-di-un-mercato-editoriale-in-continua-espansione-2494.html>, 2016, accessed 28-05-2019.

<sup>30</sup> LOLLI, "Cina: fotografia di un mercato editoriale in continua espansione", 2016.

<sup>31</sup> *Ibidem*.

As already mentioned, the publication of works including “sensitive” contents is prohibited by law. Art. 26 of the Publishing Regulations provides a thorough enumeration of the prohibited topics, including those opposing the basic principles established in the Constitution; those endangering the unification, sovereignty and territorial integrity of the State; those which propagate evil cults or superstition; those which propagate obscenity, gambling, violence or instigate crimes; and those which endanger public ethics or the fine national cultural traditions.<sup>32</sup>

The official agency designated by the Government for the purpose of supervising publication is the State Administration of Press, Publication, Radio, Film and Television (SAPPRFT), resulted from the merger of the former General Administration of Press and Publication (GAPP) and the State Administration of Radio, Film and Television (SARFT) in 2013. Specifically, among its several duties, SAPPRFT is in charge of approving the formation of publishing entities, drafting and implementing regulations concerning press, publication and copyright management and, above all, deciding on the issue of International Standard Book Numbers (ISBNs)<sup>33</sup>. Only those publishing houses that have been approved by SAPPRFT can be issued ISBNs, and selling books without a valid ISBN can result in criminal charges; therefore, private publishing businesses are not allowed in China, since, with no legal access to ISBNs, they have no legal right to publish books. Nonetheless, quasi-private publishers do exist in the form of “cultural agencies” cooperating with state-run publishing houses to conduct their business.

As of today, there are about 590 state publishers in China, which can be divided into two main types according to the *tiao-kuai* 条块 principle permeating the whole governmental administration in the PRC. The term *tiao* refers to the vertical lines of authority linking ministries and governmental offices to the central Government, whereas *kuai* refers to the horizontal level of authority connecting provincial or local governments.<sup>34</sup> This principle also regulates the organisational structure of publishing houses as being formed either with vertical or horizontal arrangements. In the first case, the central Government considers each ministry or governmental office as a *tiao*, and approves the formation of one publishing unit within each *tiao*. As a result, these “central publishers” are each supervised by one ministry or other

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<sup>32</sup> “Chuban guanli tiaoli” 出版管理条例 (Regulations on the Administration of Publication), WIPO, 2011, <https://wipolex.wipo.int/en/text/216497>, accessed 28-03-2019.

<sup>33</sup> Since 1970, the ISBN system has been recognised as the international classification and identification system for the book trade, in the form of a code accompanying publications throughout production and distribution. The use of ISBNs allows a better management of inventory and monitoring of sales data, facilitating also the management of book rights.

<sup>34</sup> Andrew MERTHA, “China’s ‘Soft’ Centralization: Shifting *Tiao/Kuai* Authority Relations”, *The China Quarterly*, 184, 2005.

governmental commissions. This is why their names are usually composed of the name of the ministry or office plus the name of the publishing house. For instance, the China Commerce Publishing House belongs to the Ministry of Commerce. On the other hand, the *kuai* arrangement establishes a similar number of publishing houses for each province, autonomous region and municipality<sup>35</sup>. For instance, the Jiangsu province has several publishing houses, each related to one field among politics, law, education, literature, science and technology, ancient classics and fine arts; like central publishers, their names are also composed of the name of the province plus the field of publishing plus the name of the publishing house, so that we will have the Jiangsu Education Publishing House, the Jiangsu Literature and Art Publishing House etc. Under the administrative level of provinces, the formation of publishing houses is not allowed, except for newspapers.<sup>36</sup>

Until 2008, depending on the publisher's size and level of operation, state publishers were issued a batch of ISBNs per year, which they then individually assigned to each book. Many publishers managed to obtain more ISBNs than they needed, and started to sell them to private companies, becoming therefore a sort of book codes dealers in the black market of ISBNs:

The amount of quasi-private publishers working under the name of a "culture agency" has grown rapidly in the past few years. They publish under ISBN numbers which they do not own and which has become a trade commodity between private and state-run publishers on the invisible market. Thus, private publishers are forced to co-operate with state-run publishers, and every book is being released under the name of an official publishing house.<sup>37</sup>

In 2008, a new system for the release of ISBNs was implemented: in order to conform to the latest version of the ISBN system, book code digits were increased from 10 to 13<sup>38</sup> and ISBNs started to be issued on a per-title basis rather than in bulk, thus eliminating the surplus ISBNs that could be sold off to cultural agencies.<sup>39</sup> However, the ISBNs invisible market still operates, since cultural agencies are free to engage in publishing-related activities and can therefore manage editing, marketing and all the other publishing tasks on behalf of the publisher that sells

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<sup>35</sup> The PRC administrative subdivision is composed of 23 provinces, 4 municipalities under the direct administration of the central Government (Beijing, Tianjin, Chongqing, and Shanghai), 5 autonomous regions (Tibet, Guangxi, Inner Mongolia, Xinjiang, Ningxia) and 2 special administrative regions (Hong Kong and Macau).

<sup>36</sup> XIN, *Publishing in China...*, 2010.

<sup>37</sup> Sophie ROCHESTER, XIN Lin, *The Publishing Landscape in China: New and Emerging Opportunities for British Writers*, Nesta, Art & Humanities Research Council, 2015, p. 13.

<sup>38</sup> "China Adopts New ISBN System", *Hong Kong Trade Development Council*, <http://info.hktdc.com/alert/cba-e0702c-1.htm>, 2007, accessed 2-04-2019.

<sup>39</sup> Joel MARTINSEN, "Snags in China's new ISBN distribution system", *Danwei*, [http://www.danwei.org/media\\_regulation/sorry\\_guangdong\\_no\\_books\\_for\\_y.php](http://www.danwei.org/media_regulation/sorry_guangdong_no_books_for_y.php), 2009, accessed 2-04-2019.

them the ISBN, provided that, as we can read in the quotation above, they release the book under the name of the official publishing house.

Clearly, this practice, in Chinese commonly referred to as *hezuo chuban* 合作出版 (collaborative publishing) or *shuhao maimai* 书号买卖 (trade of book numbers), is conducted secretly. As a matter of fact, although SAPPRFT officially forbid state publishers to sell ISBNs, it is fully aware of this kind of trade and tolerates it tacitly.<sup>40</sup> One might arguably ask why SAPPRFT turns a blind eye to such practice. The reason is that SAPPRFT controls access to ISBNs not much to eliminate private publishing, but rather to monitor the contents that are published in China. Since it would be difficult to control every single book before it is published, by allowing the trade of ISBNs, SAPPRFT indirectly delegates this task to state publishers, which, in case “inappropriate” contents are published, would be held fully responsible, and therefore performs the pre-publication screening in place of SAPPRFT. Indeed, to protect their interest, state publishers usually ask cultural agencies to submit manuscripts for examination, before they transfer their ISBNs, functioning as state’s censors *de facto*.<sup>41</sup> On the other hand, the trade of ISBNs can be very profitable for state publishers, which can earn up to 30,000 yuan (about 4,000 euros). According to researchers, the smallest state publishers often depend on the sale of ISBNs for their own survival, being incapable of producing profitable books.<sup>42</sup> As emerged from an interview to the editor of a cultural agency:

The reason the government has turned a blind eye to the trade is because if it were banned completely, many state houses would be cut off from their livelihood, and who do you think will have to come up and save them? The government, of course. So why not save their own money and make us private publishers pay for this?<sup>43</sup>

However, there exists another form of collaboration between state and private publishers, which in recent years has often been chosen over the trade of ISBNs as a more profitable solution for both parties. Today, many large state publishing houses acquire or hold shares in private cultural agencies, further contributing to the overlapping between the two worlds. One of the most successful cases has been the acquisition by the state publisher People’s Literature Publishing House (PLPH) of Shanghai 99 Readers, a private publisher which owned the Chinese rights for

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<sup>40</sup> YUN Q. “State versus Market: A perspective on China’s publishing industry”, *Logos*, 24, 1, pp. 19-29.

<sup>41</sup> ZHENG, “A World of Division and Interdependence...”, 2018.

<sup>42</sup> LIU Gexue 刘革学, LIU Fang 刘芳, *Zhongguo Minying Shuye Diaocha – Zhongguo Minying Chuban Lanpishu* 中国民营书业调查 – 中国民营出版蓝皮书 (China’s Survey on the Private Book Publishing Industry – China’s Private Press Official Report), China Water and Power Press, 2005.

<sup>43</sup> ZHENG, “A World of Division and Interdependence...”, 2018.

works realised by famous Western authors such as J.K. Rowling, and had long published these bestsellers using PLPH's ISBNs. From this example we can easily deduce that the reason why state publishers seek to acquire private publishers is that they want to gain access to private publishers' gains, which, in the long term, turns out to be more profitable than selling ISBNs.<sup>44</sup> In this way, state and private publishers manage to exchange the resources the counterpart misses: on the one hand, private publishers not only save the money previously destined to the purchase of ISBNs, but also gain what we can call a "political capital", i.e. state's publishers legal status and the privilege to publish legally; on the other hand, as the case of Shanghai 99 Readers' acquisition shows, state publishers that are unable of producing profitable books by their own acquire an "intellectual capital", i.e. access to the private publishers' author pool.<sup>45</sup> In the past, all publishing houses were *shiyew danwei* 事业单位, i.e. public-sector organisations operating on a not-for-profit basis and fully financed by their state patrons.<sup>46</sup> However, although the Government continues to exercise its strict control, the publishing landscape in China has deeply changed in the last two decades. After China's entrance in the WTO, in order to help the Chinese cultural sectors to appeal to the international market, many reforms have been implemented. As far as publishing is concerned, two major measures deserve mention: the first one is the already-mentioned merger between state-run and private publishers into publishing groups or conglomerates to increase competitiveness and achieve a better allocation of resources; secondly, publishing houses are gradually being transformed from public institutions into commercial enterprises, with the adoption of a market orientation and a corporate management model.<sup>47</sup>

There are currently about thirty publishing groups in Mainland China and eight of them are listed on the stock exchange. Formed in 2002, the China Publishing Group is the largest publishing conglomerate in China, including 40 publishers and 81 different companies, and totalling over 10,000 books produced every year. Concluding several copyright agreements with overseas publishers for over 1,000 book titles annually, it owes a consistent part of its revenues to book import and export, and distribution. Indeed, among its subsidiaries, we can

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<sup>44</sup> BAO Hong 鲍红, "Jingzheng Yu Hezuo – Guoyou Chubanshe Yu Mingying Chuban Gongsi Ziben Hezuo Tanxi" 竞争与合作 – 国有出版社与民营出版公司资本合作探析 (Competition and Collaboration: An analysis on the collaborative capital of state-owned publishers and private publishing firms), *Chuban Faxing Yanjiu*, 9, 2010, pp. 37-40.

<sup>45</sup> ZHENG, "A World of Division and Interdependence...", 2018.

<sup>46</sup> *Ibidem*.

<sup>47</sup> *The Chinese Book Market 2015*, German Book Office Beijing, 2015.

find the China National Publications Import and Export Corporation, China's largest publication import and export enterprise.<sup>48</sup>

Another well-known publishing group is the Phoenix Publishing and Media Group, based in Nanjing and listed on the Shanghai Stock Exchange. Notwithstanding its provincial base, throughout the years this group has been able to create substantial cross-provincial links in terms of publishing and distribution, and has also formed strategic links in the West, by establishing the Hachette-Phoenix Cultural Development Company with the Hachette Group from France. According to Liu Feng, Director of International Business Development Department of the group:

Under the leadership of its dynamic chairman, Chen Haiyan, the Phoenix Publishing and Media Group has ambitions not only to extend its penetration of the burgeoning domestic Chinese publishing market, whether in print or digital form, but internationally. Its presence at London Book Fair 2012 [...] heralds not only a pro-active policy in terms of export sales, rights deals and co-publishing, but the establishment of a permanent presence in key Western markets, whether through start-ups or acquisitions.<sup>49</sup>

To conclude this section, we can affirm that today China's publishing industry is surely moving toward marketization and commercialisation, albeit the legacy of the planned economy still contributes to maintain the separation between state and private publishers. Nonetheless, we cannot consider the two types of publishers to be isolated from one another, but rather their relationship is characterised by an equal dosage of division and interdependence, since they often have to turn to one another for their own survival.<sup>50</sup> As we can see, the publishing industry in China is another sector that cannot help but diving into the pool of the beautifully scary contradictions that permeates the whole country, and foreign publishers willing to enter the Chinese book market should be aware of this distinctive trait in order to shape their strategy and decisions.

### 2.2.3 Taiwan and Hong Kong: A Gateway to Mainland China

In the previous section, we analysed the current situation of Mainland China's publishing industry, discovering how, although moving towards internationalisation and marketization, it is still tightly subordinate to state control. A special mention is now needed for the publishing

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<sup>48</sup> China Publishing Group website, <http://en.cnpubg.com/en/about/introduction.shtml>, accessed 2-04-2019.

<sup>49</sup> LIU Feng, "Phoenix Rises", *BookBrunch China Market Insight*, 2012.

<sup>50</sup> ZHENG, "A World of Division and Interdependence...", 2018.

industry in Taiwan and Hong Kong, which constitutes the other two major centres for Chinese-language publications. Due to the presence of lower state control and a more open market, these two regions in many cases also represent a gateway to Mainland China for foreign publishers willing to enter the Chinese book market. Indeed, while retaining their own unique characteristics, both publishing industries show convinced market orientation, predominance of private companies and significant volumes of import and export.

Ever since the Guomindang's defeat in the Civil War of 1949, Taiwan has become the centre of Nationalists' political activity, proclaiming itself as an independent and sovereign State under the name of "Republic of China". After having achieved outstanding levels of industrialisation and economic development in the last fifty years, and being based on a capitalist economic system, Taiwan represents today an open land for foreign opportunities and it is actively engaged in the international trade.<sup>51</sup>

As far as the publishing industry is concerned, throughout the years Taiwan has established itself as the second major Chinese-language publishing industry, following immediately Mainland China in terms of overall publishing capacity. After the abolition of the previous Law of Publication in 1999, it has become rather easy to set up a publishing house in this region: with a fund of 500 TWD, anyone can submit an application.<sup>52</sup> As a result, today the market is saturated and competition is extremely intense, as there are about 8,000 publishing houses in Taiwan, with 40,000 titles published every year. Most of them are located in the city of Taipei and are private companies, while the rest are public enterprises or are owned by political parties.<sup>53</sup> Unlike in Mainland China, in Taiwan the ISBN system is not used as a governmental control tool, but rather as a way to collect data about the book trade. Since 1988, the agency responsible for the assignation of ISBNs is the National Central Library of Taiwan.<sup>54</sup>

As already mentioned, the publishing industry of Taiwan is open to international trade: with few restrictions, foreigners are free to invest in every publishing sector, and imported publications and foreign copyrights account for the majority of the annual new title output in Taiwan.

