Dancing in Shackles
COPYRIGHT IN CHINA’S HIGHLY REGULATED PUBLISHING MARKET

by HONGSONG SONG*

The entire private publishing business is grounded on informal rules.¹

--A private publisher (2008)

I. INTRODUCTION

In the process of economic and political transition, China has tried to introduce market mechanisms into the information production and dissemination system while still maintaining state control over this system. In addition to exercising strict censorship, the Party-state also monopolizes ownership of the crucial sectors in this system, such as publishing, broadcasting, and newspapers. Recently, the influence of press control over copyright enforcement has drawn more international attention. Some commentators have touched on the influence of censorship and importation restrictions on copyright enforcement in China.² The U.S. government also issued two complaints to the WTO against China’s censorship and market access restrictions because of their impacts on copyright enforcement. However, the influence of state media monopolies on copyright enforcement has not been fully investigated.

In 2008, the author interviewed around twenty private publishers, staff of state-owned publishing houses, copyright officers, and copyright scholars in China.³ Based on the first-hand information provided by these

*Associate professor, Law School of Yantai University (China), Intellectual Property Academy of Shandong Province; Ph.D., University of Queensland (Australia). This research is also supported by the Ministry of Education: Humanities and Social Sciences Research Project No. 11YJA820060, and the Ministry of Justice: Legal Research Project No. 12SFB2039. Email: shs.song@gmail.com

¹ Interview 081103 (Beijing, 3 Nov. 2008).
³ These interviews were approved by the Ethical Committee of the TC Beirne School of Law of the University of Queensland in accordance with its official guidelines. In order to protect the information sources, all the interviewees are anonymous in this article.
interviewees, the author has been able to find out a great deal about the actual operation of China’s publishing industry and how it navigates between the market and state control. In fact, tension between the market and state control constitutes the major force that shapes the basic structure of China’s media industry. Facing the state monopoly over the publishing sector, the representatives of market forces, such as private publishers who try to participate in the publishing process more broadly and more thoroughly have to circumvent formal regulations. Although private publishers are able to undertake book publication through the “book number” trade\(^4\) and cooperation with state-owned publishing houses and are covered by various deceptive arrangements, without official acknowledgment the entire private publishing business is largely illegal.

The unique business model adopted by China’s publishing industry seriously impedes copyright enforcement in insidious and non-obvious ways. Lacking legal status in book publishing, private publishers cannot protect the copyright in their books. Thus, in China’s publishing sector, copyright cannot play an important role in protecting creation and inhibiting copyright piracy. This situation plus the uncertain legal status further impede private publishers from investing in copyright exploitation and even push many of them into imitation and piracy. Based on these discoveries, this paper aims to shed light on the influence of state monopoly on copyright in China’s publishing industry.

II. PUBLISHING REGULATIONS TO MAINTAIN STATE MONOPOLY

Press control over the publishing process has been dramatically relaxed after thirty years of reform. Private investment is now allowed to enter most sectors of the publishing industry, and the market has started to play a much more important role in information production and dissemination. Control over literary and artistic creation has declined, with more and more authors relying on copyright royalties instead of state patronage. The book retail sector is generally open to private investment, although the retailing of textbooks is still monopolized by the state-owned New China Bookstore. The book wholesale sector has been officially opened to private enterprises, although registration requires examination and approval by the relevant government authority.

In spite of all these changes, however, the Party-state still retains significant control over publishing, which it treats as the most critical link in the press production chain. China’s publishing regulations state that the government directly controls the total number, structure, distribution and coordination of all publishing institutions in the country. All press houses are owned by the State. Only state-owned press houses can obtain a publishing license, that is, if one adopts a more literal translation, a “book number,” and these licenses are required in order to commission printers to print books. A number of barriers have been set up to prevent anyone other than the state-owned publishing houses being involved in the publishing business.

A. Publishing Houses Monopolize Publishing

Throughout its half-century history, the Communist Party has maintained a publishing monopoly which has persisted despite the market-driven reform of the last thirty years. In 1987, concerned about rampant illegal publishing activities, the General Administration of Press and Publication (GAPP) issued an official notice stressing that except for those publishing institutions approved by the State, no institution or individual may publish for open distribution any book, periodical, or audio-visual publication. In 1996, facing a second wave of illegal publishing, this principle was emphasized again. In 1997, this principle was adopted in the Regulations on the Administration of Publishing, which states that all books published in China must be published by “publishing institutions.” The same requirement is found in the 2001 Regulations on the Administration of Publishing. Anyone who engages in the publishing, printing, copying, importing, or distribution of a publication