While Chinese culture and language dominate Taiwan, Western culture is tightly rooted in Hong Kong, due to over 150 years of British rule. At the end of the First Opium War (1839-

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<sup>51</sup> POCHIH Chen, "Lessons from Taiwan's Economic Development", *Orbis*, 60, 4, 2016, pp. 515-530.

<sup>52</sup> ZHANG Keyan, *International Rights Selling & the Chinese Publishing Market*, Simon Fraser University, 2018.

<sup>53</sup> XIN, *Publishing in China...*, 2010.

<sup>54</sup> "ISBN Agency in Taiwan", *ISBN.net*, [http://isbn.ncl.edu.tw/NEW\\_ISBNNet.eng/main\\_ProcessMenuItems.php?Ptarget=155&Pact=ViewContent&Pval=155&Pfld=Ffile](http://isbn.ncl.edu.tw/NEW_ISBNNet.eng/main_ProcessMenuItems.php?Ptarget=155&Pact=ViewContent&Pval=155&Pfld=Ffile), accessed 3-04-2012.

1842) and after China's defeat, China was obliged to sign the Treaty of Nanjing, which, among its dispositions, also contained the cession of the Hong Kong island and its harbour to the British Empire. It was only in 1997, by means of the Sino-British Joint Declaration, that the PRC restored the exercise of sovereignty over Hong Kong; however, in accordance with the "One Country, Two Systems"<sup>55</sup> principle, a special status for the region was also agreed upon, i.e. from being a British colony, it would become the Hong Kong Special Administrative Region, and, for fifty years, it would retain the previous capitalist system established during the British domination. As a result of the British influence, Hong Kong presents a bilingual and highly internationalised market, having both Chinese and English as official languages and being particularly known for its open investment environment, freedom from trade barriers, easy and free capital circulation and solid legal system.<sup>56</sup>

The publishing industry of Hong Kong closes the line of the three major Chinese-language publication bases, positioning itself immediately after Mainland China and Taiwan. As in Taiwan, start-up requirements for the formation of new publishing houses are very low, therefore several companies continue to spring up, enriching the Hong Kong publishing landscape, but also contributing to intensify competition. There are currently about 500 book publishing houses in the region, with 13,000 titles being published every year.<sup>57</sup>

If compared to Mainland China, the Hong Kong Government does not often interfere with the activity of the publishing industry, apart from cases of sexually explicit publications, and this enables the publishing system to be more flexible. For instance, having an ISBN is not a compulsory requirement for a book to be published in Hong Kong, but publishers can still apply for ISBNs for free to the Book Registration Office, simply by showing a copy of their Business Registration Certificate.<sup>58</sup>

Hong Kong is not only home to Chinese publishing houses, but it also boasts several English publishing houses, which established branches and regional headquarters in the territory in order to manage the business of their parent companies across the entire Asia-Pacific region. A few eminent examples are Oxford University Press, Longman Publishing Company and Macmillan Publishers Ltd. Furthermore, Hong Kong also represents the "transit station" of the

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<sup>55</sup> Formulated by Deng Xiaoping in the 1980s, this principle suggests the existence of only one China, but with some regions retaining their own economic, governmental and legal systems, instead of using the system of socialism with Chinese characteristics in effect in the rest of the PRC.

<sup>56</sup> XIN, *Publishing in China...*, 2010.

<sup>57</sup> *Ibidem*.

<sup>58</sup> "International Standard Book Number (ISBN)", Hong Kong Public Libraries, <https://www.hkpl.gov.hk/en/about-us/services/book-registration/isbn.html>, accessed 3-04-2019.

book trade between Taiwan and Mainland China, compensating for the absence of a direct trade link between the two areas.

This role of gateway to Mainland China has historically been recognised also by Western publishers, using Taiwan and Hong Kong as primary venues for their activities of book export and rights trade, and relying on the fact that they would find fewer government controls there, more open markets and a more conscious reception of international trends.

We also need to consider that China has two different writing systems playing a key role in this matter: in Mainland China, Simplified Chinese is the official writing system, whereas Taiwan and Hong Kong use the Traditional Chinese writing system. Therefore, when dealing with language and translation rights, foreign publishers must take into account these two different language segments of the Chinese-speaking market, requiring two independent contracts. Not only in the past, but also today, many Western publishers prefer to first engage in the Traditional Chinese rights trade with Taiwan and Hong Kong publishers; once the Traditional Chinese edition is published, publishers from Mainland China can use this edition as a reference point to help them in negotiating rights for the Simplified Chinese edition.<sup>59</sup>

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<sup>59</sup> ZHANG, *International Rights Selling...*, 2018.

## CHAPTER 3

### China: An Open Land for Foreign Publishers?

Our analysis of China's publishing industry allowed us to understand the main features of this fast-growing but also highly challenging environment. Like the traveller that wants always be prepared for what they will find at their destination and carefully examines the situation, our book has now secured in its pocket a deeper knowledge of the country it will finally land in. But what other pitfalls hide in the shadow of this long and strenuous journey? Is China really an open land for foreign publishers willing to enter the local book market?

The Chinese Government surely recognises the importance of exchange and cooperation with the abroad in the publishing sector: as part of the so-called *zouchuqu zhanlue* 走出去战略 (Go Out Policy), firstly introduced with the 12<sup>th</sup> 5-year-plan (2011-2015)<sup>1</sup>, the Government actively encourages the spread of Chinese works to foreign countries, while at the same time acknowledging the need to introduce foreign works into China to satisfy the requests of an increasingly internationalised community of Chinese readers.

Notwithstanding the good intentions, foreign subjects are not allowed to start editing and publishing businesses by their own. Publishing is indeed one of the sectors included in the "Special Administrative Measures on Access to Foreign Investment", also known as the "Negative List", annually released by the Ministry of Commerce (MOFCOM). This is a list of industries in which foreign investment to China is either prohibited or restricted. There are only four prohibited industries, while the restricted industries are more numerous and are divided into eighteen categories including agriculture, construction, transportation, education, health, and culture and entertainment industries, where publishing belongs to.<sup>2</sup> Foreign investment in a restricted industry is usually submitted to the approval of MOFCOM, and often only feasible by establishing a joint venture with a Chinese partner.<sup>3</sup>

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<sup>1</sup> MENG Siyu, "China's Book Publishing Industry: A review of 2011", *Springer Science+Business Media*, 28, 2012, pp. 124-129.

<sup>2</sup> WONG Dorcas, "China's New Negative List Targets Unified Market Access", *China Briefing*, <https://www.china-briefing.com/news/chinas-new-negative-list-targets-unified-market-access/>, 2019, accessed 04-05-2019.

<sup>3</sup> WONG Dorcas, "How to Read China's 2018 Negative List", *China Briefing*, <https://www.china-briefing.com/news/how-to-read-chinas-2018-negative-list/>, 2018, accessed 04-05-2019.

Although foreign investors are not allowed to directly engage in publishing by their own, they can cooperate with local publishers in publishing-related activities, such as printing, distribution and advertisement.<sup>4</sup> As a result of the restrictions imposed, three main market entry strategies assume particular relevance for those foreign publishers willing to enter the Chinese book market, and these are book export, rights sales and co-publishing by establishing a joint venture with a local publisher.

In imagining the journey of our book towards China, we need to think at these strategies as the three main “means of transport” available for the book to reach its destination. After having carefully analysed the local environment, it only needs to decide what is the best way to get there.

### **3.1 Book Export to China**

In the last fifteen years, book export has established itself as an increasingly popular way to introduce foreign books to China. According to the data available, in 2006 China imported 559,896 titles totalling US\$ 43.2441 million<sup>5</sup>; but, according to a report published by SAPPRT in 2014, the value of book export to China has increased up to US\$ 283.8 million, with an average growth of 1.2% per year.<sup>6</sup>

In particular, in the first 2000s, the majority of books exported to China concerned the categories of science and technology, finance, and business management in order to satisfy the local demand of the State’s development and modernisation drive.<sup>7</sup> As a result, in 2003, books representing the above-mentioned categories accounted for 37% of the total book importation.<sup>8</sup> In most recent years, due to the growing level of cultural contamination with the West and the increased number of English-speaking Chinese nationals, children’s and young adult books, literature bestsellers, biographical and psychological books also account for high proportions in book exportation to China.<sup>9</sup>

However, if foreign book export to China is growing, the same cannot be said about Chinese book export to foreign countries. Seen from China’s side, book imports have always outrun

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<sup>4</sup> XIN, *Publishing in China...*, 2010.

<sup>5</sup> The GAPP Book Department, *China Book Publishing: The official industry report*, Cengage Learning, 2010.

<sup>6</sup> Bureau of Publishing Industry Development, GAPP/Bureau of Planning and Development, SAPPRET, *Statistical Data Collection of Press and Publication*, China Book Press, 2014.

<sup>7</sup> HUANG Xiaoyan, *From Survival to Profit: A Canadian book publishers’ guide to China, the world’s largest market*, Simon Fraser University, 2005.

<sup>8</sup> YU Yongzhan, *External Policies and Foreign Cooperation in the Chinese Publishing Industry*, (Speech), 2004.

<sup>9</sup> “Enter the Chinese Publishing Market: Trends, figures and tips”, *Beijing International Book Fair*, [http://www.bibf.net/ckfinder/userfiles/images/2017london\\_key.pdf](http://www.bibf.net/ckfinder/userfiles/images/2017london_key.pdf), 2017, accessed 08-05-2019.

exports, resulting in a consistent trade deficit that has continued to exist until today.<sup>10</sup> Clearly, as China is becoming acquainted with the Western culture, it still represents quite a distant and mystery land for us.

But what exactly does it involve exporting books to China? The peculiarity of this entry mode into a foreign country is that it is carried out without a transfer of copyright, at least not between publishers located in two different countries. The only rights-related matter here is whether the author originally transferred foreign rights to the domestic publisher or not. In the first case, the publisher, being the holder of foreign rights for as long as it is disposed by the publishing contract, can freely engage in export operations, provided that the original contract does not restrict the territory where they would like to export the book. On the other hand, if the author did not grant foreign rights to the publisher in the original contract, the author is still the holder of these rights and they may decide to resort to a literary agent to place the book outside the national territory.

With the term “book export” we refer to titles in the original language distributed directly by the publisher in a foreign country, without involving the intermediation of other publishers. So, we are not talking about translated editions of foreign publications, but texts written in the language of their country of origin. We can immediately understand that there is not much room here for the export of Italian books, since the number of people able to speak Italian in China only amounts to a few thousands. On the contrary, China produces 20 million new English speakers every year<sup>11</sup>, being the country with the largest number of students studying abroad, with children starting to learn English even before they start going to school.<sup>12</sup> Unsurprisingly, China is emerging as one of the largest English-language book markets in the world; for this reason, book export as an entry mode to China is chosen especially by publishers located in Anglo-Saxon countries.

### 3.1.1 Import and Export Agencies

As mentioned before, the printing and distribution sectors in China are subject to less government control as to foreign investments than content publishing. This was made possible in 2003, by means of the “Measures on the Management of Foreign Invested Businesses in Book, Newspaper, and Periodical Distribution” (hereinafter Measures), jointly promulgated by the GAPP and MOFCOM. With effect from 1<sup>st</sup> December 2004, these Measures allowed the

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<sup>10</sup> XIN, *Publishing in China...*, 2010.

<sup>11</sup> ROCHESTER, XIN, *The Publishing Landscape in China...*, 2015.

<sup>12</sup> ZHANG Keyan, *International Rights Selling...*, 2018.

establishment of foreign-invested retail and wholesale companies for books, newspapers and periodicals.<sup>13</sup>

The only exception to the Measures was represented by import-export activities, which would remain under government control. As of today, foreign book export to Chinese wholesalers, distributors, retailers, libraries, must be supervised by SAPPRT-authorized or state-owned book import-export agencies. In 1985, there was only one official import-export agency, the China National Publications Import and Export Corporation (CNPIEC), which, as we saw in the previous chapter, now belongs to the China Publishing Group. Currently, the number of import-export companies approved by SAPPRT has increased up to 38. Most of them are located in Beijing, with offices in multiple cities (such as Shanghai, Guangzhou and Xi'An) in charge of distributing imported publications throughout China,<sup>14</sup> and only seven have a license to import and deal with e-books and digital publications.<sup>15</sup> With offices in six Chinese key cities and also in London, Frankfurt, Moscow, Tokyo, and Singapore, CNPIEC still represents the largest agency in China, with its business accounting for 60% of the total trade volume in the import and export market.<sup>16</sup>

Once again, the main venues where foreign publishers can establish contacts and negotiate with import-export agencies are international book fairs, both inside and outside China. In many cases, agencies might represent the first strategic partner foreign publishers connect with when approaching the Chinese book market. For this reason, it is extremely important for publishers to find agencies that are in line with their objectives and market segments. For instance, for an educational publisher, the most appropriate choice would be China Educational Publications Import & Export Corporation (CEPIEC), China's second largest import-export agency, which is specialised in import of elementary, secondary and higher education publications.<sup>17</sup>

Once the fit between publisher and organisation is found, publishers can proceed to send book information and catalogues to the agencies, which will in turn place their books in the Chinese territory. Other tasks performed by book import-export agencies involves processing orders placed by local retailers willing to purchase books from foreign publishers, and creating tailored catalogues and proposals for local retailers, such as libraries and bookstores, with the aim of becoming their exclusive source of supply of foreign publications.<sup>18</sup>

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<sup>13</sup> XIN, *Publishing in China...*, 2010.

<sup>14</sup> ZHANG Keyan, *International Rights Selling...*, 2018.

<sup>15</sup> Robert E. BAENSCH, JIANG Xiaojuan, *Selling Canadian Books and Translation Rights in China*, Livres Canada Books, 2016.

<sup>16</sup> XIN, *Publishing in China...*, 2010.

<sup>17</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

<sup>18</sup> *Ibidem*.

Import-export companies' major customers include local bookstores, libraries, and universities. Any retailer or organisation willing to purchase from foreign publishers can either choose from the lists provided by importers or independently forward their orders. In the second case, the import-export agencies approved by SAPPRFT have the authority to decide whether the books in question can be imported or not.<sup>19</sup>

An exception to the regulations concerning import and export of books is represented by the National Library of China, the largest library in China, as it is not bound to have import-export agencies as intermediaries, but is free to import books directly from foreign publishers and booksellers. This library alone imports about 10,000 foreign titles annually, of which 80% are English-language titles.<sup>20</sup>

Once the order to the foreign publisher has been placed, books are usually shipped through a foreign freight forwarder based in Singapore, the United States, the United Kingdom or other countries. In particular, Singapore is considered as a critical node, since most international publishers have subsidiaries or distributors there in charge for their whole Asia-Pacific business. Many Chinese import-export agencies work on a monthly shipment schedule, while CNPIEC consolidates air cargo book shipments once a week.<sup>21</sup>

### 3.1.2 Distribution Channels

Distributors and retail booksellers are allowed to sell only publications that foreign publishers have exported via a SAPPRFT-authorized agency.

Historically, the distribution sector used to be tightly controlled by the Government in the same way as the publishing one, with state-owned bookstores dominating the market under the name of Xinhua Bookstores. All branches were identified by the name of the province they operated in, and were originally subsidiaries of the Xinhua General Bookstore in Beijing, founded by the Communist Party in 1952.<sup>22</sup> The restructuring of the book distribution system started along with the other reforms in the 1980s and it is still on-going. Throughout the years, branches managed to become independent legal entities and many of them formed distribution groups and bookstore chains, while the Xinhua General Bookstore was merged with the China Publishing Group.<sup>23</sup>

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<sup>19</sup> HUANG, *From Survival to Profit...*, 2005.

<sup>20</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

<sup>21</sup> *Ibidem*.

<sup>22</sup> *Ibidem*.

<sup>23</sup> XIN, *Publishing in China...*, 2010.

These developments also led to the implementation of further reforms in the distribution system: as we already saw, the promulgation of the Measures in 2003 opened the distribution sector to foreign investment; and in the same year, the GAPP released the “Administrative Regulations on Publication Market”, which allowed private bookstores to access the wholesale and retail business, marking the end of Xinhua Bookstore’s domination.<sup>24</sup> At the beginning, private bookstores had to fight with low media recognition and capital shortage that hindered their expansion, but in the past twenty years they have grown steadily and today they hold half of the market share in book distribution.<sup>25</sup> Today, state-run bookstores are referred to as “primary-channel distributors”, while private book distributors and retailers are identified as “secondary-channel distributors”. Many of the newly-introduced policies have favoured private distributors, however the Government still retain a certain degree of control in certain aspects of the distribution and retailing system. For instance, Xinhua Bookstores remain the only retailers authorised to distribute and sell school textbooks.<sup>26</sup>

Foreign-language books are sold both in special sections of the Xinhua bookstores and in foreign-language bookstores located primarily in Beijing, Shanghai and cities along the coastal area of China. Books in Japanese, Korean, French, German and Russian represents some of the largest percentages of foreign-language books sold, but the English language maintains its indisputable supremacy.<sup>27</sup> Indeed, following the liberalisation of the distribution industry in 2003, many U.K. and U.S. publishers have now set up representative offices and retail companies in China, managing to establish their own unique distribution channels for English language sales by exploiting both brick-and-mortar and online opportunities. Perhaps the most eminent example is represented by the U.S. publishing group Penguin Random House. As Rochester and Xin state:

Sales of Random House’s global English titles in China are skyrocketing, particularly beyond traditional physical channels where the online retailers are highly successful and big players in anyone’s terms.<sup>28</sup>

Indeed, online bookstores are a distribution channel in constant development and also represent a valid alternative for those foreign publishers who are unable to set up brick-and-mortar retail

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<sup>24</sup> HUANG, *From Survival to Profit...*, 2005.

<sup>25</sup> HU Shouwen, “China: An open land for the rights business”, in Baensch R. (ed.), *The Publishing Industry in China*, Routledge, 2003, pp. 133-141.

<sup>26</sup> HUANG, *From Survival to Profit...*, 2005.

<sup>27</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

<sup>28</sup> ROCHESTER, XIN, *The Publishing Landscape in China...*, 2015.

companies in China. In 2014, online bookstores accounted for 37% of the total book sales, with Dangdang.com, Jing Dong Mall and Joyo Amazon China being the three major online sellers. When it comes to foreign publications, online bookstores are not permitted to use only one import-export agency on an exclusive basis, even though they primarily use the CNPIEC office in New Jersey, being one of the few importers that consolidate orders and make weekly airfreight shipments. Also, online bookstores often act as outlets for imported publications, offering a lower price for foreign-language books than brick-and-mortar booksellers.<sup>29</sup>

### 3.2 Rights Sales to China

Ever since China became party to the major international copyright conventions, the rights trade with foreign countries has been skyrocketing. The business of international rights sales is usually referred to as “copyrights trade” in the Chinese official reports, with “copyright imports” being the rights purchased by China and “copyright exports” being the rights sold by China. The table below summarises the data available between the years 1995 and 2014 concerning both rights purchased and sold by Chinese publishers.

<b>Year</b>	<b>1995</b>	<b>2000</b>	<b>2010</b>	<b>2014</b>
Number of rights purchased by Chinese publishers	1,823	7,343	16,604	15, 542
Number of rights sold by Chinese publishers	354	638	3,880	8,088

*Table 1. Source: Bureau of Publishing Industry Development, GAPP/Bureau of Planning and Development, SAPPRET, Statistical Data Collection of Press and Publication, 2014.*

As outlined by the table above, we notice how, over the past twenty years, copyright imports have always exceeded copyright exports, thus highlighting the increasingly important role of China in the international book business, and at the same time also revealing that books published in China are still rather uncompetitive and unattractive worldwide.<sup>30</sup>

China is currently involved in the copyright trade with over fifty countries, and its major trade partners are the United States, the United Kingdom, Japan, Korea, Germany, France and Canada. The table below provides data about the number of rights purchased by Chinese publishers in 2014 from the single countries.

<sup>29</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

<sup>30</sup> HUANG, *From Survival to Profit...*, 2005.

Total	USA	UK	Japan	Korea	Germany	France	Canada	Other
15,542	4,840	2,655	1,736	1,160	807	754	160	3,430

Table 2. Source: Bureau of Publishing Industry Development, GAPP/Bureau of Planning and Development, SAPPRET, Statistical Data Collection of Press and Publication, 2014.

As far as Italy is concerned, according to a report released by the *Associazione Italiana Editori* (AIE)<sup>31</sup> in 2017, Italian copyright exports towards Asia has registered an increase of 69,2% between 2007 and 2015, with China representing Italy's second area of business.<sup>32</sup>

In the past, Chinese publishers used to purchase mainly rights to classic literature, but today Western bestsellers are what sells the most in China. The turning point of the Chinese rights purchasing trends dates back to 1995, when the People's Literature Press bought the rights to *The Bridges of Madison County*, a novel written by Robert James Waller and originally published by the U.S. publisher Warner Books. The book sold 600,000 copies in China and, since then, rights to Western bestsellers have been massively exported to China, to the extent that many Chinese publishers purchase rights for foreign publications even before the titles are officially released. This is the case of *My Side*, David's Beckham's autobiography, for which the domestic publisher HarperCollins and the purchasing publisher China City Press initiated negotiation before the official release, and the Chinese edition of the book came out less than two months after the release of the English edition. The same happened with *Harry Potter and the Order of the Phoenix* by J.K. Rowling, which was available in Chinese bookstores only three months after its publication in the United Kingdom.<sup>33</sup> As of today, Western fictions such as *One Hundred Years of Solitude* and *Love in the Time of Cholera* by Gabriel García Márquez, *The Kite Runner* by Khaled Hosseini, and non-fiction books like *A Brief History of Time* by Stephen Hawking and *Steve Jobs* by Walter Isaacson still hit the top bestsellers lists in China.<sup>34</sup> Self-help and how-to titles like Jack Welch's *Jack: Straight from the gut* are also very popular, together with business, marketing and finance books. However, with over 20 million copies sold in China in the last twenty years, the *Harry Potter* series still remains the most popular foreign title in China.<sup>35</sup>

<sup>31</sup> Translation: Italian Publishers Association.

<sup>32</sup> Giovanni PERESSON, "Rapporto sull'import/export di diritti 2017", *Giornale della Libreria*, AIE, 2017.

<sup>33</sup> HUANG, *From Survival to Profit...*, 2005.

<sup>34</sup> Anderson PORTER, "China's Book Market: 2018 in Review and December's Bestsellers", *Publishing Perspectives*, <https://publishingperspectives.com/2019/01/chinas-book-market-2018-in-review-and-decembers-bestsellers/>, 2019, accessed 15-05-2019.

<sup>35</sup> ZHANG Zhiyi 张知依, "'Hali Bote' yinjin 17 nian shouchu liang qianwan ce" 哈利·波特引进17年售出两千万册 ('Harry Potter' brought in 20 million copies sold in 17 years), *Xinhua Net*, [http://www.xinhuanet.com/book/2017-06/30/c\\_129644374.htm](http://www.xinhuanet.com/book/2017-06/30/c_129644374.htm), 2017, accessed 15-05-2019.

But how does copyright export differ from book export? While the latter concerns selling physical copies of books in their original language without involving other publishers in the territory of destination, selling rights involve copyrights being licensed by the original rights holder to a foreign publisher, and this is frequently done via a book rights agency.

### 3.2.1 Book Rights Agencies

In chapter 1, we mentioned how international book fairs represent the bridge guiding the path of our book towards China, providing unique opportunities for publishers to meet and engage personally in the rights trade. Another valuable ally for foreign publishers and authors willing to sell rights in China is represented by local book rights agencies or copyright agencies, as they are called in China's official reports. These act as intermediaries connecting foreign publishers to rights buyers, but also Chinese publishers to potential titles.

At the end of 2002, the GAPP's National Copyright Administration approved 28 official rights agencies in China, of which 23 were book right agencies,<sup>36</sup> mainly located in Beijing, Shanghai, Guangxi, Shaanxi, Guangdong, Anhui and Shenzhen. The first agency established in Mainland China was the Copyright Agency of China, shortly followed by the Shanghai Copyright Agency and the Guangxi Wanda Copyright Agency.<sup>37</sup> Originally, these state-run agencies did not directly sell rights to local publishers on behalf of foreign publishers, but were principally responsible of providing regulatory and legal advisory services to foreign publishers, and they also handled the collection and transfer of license fees and royalties for publishers and authors.<sup>38</sup> Along with the liberalisation of the publishing industry and the partial introduction of foreign investment in publishing-related activities, many former government agencies started to operate as independent companies, and foreign rights agencies managed to set up their own representative offices in China. Among them, three main agencies have been dominating the book rights trade-related business.

Andrew Nurnberg Associates was originally founded in Great Britain in 1977, and is specialised in representing authors for English-language rights and translation rights. To better negotiate Chinese-language translations and English-language reprint rights, in 2002 it established an office in Beijing.<sup>39</sup>

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<sup>36</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

<sup>37</sup> XIN, *Publishing in China...*, 2010.

<sup>38</sup> HUANG, *From Survival to Profit...*, 2005.

<sup>39</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

Big Apple Tuttle-Mori Agency, whose parent company is based in Tokyo, registered two branch offices in Shanghai and Taipei, with the aim to assist Mainland China's publishers to acquire Simplified Chinese translation rights from Taiwan.<sup>40</sup>

Founded in Taiwan in 1989, Bardon-Chinese Media Agency is specialised in both Simplified and Traditional Chinese-language rights, with a representative office registered in Beijing. It represents publishers and authors from a variety of countries, including the United States, the United Kingdom, France, Germany and Italy.<sup>41</sup>

As disposed by the "Regulations for the Administration of the Registration of Resident Representative Offices of Foreign Enterprises" (hereinafter Representative Offices Regulations) with effect from March 2011, representative offices of rights agencies are not allowed to earn income for the services they provide<sup>42</sup>, but can only facilitate the flow of information, promote new books and authors, and initiate negotiations for agreements that will be later finalised directly by the Chinese publisher and the rights holder.<sup>43</sup>

Together with foreign rights agencies, private local agencies are also emerging in the book rights agency landscape. The most eminent example is perhaps represented by Rightol Media, in Chinese *Ruituo Chuanmei* 锐拓传媒. Founded in Chengdu in 2006, it has become one of the major local agencies for international book rights, finalising over 6,000 rights transactions in the last ten years<sup>44</sup>, currently managing 8% of the total copyright imports every year and selling rights on behalf of over 2,000 foreign publishers<sup>45</sup>.

As many other agencies of its kind, Rightol Media provides a variety of services including representing foreign publishers' books at major book fairs in China, and establishing relationships with Chinese publishers on behalf of foreign rights holders. When a Chinese publisher shows interest in a certain title, the agency is in charge of negotiating the price and the other terms of the agreement with the rights purchaser on the foreign publisher's behalf. Once the three parties (agency, foreign publisher and Chinese publisher) sign separate contracts, and the foreign publisher sends out physical copies of the book, the agency is usually also responsible for collecting royalties and other fees, wiring the payment to the foreign publisher

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<sup>40</sup> *Ibidem*.

<sup>41</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

<sup>42</sup> "Guida legale agli investimenti stranieri in Cina", *Studio legale Chiomenti*, [www.chiomenti.net](http://www.chiomenti.net), 2013, accessed 14-05-2019.

<sup>43</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

<sup>44</sup> HUANG Huang 黄璜, "Zhongzi bandai de jueqi yangben" 中资版代的崛起样本 (Rightol Media: an example of the rise of Chinese rights agencies), *Chubanren Zazhi*, <https://chuansongme.com/n/1024464752842>, 2016, accessed 14-05-2019.

<sup>45</sup> ZHANG, *International Rights Selling...*, 2018.

after deducting its commission, and eventually delivering the copies of the book and the other documents to the Chinese publisher. When the Chinese edition is published, the agency also provides an “after-sale service”, making sure the Chinese publisher submits the subsequent royalties as well.<sup>46</sup>

However, apart from the above-mentioned services, the key to Rightol Media’s outstanding success has another source: its ability to build networks with international publishers via the Internet, by setting up “Rightol Media Rights Online”, a unique and open information system for collecting and sharing information between rights buyers and rights holders.<sup>47</sup> The website is available in the English version and in the Chinese version: the English version is mainly built for foreign rights holders, providing information about Rightol Media’s services and contacts for new users, while allowing users registered with a login account to check the marketing progresses of their books, including “how many potential buyers browsed the book” and “how many samples requests”; on the other hand, the Chinese version focuses on the promotion of the books the agency represents and, as such, is mostly built for potential Chinese publishers willing to acquire new titles.<sup>48</sup> This version allows registered users to access books information divided by genres, and books’ samples and translation samples, with an integrated system that elaborates data from the users’ browsing activity and shows information about the books those users might be interested in.<sup>49</sup> In this sense, we might say that the information system realised by Rightol Media acts as a sort of online international book fair, positioning this agency at the vanguard of the rights trade business.

### 3.2.2 Selling Translation Rights

While the previous section offered an overview on the activity of books rights agencies, between the lines it also introduced the two main kinds of rights involved in the international copyright trade: translation rights and reprint rights, which are discussed in more detail in this section and in the following one.

As already mentioned, licensing translation rights entails giving publishers the permission to translate the book into another language. When signing the original publishing contract with the domestic publisher, the author may or may not have included this right in the grant of rights clause. If they did not, the author might want to resort to a literary agent to close a deal with a

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<sup>46</sup> *Ibidem*.

<sup>47</sup> HUANG 黄, “Zhongzi bandai de jueqi yangben” 中资版代的崛起样本..., 2016.

<sup>48</sup> ZHANG, *International Rights Selling...*, 2018.

<sup>49</sup> HUANG 黄, “Zhongzi bandai de jueqi yangben” 中资版代的崛起样本..., 2016.

foreign publisher. If they did transfer translation rights to the domestic publisher, it is likely they will sell or license this right to a foreign publisher themselves.

A typical contract for translation rights include the name of the foreign publisher that is acquiring the rights, the name of the rights holder usually indicated as “the Proprietor”, and might also include the name of the translator. It also includes the title of the work, the period of time within which the foreign publisher must publish the translated edition (usually five to seven years), and advance and royalty terms.<sup>50</sup> The average royalty rate negotiated with Chinese publishers is 7% for academic books, with advance ranging from 800 to 1,000 US\$; 7-8% for literature, with an average advance of 1,500 US\$; and 7-9% for bestsellers, with advance ranging from 10,000 to 40,000 US\$. The advance is usually divided into two payments, the first received when signing the agreement and the second at publication.<sup>51</sup>

The contract also typically includes a clause covering translation warranties, specifying that the translation of the book shall be complete, accurate, faithful and that no alteration shall be made in the book’s title or text unless the consent of the rights holder is explicitly provided. The contract might also specify the length of the translation measured in words.<sup>52</sup>

It is important to remember that, although treated as derivative works, translations are protected without prejudice to the copyright in the original work, and are copyrighted as original works themselves, given the creative effort the translator puts into the translation activity. The author or publisher’s grant to translate the work does not authorise the adaptation or any other modification to the original work.<sup>53</sup> Reference to these provisions can be found in art. 2 of the Berne Convention, art. 4 of the Italian Copyright Law, and art. 12 of the Copyright Law of the PRC.

### 3.2.3 Selling Reprint Rights

As previously mentioned, reprint rights also pertain to the category of subsidiary rights and can be defined as the right to reprint or reproduce texts, illustrations, photographs, etc., that have already been published elsewhere. In contracts they are often named “paperback rights” or “hardcover rights” respectively, when the book is being reprinted in a different print format than the original. Differently from translation rights, the sale of reprint rights does not involve the translation of the text or book, but it allows the foreign publisher to reproduce and sell the

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<sup>50</sup> Justine TEDJASUKMANA, *The Way a Literary Agent Deals with Foreign Rights*, DigitalCommons@Pace, 2009.

<sup>51</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

<sup>52</sup> TEDJASUKMANA, *The Way a Literary Agent Deals with Foreign Rights*, 2009.

<sup>53</sup> UBERTAZZI, “Diritto d’autore...”, 1989.

work in its original language outside its country of origin.<sup>54</sup> However, reprint rights also differ from book export in that in this case copies of the book are not physically shipped to the foreign country, but foreign publishers print and distribute copies themselves.

As we can deduce, the market of reprint rights in China and outside is also dominated by English-language works, since other languages cannot boast a foreign community of non-native speakers as wide as the English one.

In particular, reprint rights are sold to China especially for scientific, technical, medical and computer science books, along with textbooks for teaching and learning foreign languages, the latter representing perhaps the only, even if narrow, window available to Italian publishers to engage in the sale of reprint rights. As a result, the major potential customers for reprint rights sales to China are university presses and professional science publishers.<sup>55</sup>

Given the use that the academic world does of English-language scientific texts, it is not uncommon to sell reprint rights just for one or few chapters of the book to be included in anthologies or course packs<sup>56</sup>. From the author's point of view, selling reprint rights for just some chapters of their book can strongly affect sales. If the chapters in question are those that motivate people to buy the book the most, the author might refuse to grant the permission to reprint, unless they are offered a substantial royalty percentage. On the other hand, having a chapter reprinted in an anthology could enhance the author's professional reputation, stimulating in this way sales of the original book.<sup>57</sup>

Contracts for the sale of reprint rights to Chinese publishers typically include a clause specifying that the original-language reprint edition shall be for sale only within Mainland China and not as an export product. In order to increase sales of the book in China and to confirm such sales to be limited to this territory, a Chinese-language preface, introduction or opening chapter is often included before the original-language text.<sup>58</sup>

### **3.3 Joint Ventures for Co-publishing in China**

Another way for our book to enter the Chinese market is by realising a co-publication between the domestic publisher and a Chinese publisher. Although the co-publishing mechanism still

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<sup>54</sup> Franklin H. SILVERMAN, *Self-Publishing Textbooks and Instructional Materials: A practical guide to successful – and respectable – Self-Publishing*, Atlantic Path Publishing, 2004.

<sup>55</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

<sup>56</sup> Course packs are customised anthologies used as textbooks for specific modules in university degree programmes, consisting of reprint editions of journal articles and book chapters. In this case, it is likely the author may want to negotiate non-exclusive reprint rights to have their works used in as much classes as possible.

<sup>57</sup> SILVERMAN, *Self-Publishing Textbooks and Instructional Materials*, 2004.

<sup>58</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

involves the license of rights to a foreign publisher, in this case this is usually done through the establishment of a joint venture with a local partner. For this reason, it seems reasonable to examine this entry mode in a separate section, and before we enter into the details of co-publishing in China, to dedicate further discussion to the characteristics of this useful business tool.

### 3.3.1 Main Features and Regulation of Joint Ventures

Joint ventures can be broadly defined as “tools for the cooperative exercise of certain business activities by two or more enterprises”<sup>59</sup>, whose parties may operate in similar fields and therefore share their resources to reach the business objective, or may also operate in different sectors and need each other’s expertise. In our case, both parties are usually publishers willing to realise a co-edition in order to split the risk and the costs.

We can identify two main types of joint ventures: Contractual Joint Venture (CJV) and Equity Joint Venture (EJV), the main difference between them being the fact that in the former, parties do not set up a separate legal entity, while in the latter a separate legal entity is established for carrying out the project.<sup>60</sup>

CJVs mainly consist of an agreement whereby parties accept to pool their resources to reach a certain business objective and outline the terms under which they intend to conduct the cooperative work, such as the outline of the project, the allocation of tasks within the joint venture, and the division of costs and profits. Since no new legal subject is established, CJVs represent a very flexible tool for the realisation of temporary and short-term projects, but having no legal personality, they cannot enter into contracts or hire employees, and they also entail more risks in terms of potential liabilities. Parties to a CVJ remain entirely distinct and independent subjects, each with its own rights and obligations, and profits or losses are also distributed between them.<sup>61</sup>

On the other hand, the establishment of an EJV with the formation of a new legal subject involves not only the obligation for parties to set up or buy/sell shares in a company, but also that parties agree on the governance and management of such company and on the relations between shareholders.<sup>62</sup>

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<sup>59</sup> CAVALIERI, SALVATORE, *An Introduction to International Contract Law*, 2018, p. 126.

<sup>60</sup> CAVALIERI, SALVATORE, *An Introduction to International Contract Law*, 2018.

<sup>61</sup> *Ibidem*.

<sup>62</sup> *Ibidem*.

In China, Sino-Foreign EJV's were firstly regulated in 1979 by the "Law of the People's Republic of China on Sino-Foreign Equity Joint Ventures" (hereinafter Joint Venture Law), which still discipline the formation of joint ventures together with the relative "Implementing Regulations" issued in 1983. Throughout the years, both have been modified several times, and lastly in 2001.

Sino-Foreign EJV's are considered as Chinese legal persons established in the Chinese territory with the contribution of a Chinese legal person and a foreign legal or natural person, with the foreign capital required to amount to at least 25% of the total investment. Since publishing is one of the restricted sectors included in the Government's Negative List, foreign ownership in a publishing business cannot exceed 50% of the total investment. Parties can contribute either in cash or in kind, and usually the Chinese party grants land-use rights and buildings for manufacturing activities, while the foreign party provides cash and technology. Profits and losses are distributed according to the parties' respective shares in the registered capital.<sup>63</sup>

Apart from the Joint Venture Agreement, parties are also required to draw up the Joint Venture's Articles of Association, containing provisions about the governance and management of the company. Both documents are necessarily subject to the Chinese law and must be approved by MOFCOM.<sup>64</sup>

According to the Joint Venture Law, a Board of Directors must be established as the executive authority of the company, and its members are appointed by the parties according to their respective contributions. The establishment of a Shareholders Meeting is not compulsory. Any dispute arising between parties may be submitted to arbitration in China or abroad.

### 3.3.2 Co-publishing in China

While foreign sole ownership of publishing businesses is not allowed in China, cooperation between foreign and local publishers are not only permitted, but also encouraged as part of the previously mentioned Go Out Policy, as a way to foster international recognition and reputation of Chinese works. As a result, the decision to start co-publishing projects has proven to be profitable for both Chinese and foreign publishers.

As we already saw, a co-publishing strategy is adopted when two or more publishers pool their resources together to realise several international editions at the same time and achieve economies of scale.<sup>65</sup>

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<sup>63</sup> CAVALIERI, SALVATORE, *An Introduction to International Contract Law*, 2018.

<sup>64</sup> "Guida legale agli investimenti stranieri in Cina", 2013.

<sup>65</sup> ZHANG, *International Rights Selling...*, 2018.

In order to co-publish a book in China, the foreign publisher must license a Chinese publishing house to release the Chinese version of a copyrighted work, agreeing on a certain range of local editorial content to be added, or original content to be adapted in addition to straight translation of the original edition. The foreign publisher often also contributes to sales and marketing-related activities to help the Chinese publisher launch the local edition.<sup>66</sup> In other cases, the co-publication does not result in a new edition of a previously existent work, but in two simultaneous editions of the same book realised from scratch, whereby editorial content must be mutually agreed-on in advance in order to be suitable to both markets.

In China, co-editions of a book can be either realised by means of CJVs, in official reports called “project cooperation”, or, more rarely, by means of EJVs.

Project cooperation refers to short-terms publishing projects, usually dedicated to only one title or a set of books.<sup>67</sup> A typical example is represented by the project realised by the Chinese publisher Foreign Language Teaching and Research Press (FLTRP) and the British publisher Longman for the co-publication of *New Concept English*, an English learning textbook, originally written by the British author Louis George Alexander for German-language learners. In 1995, FLTRP and Longman agreed to cooperate for revising and publishing a new edition also suited to Chinese-language learners: the new edition was therefore co-authored by the original British author and the Chinese author He Qixin, with the two publishers being joint copyright owners of the revised edition and, as such, assigning their own editors to the project.<sup>68</sup> Another opportunity for Sino-foreign co-publications is represented by projects sponsored by the Chinese government to promote the Chinese culture in other countries. For instance, in 2002 the China Foreign Languages Bureau and the Yale University Press from the United States signed an agreement to jointly publish *The Culture & Civilization of China*, a series composed of twenty books, of which eight have already been published so far. The series is available both in English and in Chinese, with the two editions respectively edited and printed in the United States and in China.<sup>69</sup>

Full-colour art books, illustrated travel books, and children’s books are also suitable candidates for co-publishing. Differently from the previous example, publishers involved in this kind of project usually decide to print both the co-edited versions in China: since printing costs for illustrated books are notably higher than others due to the presence of pictures, printing both

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<sup>66</sup> BAENSCH, JIANG, *Selling Canadian Books and Translation Rights in China*, 2016.

<sup>67</sup> XIN, *Publishing in China...*, 2010.

<sup>68</sup> *Ibidem*.

<sup>69</sup> HUANG, *From Survival to Profit...*, 2005.

editions in China would allow exploitation of the lower per-unit costs, with the two publishers splitting printing costs based on the number of copies realised. When co-publishing illustrated books, publishers may also decide to split the editing-related tasks, with one party taking care of the written text, and the other being in charge of the design and illustrations of the book. In such cases, if the text is written by a Chinese author, the foreign edition might need further adjustments in addition to straight translation, in order to make it work in the foreign market, and vice versa.<sup>70</sup>

As far as EJVs are concerned, in 2010 there were only two of them active in the publishing industry, i.e. the Commercial Press International and the Children's Fun Publishing House.<sup>71</sup> While today the number has increased to a few dozens, Sino-foreign cooperation in the form of a CJV remains the most preferred way to realise co-publications.

The Commercial Press International was established in 1993 by the five companies sharing the name of the Commercial Press in China, Hong Kong, Singapore, and Malaysia. Since then, the joint venture has been devoted to the publication of reference books, language books, and books on humanities such as the *Xinhua Dictionary with English Translation*, *Modern American English*, and *Tang Poetry on CD*.<sup>72</sup>

Children's Fun Publishing House represents the first Sino-foreign EJV for children's books publishing, established in 1992 by the Chinese publisher People's Post and Telecommunications Publishing House and the Danish publisher Egmont Group. The joint venture is headquartered in Beijing, and has also set up an office in Shanghai with sales representatives in 25 Chinese cities. It is active in both magazine publishing, with *Mickey Mouse Weekly*, *W.I.T.C.H.*, *Barbie*, etc., and in book publishing with many acclaimed titles like the *Disney Classical Stories Series*, *The Lion King*, and *Sponge Bob*.<sup>73</sup>

Another successful example is represented by the Hachette-Phoenix Cultural Development Company, established in 2010 by the Phoenix Publishing Group and Hachette Livres from France. The joint venture is actively engaged in the publication and distribution of children's books, fiction, and non-fiction books, with the aim to act

[...] as a platform bridging the Chinese and international publishing industries, [...] committed to drive the development of publishing both inside and outside of China, by bringing in excellent

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<sup>70</sup> ZHANG, *International Rights Selling...*, 2018.

<sup>71</sup> XIN, *Publishing in China...*, 2010.

<sup>72</sup> XIN, *Publishing in China...*, 2010.

<sup>73</sup> *Ibidem*.

international publishing resources and by promoting quality Chinese books to the international market through our extensive global sales network.<sup>74</sup>

### 3.4. Adapting to Chinese Readers

After having found the most appropriate means of transport to cross the internationalisation road, the long journey of our book towards China has almost come to its end. But for there is no self-respecting journey without a hint of troubles, the following sections will deal with some of the obstacles that may hinder its successful conclusion, first examining the key role played by book localisation in determining the book's appeal to foreign readers, and then exploring the issue of book censorship in China.

#### 3.4.1 Book Localisation: The Case of the *Harry Potter* Series

We already saw that China's publishing market can turn out to be very appealing for foreign authors and publishers, notwithstanding the high level of state control that still dominates it. However, even after a title is sold and the deal is closed, before the book is published it needs to confront with perhaps the most underestimated but still fearsome of all barriers: the cultural context.

In order to be successful abroad, it is not enough for our book to be appealing to foreign readers as it is, but it also needs to meet some "cultural requirements" that are specific for each single country.<sup>75</sup> It is at this point that localisation makes its entrance to the scene.

Often mistaken for mere translation, localisation can be more precisely defined as "the process of modifying products or services to account for differences in distinct markets"<sup>76</sup>, involving the adaptation of all those features needed to sell that product abroad. In our case, that clearly involves translation of the text, but localisation also addresses other cultural issues in addition to straight translation. Therefore, we might define translation as just a component of the larger process of localisation.

Among the text-related issues, some are often taken care of by the translator itself, such as different spellings, idioms, colloquialisms, use of local currencies, local address and telephone number formats, use of proper date forms and even name formats. Just to mention some examples, Chinese translators might need to adapt foreign characters' names to the format

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<sup>74</sup> Hachette-Phoenix Cultural Development Company's Website, <http://www.hachette-phoenix.com/?c=about&id=1>, accessed 16-05-2019.

<sup>75</sup> ZHANG, *International Rights Selling...*, 2018.

<sup>76</sup> The Localization Industry Standards Association Website, <https://web.archive.org/web/20110102074246/http://www.lisa.org/Localization.61.0.html>, accessed 20-05-2019.

commonly adopted in China, according to which family names are usually one-syllable long and always precede given names, which are instead two-syllable long; date forms also need to be changed from the Western day-month-year (or month-day-year) order to the Chinese year-month-day order.

Other non-textual issues are instead handled by graphic designers working on the foreign edition's book cover. When adapting it to foreign readers, we might say that the old proverb "do not judge a book by its cover" does not quite apply to our case. Book covers' graphics and colours represent perhaps the most discriminant factors contributing to the success of our book. After all, it is the first thing that catches people's eye while they wander in a bookstore deciding what to buy.

One very famous and intensely debated example of book localisation is represented by the *Harry Potter* series. Originally published by Bloomsbury Publishing in the United Kingdom, the worldwide bestseller series written by J.K. Rowling can proudly boast to be one of the most translated works of all times, claiming 79 authorised translated editions, including Latin, Ancient Greek, and the newly released Scots, Hawaiian, and Mongolian.<sup>77</sup> As such, the series also present a variety of regional adaptations made in order to fit the different target markets.

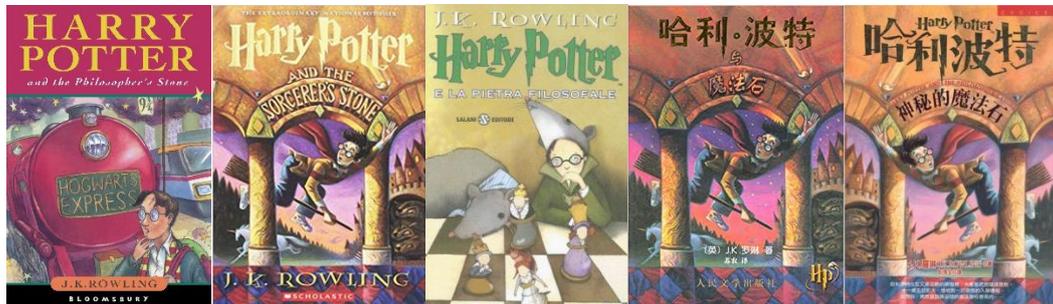


Figure 6. British, American, Italian, Simplified Chinese and Traditional Chinese Editions of *Harry Potter and the Philosopher's Stone*.

Figure 6 above shows the six different first editions of *Harry Potter and the Philosopher's Stone* addressed respectively to the British, the American, the Italian and the Chinese market. In particular, the Simplified Chinese edition (fourth from the left) was published in Mainland China by the People's Literature Publishing House, while publication of the Traditional Chinese edition (fifth from the left) was handled by the Crown Publishing Company for Taiwan, Hong Kong and Macau's markets.

<sup>77</sup> "British Library Exhibition to be part of Bloomsbury's 20<sup>th</sup> Anniversary Celebrations of *Harry Potter and the Philosopher's Stone*", *Bloomsbury Publishing*, <https://harrypotter.bloomsbury.com/uk/>, 2017, accessed 21-05-2019.

The visual comparison offered by the figure above allows us to immediately notice that the localisation process starts from the very beginning of the book, i.e. its title. While the Italian publisher Salani decided to maintain the reference to the legendary alchemical substance capable of donating immortality, other publishers were concerned that the title may sound too obscure for a book aimed at the youth.<sup>78</sup> This is the case of both Chinese editions' title, respectively rendered as *Hali·Bote yu mofa shi* 哈利·波特与魔法石 (*Harry Potter and the Magical Stone*) in the Simplified Chinese edition, and as *Hali·Bote yu shenmi de mofa shi* 哈利·波特与神秘的魔法石 (*Harry Potter and the Mysterious Magical Stone*) in the Traditional Chinese edition. The American publisher Scholastic preferred instead to change the title into *Harry Potter and the Sorcerer's Stone*, in the belief that American children would be confused by the apparent reference to philosophy. As remarked by Feral, the change of title was therefore based on the assumption of youngsters' lack of knowledge and interest in a world which differed from their immediate environment.<sup>79</sup>

When exploring the text of the different editions of *Harry Potter and the Philosopher's Stone*, we may also notice that localisation has also occurred in the adaptation of spellings and idioms. This is particularly true for the American edition, given the notably different spelling conventions that characterise the two regional varieties of American and British English. As a result, “sherbet lemon” has been translated to “lemon drop”, “chips” to “fries”, “jumper” to “sweater” and “mum” to “mom”.<sup>80</sup>

In the Simplified Chinese edition, many characters and places' names have been adapted to have meanings that resonate in China's idiomatic language. For instance, “The Leaky Cauldron”, the pub for witches and wizards located in London, has been rendered as *Po Fu Jiuba* 破釜酒吧 (The Broken Cauldron Pub), where the reference to a “broken cauldron” is aimed to remind Chinese people of a local legendary tale of soldiers who destroyed their cooking pots before leaving for a battle to show their determination not to return defeated. The name of Harry Potter's worst enemy, Voldemort, represented another challenge to the Chinese localisation of the book. According to Nel, the etymology of the name derives from the French *vol de mort*, which may be literally translated into “theft of death” as a reference to the

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<sup>78</sup> Anne-Lise FERAL, “The Translator's ‘Magic’ Wand: Harry Potter's Journey from English into French”, *Meta*, 51, 3, 2006, pp. 459-481.

<sup>79</sup> FERAL, “The Translator's ‘Magic’ Wand...”, 2006.

<sup>80</sup> Philip NEL, “You Say ‘Jelly’, I Say ‘Jell-O’? Harry Potter and the Transfiguration of Language”, in Whited Lana A. (ed.), *The Ivory Tower and Harry Potter: Perspectives on a literary phenomenon*, University of Missouri Press, 2002, pp. 261-285.

character's attempt to escape death throughout the series.<sup>81</sup> In order to maintain the same eerie reference, and in an attempt to also maintain the phonetic similarity with the original name, in the Simplified Chinese edition the name "Voldemort" has been translated to *Fu Di Mo* 伏地魔, whose English literal translation would be "evil spirit hiding underground".<sup>82</sup>

As the case of the *Harry Potter* series highlights, the ultimate purpose of book localisation is to make sure that all elements composing the book are appropriate to the target market and are able to offer the same literary experience to all countries, avoiding misunderstandings and without offending the readers. Most of the times, if localisation is properly handled, readers do not even realise that changes have been made; on the contrary, if the book is poorly localised, this will immediately be perceived as if "there is something wrong with it", even if they cannot tell what that is.

In many cases, localisation goes beyond the single word and extends to entire dialogues that need to be changed to sound "right" in certain countries and languages. Having said so, the question arises: in a controversial country like China is, what is the line of demarcation between localisation and censorship? And what happens when that line is crossed?

### 3.4.2 Tales of Censorship

Book censorship in China has a long history, which scholars usually divide into three main periods starting from the foundation of the PRC, i.e. the Pre-Cultural Revolution Period (1949-1966); the Cultural Revolution Period (1966-1976); and the Post-Cultural Revolution Period (1976-present).<sup>83</sup>

During the first period, the translation of Western works was heavily censored due to the "fraternal" influence of the Soviet Union. Soviet Russian literature, other socialist countries' literature, and works from the other "capitalism-oppressed" countries around the world were all allowed to import and translate, and any work conflicting with the proletarian line of the Party was prohibited. The repression carried out in the years of the Cultural Revolution was even more severe, to the extent that only domestic works that praised and helped propagating the CCP's political line and the cult of Mao were admitted, while translation of foreign works

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<sup>81</sup> Philip NEL, *J.K. Rowling's Harry Potter Novels: A Reader's Guide*, Continuum International Publishing Group, 2001.

<sup>82</sup> Craig S. SMITH, "Harry Potter Faces Challenge in China", *The New York Times*, <https://www.nytimes.com/2000/10/09/world/harry-potter-faces-challenge-in-china.html>, 2000, accessed 21-05-2019.

<sup>83</sup> TAN Zaixi, *(Self-)censorship and the Translator-Author Relationship: The case of full translation, partial translation and non-translation in the Chinese context*, Hong Kong Baptist University, 2014.

was completely out of question. Since the end of the Cultural Revolution, the country's restrictions on the import and translation of foreign works has been loosening, and also works that had been forbidden in the past found their way into the Chinese territory, such as George Orwell's *Animal Farm* and *1984*, which were previously banned due to their bitter satire on Communism.<sup>84</sup>

Although the surface reasons for encouraging this process might have changed, the underlying principle has not: the Chinese government believes that censorship helps guide public opinion and is crucial to maintaining domestic stability.<sup>85</sup>

In Chapter 2, we already mentioned how the Publishing Regulations provide a thorough list of categories for contents that are not allowed to be published in China, including those propagating evil cults, superstition, obscenity, gambling, or violence, together with those undermining the solidarity and stability of the nation.<sup>86</sup> According to the report released by PEN America<sup>87</sup> in 2015, two are the categories that most concern Chinese publishers, and consequently two are the main criteria used to ban and censor books: political issues opposing the CCP are identified with the colour black, while yellow stands for sexually explicit material. In the first category, the most sensitive areas are represented by the so-called "Three Ts" (Tiananmen, Tibet and Taiwan), as well as ethnic minorities, the banned spiritual group Falun Gong, the depiction of past and present Party leaders, and descriptions of historical events that do not comply with the official versions recognised by the CCP.<sup>88</sup>

Several Chinese publishers often rush in buying translation rights of foreign bestsellers in order to obtain the most successful titles, but sometimes they do not even realise that the book will never make it to the translation stage, let alone to publication. This is what happened when the rights for E.L. James' *50 Shades of Grey* were sold to a Chinese publisher, before they realised they had to cut too much out of the book to be in accordance with Chinese censors.<sup>89</sup> The book has dwelled for years in the pre-publication limbo, and its publication in China has only been allowed recently.

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<sup>84</sup> TAN, *(Self-)censorship and the Translator-Author Relationship...*, 2014.

<sup>85</sup> *Censorship and Conscience: Foreign authors and the challenge of Chinese Censorship*, PEN American Center, 2015.

<sup>86</sup> "Chuban guanli tiaoli" 出版管理条例 (Regulations on the Administration of Publication), 2011.

<sup>87</sup> PEN America is a branch of the literary and human rights organisation PEN, whose objective is to protect freedom of expression and to defend writers and journalists who are imprisoned, attacked or persecuted in the course of their profession.

<sup>88</sup> *Censorship and Conscience...*, 2015.

<sup>89</sup> Laura OWEN, "To sell books to China, foreign publishers may have to play by its rules", *Gigaom*, <https://gigaom.com/2012/10/09/to-sell-books-to-china-foreign-publishers-may-have-to-play-by-its-rules/>, 2012, accessed 22-05-2019.

The main administrative agency through which the Government exercise censorship is SAPPRFT, which is responsible for investigating and prosecuting illegal publications and illegal activities linked to publishing, printing, and distribution, and has the legal authority to screen, censor or ban any print, electronic, or Internet publication in China. SAPPRFT is also accompanied in its job by the Central Propaganda Department (CPD) of the CCP, which is in charge of monitoring published contents to make sure that they are not inconsistent with the Party's ideological line. Theoretically, since the CPD is a Party's organisation and not a state one, it only has an advisory role, and not an implementing one. Such "advice" is issued in the form of written or verbal instructions, while the actual task of implementing it is undertaken by state-run organisations such as the State Bureau of Publishing, the Public Security Bureau, and the Ministry of Culture.<sup>90</sup>

However, book censorship in China is not usually carried out by officials, but by publishers themselves seeking to avoid government reprisals once the book is published. The punishment for violation of the censorship system may include the publisher's temporary business closure, permanent loss of their publishing license and substantial fines. Furthermore, Chinese publishers also fear that if they publish controversial works, they will be included in a government blacklist and will be subject to stricter controls in the future. Publishers who do not live up to the Government's expectations might also see their supply of ISBNs dramatically cut, and be destined in this way to a slow commercial death.<sup>91</sup> For this reason, Chinese publishers tend to be extremely careful during the editing process, replacing sensitive words with milder ones (such as "incident" instead of "massacre" when talking about Tiananmen), but also excising entire pages and sections of books to avoid catching the Government's eye.

While Chinese writers cannot escape the censorship regime and cannot refuse to comply with the system without sacrificing their careers or their access to readers, foreign authors have the choice not to encourage it. But how do they cope with censorship in China?

When it comes to publishing foreign works in China, we can identify four main scenarios according to how authors deal with the censorship system.

### *Groping in the Dark*

In the first scenario, the author is completely unaware that their book has been subject to censorship, and only discovers it after the publication. This is usually the case when authors let

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<sup>90</sup> Anne-Marie BRADY, "Guiding Hand: The role of the CCP Central Propaganda Department in the current era", *Westminster Papers in Communication and Culture*, 3, 1, 2006, pp. 58-77.

<sup>91</sup> *Censorship and Conscience...*, 2015.

their agent or their domestic publisher discuss the details of their rights agreement, and they accept the cuts without even informing the author.

Andrew Solomon, current president of the PEN American Center, experienced such a situation when he discovered, only when the book was released in China, that entire sections of his autobiography *The Noonday Demon* were removed, due to the presence of topics relating to LGBT issues.<sup>92</sup> He commented the fact remarking that:

Censorship of texts without the author's knowledge is abhorrent, a violation of contract terms and of free speech, and I learned of the censorship of my own work with enormous dismay. It is a shocking betrayal of the trust writers place in their translators and foreign publishers. It is critical that authors and publishers know what is going on, and that they take steps to resolve censorship issues on a case-by-case, page-by-page basis.<sup>93</sup>

Another similar case is represented by the cuts made to the novel *Sunset Park* written by Paul Auster and published in China in 2014 by Shanghai 99 Readers. According to the editor in charge of the book, censorship was deemed necessary by the reference to the writer and dissident Liu Xiaobo, otherwise both the publisher and its state-run publishing partner Zhejiang Literature and Arts Publishing House would have faced the closure of the respective businesses. Also in this case, without the author knowing anything, several sections were excised, while in other parts of the book mentions of the dissident's name were replaced by "L.", and references to China were replaced by "Country C".<sup>94</sup>

Other unaware foreign authors found out that censorship to their works had occurred during the translation process, without their agent or the domestic publisher being informed either, even if they were promised in the contract a faithful translation of the original work, and that no modification would have been exercised without the author's approval. Hiring someone to go over both the original text and the Chinese translation seems to be the only way to avoid cases like this, but if the costs for vetting the entire translation are too high, a targeted vetting of those sections that may catch the censor's eye would be the best alternative available.<sup>95</sup>

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<sup>92</sup> Alexandra ALTER, "China's Publishers Court America as Its Authors Scorn Censorship", *The New York Times*, <https://www.nytimes.com/2015/05/29/business/media/chinas-publishers-court-america-as-its-authors-scorn-censorship.html>, 2015, accessed 22-05-2019.

<sup>93</sup> *Censorship and Conscience...*, 2015.

<sup>94</sup> *Censorship and Conscience...*, 2015.

<sup>95</sup> *Ibidem*.

### *Bending the Knee*

In other cases, the censorship process is far more transparent: foreign authors are offered to sign a contract with a Chinese publisher, but are informed that certain contents will be excised from the book. After having examined the proposed cuts with their agent or publisher, they decide whether to accept or not. Many of those consenting to censorship argue that they did it to get new ideas to China, even if in a diluted or distorted form. In this way, Chinese readers could access valuable reading materials and foreign perspectives that otherwise would be out of their reach.<sup>96</sup>

This is the case of the American author Peter Hessler, who lived in China for over ten years and wrote several books that were published there with some changes and cuts he agreed upon. In 2015, he wrote an article for *The New Yorker*, in which he reported the experience of going on a book tour in China accompanied by what he calls his “censor”. The censor in question was Zhang Jiren, editor at the Shanghai Translation Publishing House, which had previously published Hessler’s *River Town* and *Country Driving*, both part of a trilogy about China. According to Hessler, having spent so much time with his censor allowed him to see Zhang in a new light, differently from the Western perspective where “editors like Zhang are portrayed crudely, as Communist Party hacks”.<sup>97</sup> Instead, Hessler argues that some Chinese publishers and editors should be considered more as allies in the fight to make information accessible to Chinese readers:

For an editor like Zhang, who is not a Party member, there is no ideology and no absolute list of banned subjects. His censorship is defensive: rather than promoting an agenda or covering up some specific truth, he tries to avoid catching the eye of a higher authority. In fact, his goal—to have a book translated and published as accurately as possible—may run counter to the goals of the Party.<sup>98</sup>

As to reinforce this statement, in another article written for *Foreign Policy* in 2015, Hessler remarks: “I suppose that I’ve ‘agreed to censorship’, but I see my publication in China in more positive terms, as a reflection of my belief in the importance of education and access to information”.<sup>99</sup> Moreover, even if he agreed to cut some parts, the author also added an introductory page in each of the censored books, explaining that some material had been

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<sup>96</sup> *Censorship and Conscience...*, 2015.

<sup>97</sup> Peter HESSLER, “Travels with My Censor: A Chinese book tour”, *The New Yorker*, <https://www.newyorker.com/magazine/2015/03/09/travels-with-my-censor>, 2015, accessed 23-05-2019.

<sup>98</sup> HESSLER, “Travels with My Censor...”, 2015.

<sup>99</sup> Peter HESSLER, “It’s Not All About the Censorship”, *Foreign Policy*, <https://foreignpolicy.com/2015/06/15/its-not-all-about-the-censorship/>, 2015, accessed 23-05-2019.

removed, and redirecting readers to his website, where a list of all the changes and cuts was made available to them.<sup>100</sup>

On the other hand, the American writer also recognises that there is a limit to what authors should accept to censor. He agreed with Zhang not to publish his book *Oracle Bones* in Mainland China, since it includes reports on the ethnic minority of the Uyghurs and on Falun Gong, and he did not want the heart of the whole work to be censored. However, the book is available in its integral edition in Taiwan, together with the uncensored translations of the books published in Mainland China.

The story of Peter Hessler allows us to understand the reasons that sometimes hide behind the acceptance of censorship. Like him, many other authors agree to cut some parts of their work not just because they do not care of standing up to the Chinese censorship regime, but because they believe in their own silent war to get as much content as possible to Chinese readers, so as to inspire them to demand more and more information from the abroad.

### *Holding Out*

Our third scenario sees as its main characters those authors who firmly refused censorship, not agreeing to alterations of their work in the Chinese translation, even if that meant the impossibility to publish their book in Mainland China.

The American writer Evan Osnos eventually refused to publish his book *Age of Ambition: Chasing Fortune, Truth, and Faith in the New China*, reporting his travels around China to interview people affected by the economic, political and social change as they strived to change their lives. When he was proposed a contract for publishing in China, he was also required to cut out about a quarter of the content, including references to Mao's Great Leap Forward that later led to the Great Famine, and sentences like "China has never been more pluralistic, urban, and prosperous, yet it is the only country in the world with a winner of the Nobel Peace Prize [Liu Xiaobo] in prison".<sup>101</sup> The author was also presented a list of names of politically active people, such as the artist Ai Weiwei, the above-mentioned writer Liu Xiaobo, and the lawyer Chen Guangcheng, which "would be difficult" to include in the Chinese edition.

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<sup>100</sup> HESSLER, "Travels with My Censor...", 2015.

<sup>101</sup> Evan OSNOS, "China's Censored World", *The New York Times*, <https://www.nytimes.com/2014/05/03/opinion/sunday/chinas-censored-world.html>, 2014, accessed 23-05-2019.

Therefore, with clear disapproval of those authors saying that “in China, sometimes 90% is better than nothing”<sup>102</sup>, and although “it is tempting to rationalise the discomfort [of censorship] by emphasizing the percentage of the book that survives the cuts, rather than the percentage that is censored”<sup>103</sup>, he refused. As Osnos himself stated when interviewed by PEN, to him it was not a matter of margins or percentages, but a matter of having to alter the portrait of China as he saw it in the specific time of his travel, risking to give a false reflection of the country:

That’s the wrong way to look at it—what is being cut? If you’re referring to the Tiananmen protests, you can’t use normal language, you have to call it an ‘incident’ or a ‘revolt’. That’s a substantive cut. If you had to refer to Selma as a revolt or an incident, that’s not accurate. We should move away from the idea of evaluating it in terms of the number of pages that are cut, or the percentage that’s cut.<sup>104</sup>

He decided to publish in Taiwan instead. Given the lower level of editorial restrictions to which foreign works are subject in Taiwan and Hong Kong, the choice to publish uncensored versions there is often taken by authors as an alternative to Mainland China. This is also an attractive option because some bookstores in Taiwan and Hong Kong have dedicated sections where readers can find books that could not be published or are banned in China, which can be purchased by tourists from the mainland and brought back to China.<sup>105</sup> To some extent, this can also be considered as another way in which Taiwan and Hong Kong serve as a gateway for foreign works to enter Mainland China, although in recent years Chinese authorities are conducting more extensive controls at customs in an effort to crack down on books purchased in Taiwan and Hong Kong and brought back to the mainland.<sup>106</sup>

### *The Trend of Self-censorship*

Finally, there are also some cases in which censorship is neither concealed nor proposed as an alternative to authors, because self-censorship acts even before official censorship makes its move. As outlined below, this is a curse that does not spare Chinese authors as well as foreign authors.

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<sup>102</sup> Ezra VOGEL, “In China, Sometimes 90% Is Better Than Nothing”, *Harvard University Press Blog*, [https://harvardpress.typepad.com/hup\\_publicity/2013/10/ezra-vogel-on-chinese-censorship.html](https://harvardpress.typepad.com/hup_publicity/2013/10/ezra-vogel-on-chinese-censorship.html), 2013, accessed 23-05-2019.

<sup>103</sup> OSNOS, “China’s Censored World”, 2014.

<sup>104</sup> *Censorship and Conscience...*, 2015.

<sup>105</sup> *Censorship and Conscience...*, 2015.

<sup>106</sup> Ian JOHNSON, “Lawsuit Over Banned Memoir Asks China to Explain Censorship”, *The New York Times*, <https://www.nytimes.com/2015/04/26/world/asia/china-lawsuit-over-banned-li-rui-memoir-censorship.html>, 2015, accessed 24-05-2019.

In recent years, many studies have been conducted on the issue, and several definitions of self-censorship have been attempted, with scholars being divided between two main positions: according to some, self-censorship may be defined as “an act of intentionally and voluntarily withholding information from others in the absence of formal obstacles [...] like external censorship that prevents him or her from sharing it”<sup>107</sup>, thus excluding those cases in which self-censorship is induced by the presence of institutions, orders, or laws controlling the flow of information; others consider it as the mechanism through which individuals willingly censor themselves *in response to* the fear that governments, institutions, and laws have instilled into their minds.

According to representatives of the second school of thought, Chinese citizens are induced to use self-censorship as a preventive-defence mechanism as a result of two main types of control: coercive control and normative control. More specifically, coercive control may be defined as control of another person’s behaviour by using force or threats, or by using fear.<sup>108</sup> Knowing that the Government is able to track down and punish transgressors, along with the knowledge of the consequences of divulging information that has been banned, deters individuals from doing so, and represents the foundation for how citizens start to activate the self-censorship mechanism.<sup>109</sup>

In addition to coercive control, normative control also plays a pivotal role in inducing self-censorship, and we can fully understand it by making reference to the Constructivist theory on social norms. According to this school of thought, individuals’ identities and interests are continuously shaped by social context and interaction, as they live in an environment based on norms that have been established through learning and socialisation<sup>110</sup>:

When making decisions, actors look at social variables such as social context, identities, and their relationships with others. In the end, individuals “do what’s right.” [...] The social context in which individuals live in gives them an identity by telling individuals who they are, which in turn influences their decision-making process.<sup>111</sup>

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<sup>107</sup> Daniel BAR-TAL, “Self-Censorship as a Socio-Political-Psychological Phenomenon: Conception and research”, *Advances in Political Psychology*, 38, 1, 2017, pp. 37-65.

<sup>108</sup> Definition of “Coercive control” according to the *Cambridge Dictionary*, available at: <https://dictionary.cambridge.org/dictionary/english/coercive-control>.

<sup>109</sup> Simon K. ZHEN, “An Explanation of Self-Censorship in China: The enforcement of Social Control through a panoptic infrastructure”, *Inquiries Journal*, 9, 11, 2017, pp. 1-25.

<sup>110</sup> *Ibidem*.

<sup>111</sup> ZHEN, “An Explanation of Self-Censorship in China...”, 2017, p. 11.

In other words, according to this theory, people do what they do following social norms that have been constructed over time, and this limits the realm of what is considered as an appropriate action, while virtually eliminating choices that would be considered inappropriate by the social environment itself. As a result, pressured by the consequences they would face (coercive control) and being raised to believe that dissenting from the Party's line would be socially inappropriate with respect to the established norms (normative control), Chinese authors inevitably think it twice before writing about controversial issues.

Although foreign authors are not subject to the same coercive and normative pressures as China's mainland citizens, they are still not immune to the curse of self-censorship. One interesting case is represented by academic self-censorship in American universities.

In order to avoid catching the eye of Chinese authorities, more and more scholars from American universities started to self-censor their academic publications, feeling threatened by the risk to lose access to China in the future, may it be in the form of a visa or research cooperation. Furthermore, most of the times scholars do not even call it self-censorship, rather they say that they occasionally word things differently out of politeness, so as not to offend their Chinese colleagues and students.<sup>112</sup>

As reported by Stone in his article for *The New Republic*, often it is the university itself that advise them not to explore sensitive subjects in their research, so as not to jeopardise their relationship with Chinese universities and cultural institutions. According to Stone, this is due to the fact that American universities are increasingly financially dependent on China, providing them a powerful incentive to act carefully and to urge scholars to do the same. To mention one example, from 2010 to 2017 the Chinese Ministry of Education, via China's Confucius Institutes<sup>113</sup> in the United States, destined more than 17 million dollars to U.S. universities for the development of Chinese studies.<sup>114</sup>

It is not easy to convey the scope of Chinese authorities' ability in inducing fear and triggering the self-censorship mechanism; the noted scholar Perry Links perhaps manages to do so, by incisively comparing it to an anaconda in a chandelier:

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<sup>112</sup> Isaac STONE FISH, "The Other Political Correctness: why are America's elite universities censoring themselves on China?", *The New Republic*, <https://newrepublic.com/article/150476/american-elite-universities-selfcensorship-china>, 2018, accessed 24-05-2019.

<sup>113</sup> Confucius Institutes are state-run cultural organisations, overseen by the Chinese Ministry of Culture, born with the aim to spread the Chinese language and culture in the rest of the world. They are usually set up through the establishment of a joint venture between one Chinese and one foreign university.

<sup>114</sup> STONE, "The Other Political Correctness...", 2018.

Normally the great snake doesn't move. It doesn't have to. It feels no need to be clear about its prohibitions. Its constant silent message is "You yourself decide", after which, more often than not, everyone in its shadow makes his or her large and small adjustments—all quite "naturally".<sup>115</sup>

### 3.5 Undesired Destinations: The Land of Book Pirates

After having overcome so many obstacles and barriers, our book finally managed to reach China, its long-sought destination. At this point, all self-respecting stories would end with "and they lived happily ever after", and in our case most of the time they do. However, the journey of our book towards China might also end up to undesired destinations, namely the obscure and dark lands of copyright infringement and piracy, thus leading to an inevitable unhappy ending. Chapter 1 opened with a quote on piracy seen as the precondition for the rise of copyright, and we used it to discuss the importance of making copyright systems all around the world work simultaneously, in order to let the book's international journey proceed as smooth as possible; now the journey finally comes full circle, as in this section we will see how sometimes, despite the increasing amount of protection that a book is offered at the international level, cases of copyright infringement still occur, and piracy prevails.

The term "book piracy" is an umbrella term that encompasses several different cases in which copyright is infringed: professionally printed illegal editions, illicit photocopying of copyrighted materials, unauthorised translations, online file sharing of copyrighted texts, etc.<sup>116</sup> As already mentioned in Chapter 1, the phenomenon of book piracy arose with the modern invention of the print, which made information circulate much faster, but also imposed the need of controlling the contents that were published. European monarchies managed to do so by establishing royal privileges granted to state-favoured publishers. Eventually, this brought to the establishment of literary monopolies and state-controlled censorship systems, but soon these state-protected "book cartels" started to be challenged by less privileged publishers and entrepreneurs from outside the local markets, who disregarded state censorship, crown-granted privileges and guild-enforced copyrights in order to print censored texts and cheaper versions of the officially printed books that could reach new and less wealthy readers. They were what in the 17<sup>th</sup> century started to be defined as "pirate printers".<sup>117</sup>

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<sup>115</sup> Perry LINK, "China: The anaconda in the chandelier", *ChinaFile*, <http://www.chinafile.com/library/nyrb-china-archive/china-anaconda-chandelier>, 2002, accessed 24-05-2019.

<sup>116</sup> Ted STRIPHAS, "Harry Potter and the Culture of the Copy", in *The Late Age of Print: Everyday book culture from consumerism to control*, Columbia University Press, 2009, pp. 141-174.

<sup>117</sup> Bodó BALÁZS, "Coda: A short history of book piracy", in Karaganis J. (ed.), *Media Piracy in Emerging Economies*, Social Science Research Council, 2011, pp. 399-412.

Focusing on the issue of book piracy in China, even when analysing the most recent developments, we need to take into account that the Chinese culture was, and still is, deeply rooted in the Confucian tradition, where knowledge was not considered as a form of property and learning was not aimed to develop critical thinking, but it rather involved emulating eminent examples from the past. Imitation was considered as the highest form of respect and admiration of other people's work, and learning by copying was therefore encouraged as a way to transmit the lessons of the great masters of the past.<sup>118</sup> Furthermore, intellectual achievements and creativity were not attributed to individual abilities and innate genius, but to the principles that parents, friends, and the rest of the society had taught and inculcated into people's minds. Any creative work, including literary works, was therefore given birth by the contribution of the society as a whole, and seeking personal rewards or profit from their creation would have been considered highly selfish.<sup>119</sup>

As a result, not much emphasis was put into protecting individual ownership of the work as it was in making the work widely available to be shared with the community. According to scholars, this cultural tradition still influences people's attitude toward copyright protection and enforcement today, indirectly authorising in some way the establishment of a "culture of the copy" and resulting in extensive piracy consumption and copyright infringement.<sup>120</sup>

In light of the above, the following sections will respectively discuss the reasons that may hide behind the proliferation of copyright infringement cases in contemporary China, and will then present a concrete case of copyright infringement.

### 3.5.1 (Not) Enforcing Copyright Protection in China

As part of the Open Door Policy initiated by Deng Xiaoping in 1979, China began to seriously take into consideration the protection of intellectual property to regain its role in the international scene, after years of closure and denial of any rights that remotely protected or awarded individual creativity.

At the time, the rampant diffusion of piracy was therefore due to a poorly developed legal framework that was simply inadequate to guarantee protection and enforcement of copyright and the other intellectual property rights. In order to successfully implement the Open Door Policy, there was therefore the need to establish the legal foundations for such protection to be

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<sup>118</sup> XIANG Ren, "Copyright, Media and Modernisation in China (1890 to 2015): A historical review", *Studies in Communication & Culture*, 7, 3, 2016, pp. 311-326.

<sup>119</sup> Michel OKSENBERG et al., "Advancing Intellectual Property Rights: Information technologies and the course of economic development in China", *The National Bureau of Asian Research*, 7, 4, 1996.

<sup>120</sup> XIANG Ren, "Copyright, Media and Modernisation in China...", 2016.

consistent with the international standards.<sup>121</sup> As we already saw, in the hope to reduce the cases of copyright infringement, Western countries, and especially the United States, pressured China into abiding by international standards, by requiring it to emanate the 1990's Copyright Law and to adhere to the most important international conventions on copyright.

As a result, today the Chinese legal framework for the protection of copyright is essentially consistent with the international requirements, at least theoretically. Evidence of the progresses made in the past forty years are contained in the Copyright Law of the PRC, which includes an entire section titled “Legal Liabilities and Enforcement Measures” (arts. 47 to 56) that regulates cases of copyright infringement. In particular, arts. 47 and 48 are devoted to the enumeration of the civil and, where the act constitutes a crime, criminal liabilities born by those who commits acts of copyright infringement such as:

- publishing a work without the permission of the copyright owner;
- distorting or mutilating a work created by another;
- exploiting by exhibition, film production or any analogous method of film production, or by adaptation, translation, annotation, or by other means, without the permission of the copyright owner, unless otherwise provided in the Law;
- exploiting a work created by another person without paying remuneration as prescribed by regulations;
- publishing a book where the exclusive right of publication belongs to another person;
- producing or selling a work where the signature of another is counterfeited.<sup>122</sup>

As scholars quite unanimously suggest, today the problem is no longer that China does not provide adequate laws for the protection of copyright<sup>123</sup>, or that central Government leaders ignore infringement problems.<sup>124</sup> So, how is it possible that copyright infringement still represents one of the country's major plagues?

Unexpectedly, the answer to this discrepancy between the so-called “law in the books” and “law in action” can be found in an old Chinese saying that recites as follows: *shan gao huangdi yuan* 山高皇帝远, i.e. “the mountains are high and the Emperor is far away”. This proverb is often used by scholars to describe the status of intellectual property rights protection in China:

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<sup>121</sup> Joseph A. MASSEY, “The Emperor Is Far Away: China's enforcement of intellectual property rights protection, 1986-2006”, *Chicago Journal of International Law*, 7, 1, 2006, pp. 231-237.

<sup>122</sup> “Zhonghua Renmin Gongheguo zhuzuoquan fa” 中华人民共和国著作权法 (Copyright Law of the People's Republic of China), 2010.

<sup>123</sup> Bryan MERCURIO, “The Protection and Enforcement of Intellectual Property in China since Accession to the WTO: Progress and retreat”, *China Perspectives*, 1, 2012, pp. 23-28.

<sup>124</sup> MASSEY, “The Emperor Is Far Away...”, 2006.

the problem is not in the legal framework provided by the central Government, but rather that these laws are poorly enforced due to Beijing's lack of power to act at the provincial level.

According to Mercurio, the local protectionism that pervades Chinese provinces is the pumping heart of the whole piracy phenomenon, with local leaders and the entire community benefiting from the infringement activities,<sup>125</sup> counting on the protection offered by the "high mountains" that outdistance them from central authorities. This perspective is also shared by Massey, who states: "Chinese provincial authorities, 'far away over the mountains', benefit financially or politically from the proceeds of piracy or, instead, turn a blind eye to powerful local interests that do".<sup>126</sup>

In addition to this, the analysis proposed by the scholar Andrew Mertha in its book *The Politics of Piracy* tells us that China's size, heterogeneity, and historical complexity also represent key factors in understanding the local attitudes and difficulties to properly address the piracy problem. More specifically, Mertha argues that the main problems characterising the enforcement of copyright and the other intellectual property rights may be attributed to the differences in the economic development among different provinces; the inability of China's legal infrastructure to effectively deal with the volume of infringement cases, due to the conflicting interests created by local protectionism; and the fact that such enforcement in China is entrusted to a web of multifaceted and layered bureaucratic levels (central, provincial, and local) that create an inefficient and maze-like system.<sup>127</sup>

Massey also raises another significant point, stating that in most infringement cases "the judicial process often fails to impose deterrent penalties against piracy"<sup>128</sup>; that is, even after having escaped the maze of administrative processes and proceedings needed to enforce copyright, and after having persuaded the competent authorities to begin the investigations, when infringers are identified they are rarely imposed penalties strong enough to serve as a deterrent.

On the other hand, consumers also benefit from infringement activities, since they can gain access to counterfeit or pirated books at a much lower price than their legitimate counterparts; for this reason, most of the times they do not care if copyright has been infringed.<sup>129</sup>

To conclude, as Mercurio effectively summarises:

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<sup>125</sup> MERCURIO, "The Protection and Enforcement of Intellectual Property in China...", 2012.

<sup>126</sup> MASSEY, "The Emperor Is Far Away...", 2006.

<sup>127</sup> Andrew C. MERTHA, *The Politics of Piracy: Intellectual property in contemporary China*, Cornell University Press, 2005.

<sup>128</sup> MASSEY, "The Emperor Is Far Away...", 2006, p. 233.

<sup>129</sup> MERCURIO, "The Protection and Enforcement of Intellectual Property in China...", 2012.

Almost all scholars and commentators believe protection and enforcement efforts are hampered by a number of factors, including vaguely worded laws and regulations allowing for multiple interpretations, lack of effective deterrents against infringers, lack of political will from the central, provincial, and local governments, and industry reluctance to confront the central government or provincial authorities for fear of losing their positioning. It is also a shared belief that both a lack of resources and poor coordination among various enforcement agencies impedes the protection and enforcement of IPRs [intellectual property rights].<sup>130</sup>

### 3.5.2 Let a Hundred Potters Bloom

Since 1997, when *Harry Potter and the Philosopher's Stone* was first published in the United Kingdom by Bloomsbury, the incredible adventures of “the boy who lived” have inspired the dreams and the imagination of several thousand children and adults, who queued for hours outside bookstores on the release day of every new book of the series, just to get their hands on a copy and let the magical journey continue. With over 450 million of authorised copies sold worldwide in the last twenty years<sup>131</sup>, we can fairly state that the *Harry Potter* series has become an internationally recognised literary phenomenon.

However, with great success also come great dangers: while being one of the most popular book series in the world, *Harry Potter* has also been recognised as one of the most pirated works, at the detriment of its author and right holders. The impatience of the international *Harry Potter* fan community led to the bursting out of several episodes of copyright infringement worldwide, including unauthorised translations released before the publication of their official counterparts, knockoffs claiming to be official sequels, and an array of unauthorised derivative works.

As already mentioned, the rights for publishing official translated editions of the *Harry Potter* series in China are held by the state publisher People's Literature Publishing House. Nonetheless, in the decade during which the series was published (1997-2007), several unauthorised translations and uncannily-titled knockoffs were released under the imprint of other major Chinese publishing houses, which claimed to have no knowledge of the fact.<sup>132</sup> On the other hand, other publishing houses were perfectly aware of committing piracy, but they did it anyway because “Harry Potter was so popular that we wanted to enjoy the fruits of its widely accepted publicity in China”<sup>133</sup>, as the editor of the China Braille Publishing House stated when

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<sup>130</sup> MERCURIO, “The Protection and Enforcement of Intellectual Property in China...”, 2012, p. 27.

<sup>131</sup> “Harry Potter compie 20 anni e i 450 milioni di copie vendute”, *Agi Cultura*, <https://www.agi.it/cultura/harry-potter-compie-20-anni-oggi-e-facebook-lo-festeggia-1910098/news/2017-06-26/>, 2017, accessed 27-05-2019.

<sup>132</sup> Howard W. FRENCH, “Chinese Market Awash in Fake Potter Books”, *The New York Times*, <https://www.nytimes.com/2007/08/01/world/asia/01china.html>, 2007, accessed 27-05-2019.

<sup>133</sup> *Ibidem*.

interviewed about the knockoff they published in 2002, *Hali·Bote yu ci wawa* 哈利·波特与瓷娃娃 (*Harry Potter and the Porcelain Doll*).

Perhaps the most illustrative of all cases of copyright infringement that hit the series in China is the one regarding the knockoff *Hali·Bote yu bao zoulong* 哈利·波特与豹走龙, mistranslated in English as *Harry Potter and Leopard Walk Up to Dragon*, a 198-page book that popped up in the summer of 2002 in Beijing, Hong Kong, Guangzhou and other cities' bookstores and street markets, about a year before the official release of the English-language edition of *Harry Potter and the Order of the Phoenix*.<sup>134</sup>

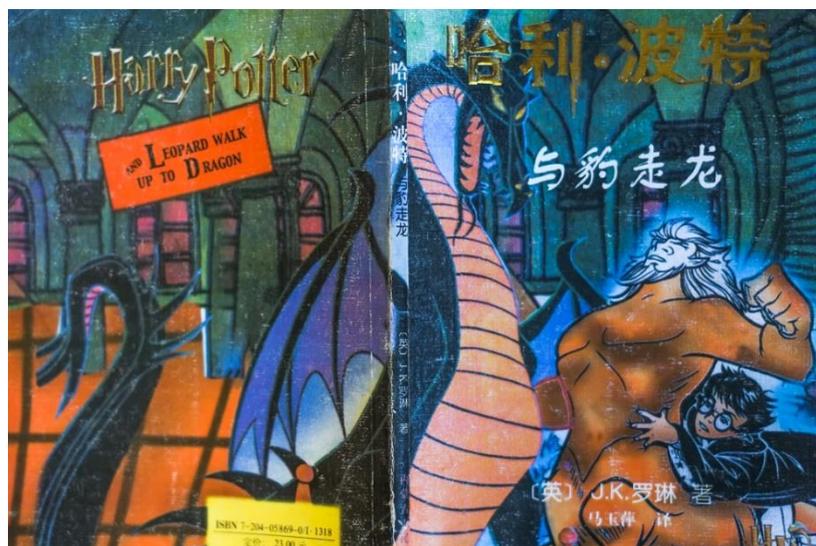


Figure 7. The cover of the knockoff “*Harry Potter and Leopard Walk Up to Dragon*”.

Figure 7 above illustrates the cover of what had clearly been designed to be passed off as the legitimate fifth book of the series. All the main character's features are respected: a black-haired, bespectacled Harry dressed in the typical Hogwarts wizard's robe appears intent on holding on tight to a centaur (possibly the centaur Florence from the official story) that defends him from a dragon. At the bottom of the front cover, the Chinese name used by the author J.K Rowling to sign the official books of the series is also included, together with the already familiar golden lightning logo. On the back cover, the book also shows a legitimate ISBN.

As Striphhas assure us, if we turn the page we will also encounter the usual publication information in Simplified Chinese and a series of assertive, legalistic statements in English such as: “Text copyright © 2002 by J.K. Rowling”; and “Harry Potter names, characters and related

<sup>134</sup> STRIPHAS, “*Harry Potter and the Culture of the Copy...*”, 2009.

indicia are copyright and trademark Warner Bros. © 2002”.<sup>135</sup> The same statements with the exact same wording can be found in the first page of any copy of the legitimate *Harry Potter* books. To the eye of an inexpert reader, all clues lead to one conclusion: that was indeed the official fifth book of the series.

However, when they went home all satisfied with their alleged new Harry Potter book under the arm and they started reading it, they would soon find out that whoever wrote that, they had just borrowed the names of J.K. Rowling and her characters, and little more. With a rather unexpected plot twist given the end of *Harry Potter and the Goblet of Fire*, at the beginning of the bogus book we find Harry turned into a fat, hairy dwarf and deprived of his magic powers, which he could regain only if he found a mysterious magical ring.

Does this ring any bells? As keeping on the reading, readers would soon discover that the book’s plot almost entirely “takes inspiration” from J.R.R. Tolkien’s *The Hobbit*, with the characters’ names changed to fit in the *Harry Potter* universe.<sup>136</sup>

To give an idea of the close resemblances between the two books, two extracts taken respectively from the incipit of *The Hobbit*’s first chapter and the incipit of the bogus *Harry Potter*’s second chapter are reported below:

In a hole in the ground there lived a hobbit. Not a nasty, dirty, wet hole, filled with the ends of worms and an oozy smell, nor yet a dry, bare, sandy hole with nothing in it to sit down on or to eat: it was a hobbit-hole, and that means comfort.<sup>137</sup>

There was a hobbit, who didn't even know how to return home. He lived in a hole in the ground, and didn't know where he came from or where he was going to. He even didn't know why he had become a hobbit. This was Hogwarts School of Witchcraft and Wizardry 5th year apprentice Harry Potter. Harry lived in a hole in the ground. Not a nasty, dirty, wet hole, filled with the ends of worms and an oozy smell, nor yet a dry, bare, sandy hole with nothing in it to sit down on or to eat [...].<sup>138</sup>

As we can read, the similarities between the two incipits are astounding, with the last two lines of the latter literally copied word by word from the former. Clearly, this does not only constitute an infringement of copyright with respect to *Harry Potter*’s copyright holders, but also with respect to *The Hobbit*’s.

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<sup>135</sup> STRIPHAS, “Harry Potter and the Culture of the Copy...”, 2009.

<sup>136</sup> “Fake Harry Potter Novel Hits China”, *BBC News*, <http://news.bbc.co.uk/2/hi/entertainment/2092661.stm>, 2002, accessed 27-05-2019.

<sup>137</sup> J.R.R. TOLKIEN, *The Hobbit*, HarperCollins Publishers, 2009, p. 1.

<sup>138</sup> “11 Harry Potter Made in China”, *Nebula House*, <https://www.nebulahousepublishing.com/it/libri-e-dintorni/11-harry-potter-made-in-china/>, 2016, accessed 27-05-2019.

Eventually, *Harry Potter and Leopard Walk Up to Dragon* was cracked down by the authorities a few weeks after its release, yet reportedly about a million copies had already been sold. When J.K. Rowling was informed of the fact, together with her publishers, the Christopher Little Literary Agency representing her, and Warner Bros. (the license holder for *Harry Potter*'s films), she entrusted a team composed of lawyers and investigators with the task of tracking down those responsible for producing the bogus book. In the end, the culprit was identified as the Bashu Publishing House based in Chengdu, which, under the fierce pressures of the team appointed by J.K. Rowling, confessed to having published the book in Rowling's name, even if they claimed they had no knowledge of having violated any law in doing so.<sup>139</sup> The Bashu Publishing House finally agreed to pay a £1,600 fine and to issue a public apology, which was published in China's *Legal Times*.<sup>140</sup>

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<sup>139</sup> STRIPHAS, "Harry Potter and the Culture of the Copy...", 2009.

<sup>140</sup> Oliver AUGUST, Jack MALVERN, "Legal Magic Spells Win for Harry in China", *The Times*, <https://www.thetimes.co.uk/article/legal-magic-spells-win-for-harry-in-china-gbgdlmbqjp>, 2002, accessed 27-05-2019.



## Conclusions

The aim of this thesis was to explore the opportunities available for foreign books that wanted to leave their country of origin and embark on a journey of several thousand miles to China, focusing on the aspect of copyright management throughout its several stages. As the story of the book's journey towards China comes to its end, and in light of our overall discussion, it is finally time to answer that famous question that had remained unanswered in the introduction of this thesis. Is China really an open land for foreign publishers willing to enter the local book market with their publications?

Thanks to an extensive analysis conducted on the relevant laws and regulations, I discovered that the Chinese publishing industry is indeed one of the most tightly controlled sectors: each new publishing business has to be approved by SAPPRFT, which also sets the topics and publication types that the publisher in question is allowed to operate in, and decide on the issue of ISBNs, having therefore the power to virtually control every publication that is distributed to the market. Furthermore, the publication of works including the “sensitive” contents categorised in the Copyright Law of the PRC is prohibited.

As such, China is not completely open even to foreign direct investment in the publishing field, as this sector is part of the restricted businesses included in the MOFCOM's Negative List. However, as we discovered in the third chapter, foreign publishers are offered three main options to make their publications available to the Chinese audience. Each of these three entry modes has its own peculiarities, advantages and disadvantages, and I would like to provide here a summary with some final considerations.

The first strategy examined is book export, which differ from rights sales in that it entails shipping physical copies of the book in its original language to China. As such, choosing to export books rather than to sell rights can turn out to be positive for the publisher, since they do not need to involve other publishers in the operations and can retain a certain degree of control over their products. It is certainly true that most costs are kept in house, but on the bright side, the profit will also be higher.

From the author's perspective, book export does not offer great appeal since they will only receive about 18% of royalties, when they could obtain up to 75% from the rights sale of their

title. Still, royalties paid to authors for exporting their book are higher than in the case of a co-edition, where the author only gets 10% of the overall revenue.<sup>141</sup>

Although book export to China and access to the Chinese distribution system have been largely liberalised since the 1980s, the State is still highly involved in the process and, by means of approved import-export agencies, has the power to control every book that enters the country. Furthermore, as of today the market for book export is mainly confined to English-language books, since the level of knowledge of other Western languages is still too low to allow the business of other foreign-language books to take off.

Finally, apart from the political, legal and cultural challenges that publishers face when deciding to export books, a successful implementation of this strategy might also be hindered due to the risk element: if a book is exported abroad and it turns out to be a failure in the foreign country, the domestic publisher takes all the losses, because no other publisher is involved in the process; on the other hand, if a book published abroad by means of a rights sale fails, losses are distributed across several publishing houses, and the domestic publisher and the author can still make a profit from the advance and royalties paid by the purchasing publisher.

As of today, the sale of translation and reprint rights remains the most popular and successful strategy to enter the Chinese book market, given the growing interest China shows for Western bestsellers and the increasing internationalisation of Chinese nationals' new generations. A fundamental role in the process is played by book rights agencies located inside and outside China, which, together with international book fairs, can be thought as of the path leading our book towards its destination. These agencies help foreign publishers find connections to rights buyers, but also Chinese publishers to find potential titles. Apart from the services traditionally provided, some rights agencies are also exploring the use of new technologies to provide unique assistance to their clients, as outlined by the case of Rightol Media.

More and more publishers today are also considering to enter into co-publishing deals with Chinese publishers to pool their resources together. This is usually done by making use of an extremely useful business tool, i.e. the formation of joint ventures for publishing revised editions of pre-existent copyrighted works, or new editions realised from scratch. As we saw, publishing joint ventures in China tend to take the form of CVJs (project cooperation), given their higher flexibility and their suitability for the realisation of short-term projects, as can be the publication of just one book or a series of books. More rarely, foreign and Chinese

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<sup>141</sup> Jennifer POWELL, *Rights or Distribution: An analysis of factors influencing publishers' ability to sell rights or to distribute into a foreign region*, Simon Fraser University, 2008.

publishers may decide to set up an EJV, i.e. a new legal entity effectively acting as a Sino-foreign publishing company.

Both rights sales and co-publication projects allow the domestic publisher to split risks and costs with the Chinese publisher, while also enhancing their and the author's international profile and spreading the title to a wider audience, if compared to exported books that are only available in their original language. From the domestic publisher and the author's point of view, selling translation rights will increase the earnings from the domestic market thanks to the royalties received by the Chinese publisher, but it will also inevitably limit sales of the exported edition.

In light of the above, and considering that Italy was mentioned in the first chapter as the reference legislation on copyright and the book publishing contract, I would like to briefly examine here what are the opportunities for Italian publications in China.

Although the percentage of Italian books sold in China only amount to around 2%<sup>142</sup>, Italy is often mentioned among China's major copyright trade partners, positioning itself as eleventh in the line after the United States, the United Kingdom, Japan, Germany, France, Russia, South Korea, Canada, Australia and Singapore.<sup>143</sup>

As we already mentioned, book export is not usually used as an entry strategy by Italian publishers, since the number of people able to speak Italian in China only amounts to a few thousands, and the market for books imported from Italy is mainly restricted to language-learning books at the university level.<sup>144</sup>

On the other hand, Italian books' rights sales to China have been skyrocketing in the last few years, and not only for novels by worldwide-known writers like Italo Calvino, Umberto Eco and Andrea Camilleri. Unexpectedly, in the last few years China has become Italy's second area of business in the children publishing sector, occupying 21% of the Italian rights business in the field<sup>145</sup>, and most likely this is due to the explosive growth that children publishing has been witnessing in China. According to a report released by the Chinese Publishers' Association in 2016, sales of children's books in China registered an increase of 28.8% year on year, with the sector retaining a share of 23.5% of the total book market. The reasons of this success can be attributed to several factors, including the size of the target market (about 370 million

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<sup>142</sup> "Enter the Chinese Publishing Market: Trend, Figures and Tips", 2017.

<sup>143</sup> XIN, *Publishing in China*..., 2010.

<sup>144</sup> "Il mercato dei libri in Cina: quali opportunità per l'editoria italiana", *Associazione Italiana Editori*, 2005.

<sup>145</sup> L. BIAVA, "Export diritti, il made in Italy più amato dalla Cina", *Giornale della Libreria*, <http://www.giornaledellalibreria.it/news-internazionalizzazione-export-diritti-il-made-in-italy-piu-amato-dalla-cina-1978.html>, 2011, accessed 04-06-2019.

children and under-aged young adults), and the growth of a younger, more educated, wealthy and internationalised Chinese middle class, with parents aware of the importance of reading and willing to invest in their children's culture.<sup>146</sup>

The opportunities for Italian authors and publishers in the Chinese publishing sector are multiple, and some of them have already started to ride the wave of this incredible success. This is the case of *Geronimo Stilton's* books, Elisabetta Dami's well-known children series with a journalist mouse as the main character composed of more than 300 titles, which in the last twenty years has become an Italian and international publishing phenomenon. The rights for the international publication of the series are held by Atlantyca Entertainment, a company founded in 2007 in Milan operating in the sectors of publishing, licensing, foreign rights, and production and distribution of Italian children stories in the international market. As stated by the CEO Claudia Mazzucchi, in 2008 Atlantyca brought the *Geronimo Stilton* series to the Beijing Book Fair for the first time, without expecting they could witness such deep interest in Italian children publications: the series immediately received an offer by three Chinese publishers and eventually managed to sell 40 titles to the 21<sup>st</sup> Century Publishing House.<sup>147</sup> In 2014, the *Geronimo Stilton* series, known in China as *Laoshu jizhe* 老鼠记者 (literally "The Mouse Journalist") had already sold six thousand copies in China, and in 2018 the achievement of 10 thousand copies sold was celebrated with an event organised in Beijing by the Chinese publisher, which, thanks to the fortunate Italian journalist mouse, managed to reach the fourth position in the global ranking of most famous *Geronimo Stilton's* international publishers.<sup>148</sup> Following the trail of success that *Geronimo Stilton* achieved in China, at the Beijing Book Fair of 2012 Atlantyca announced that the rights to the spin-off *Tea Sisters*, a series composed of 40 titles narrating the adventures of Geronimo's sister Tea and her friends, had been sold to the publisher Beijing X-iron Children Culture Media Co. Ltd. In order to make the series easily recognisable and accessible to Chinese children that already know *Geronimo Stilton*, the title has been translated to *Qiao shu jizhe* 俏鼠记者 (literally "The Pretty Mouse Journalist"). Furthermore, as if to confirm the outstanding attainments accomplished by the Italian children publishing sector in China, in 2011 the Italian publishing house La Coccinella (belonging to the

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<sup>146</sup> Antonio LOLLI, "Continua l'aumento delle vendite di libri in Cina. Il settore ragazzi segna un +28,8%", *Giornale della Libreria*, <http://www.giornaledellalibreria.it/news-mercato-continua-laumento-delle-vendite-di-libri-in-cina-il-settore-ragazzi-segna-un-288-2941.html>, 2017, accessed 04-06-2019.

<sup>147</sup> Raffaella DE SANTIS, Sara GRATTOGGI, "I libri italiani alla conquista del mondo. La Cina si scopre pazza di Geronimo", *La Repubblica*, <https://inchieste.repubblica.it/it/repubblica/rep-it/2016/06/22/news/i-libri-italiani-alla-conquista-del-mondo-139990852/#cina>, 2016, accessed 05-06-2019.

<sup>148</sup> "Geronimo Stilton in Cina", *Atlantyca Entertainment*, <https://atlantyca.com/it/news/Geronimo-Stilton-Cina/n,1356>, 2018, accessed 05-06-2019.

Mauri Spagnol Publishing Group) and the Jilin Fine Arts Press (belonging to the Jilin Publishing Group) announced at the Bologna Children's Book Fair the establishment of an EJV based in China. As of today, the company actively engages in the activities of publishing, printing and distributing illustrated children books in the Chinese and the Asian markets. Titles are either drawn from La Coccinella's catalogue or realised by scratch using contents licensed by Warner Bros. to Shaanxi Jimei Culture Media (controlled by the Jilin Fine Arts Press). In accordance with the Chinese Joint Venture Law, the Chinese partner maintains 51% of the ownership, but the Italian partner retains the technical supervision over all products.<sup>149</sup>

Notwithstanding the several opportunities that Italian and other foreign publishers are offered to enter the Chinese market in this particularly favourable period of the Chinese publishing industry, the journey of foreign books towards China is still hindered by two major plagues affecting the country, namely censorship and piracy.

As highlighted by the four "tales of censorship" illustrated in the dedicated section of Chapter 3, censorship in China comes in many different shapes and forms, and unlike the Chinese colleagues, most of the times foreign authors and publishers are offered a choice whether to accept to modify the contents of their books, without risking to sacrifice their entire careers and access to readers. Apart from the cases of preventive self-censorship and cases where authors do not even know of the cuts made to their books, the debate over this question is represented by two main factions: those who believe in the power of reading as an education tool that will spur the demand for more foreign contents, and are therefore willing to sacrifice a certain percentage of their books to let Chinese readers access as much information as possible; and those who firmly refuse to bend the knee to the censorship regime, claiming that it is not a matter of percentages of cuts, but a matter of giving a false and sweetened reflection of what China really is. In one case or another, uncensored editions of foreign books can be usually found in Taiwan and Hong Kong, whose respective publishing industries are characterised by a lower state control and a more open and international market.

Finally, despite China's acknowledgeable efforts to be compliant with international copyright protection standards, piracy and copyright infringement are still rampant in China. As of today, the Chinese legal framework for the protection of copyright is essentially consistent with international requirements, and the problem cannot be identified in the lack of adequate laws anymore. As the case of the *Harry Potter* series has outlined, the main problem is the discrepancy between the "law in the books" and the "law in action" that pervades many aspects

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<sup>149</sup> L. BIAVA "La Coccinella sbarca in Cina", *Giornale della Libreria*, <http://www.giornaledellalibreria.it/news-editori-la-coccinella-sbarca-in-cina-2200.html>, 2011, accessed 05-06-2019.

of the Chinese law. As emerged from the analysis of the relevant literature, the poor enforcement of the laws concerning copyright protection is to be attributed to the central Government inability to act at the provincial level, whose local protectionism, heterogeneous economic development, and inadequate penalties make it extremely difficult for the relatively new legal infrastructure to deal with the large volume of copyright infringement cases.

If there is something that I learned in the five-year-long period of my Chinese studies is that when talking about the country of a thousand contrasts and contradictions, there is no question with a straightforward answer, there is no black and white, but rather a rainbow of nuances. I am afraid, the answer to our highly debated question is no different, but after all, every intrepid traveller knows that uncertainty is part of the journey towards unexplored lands.

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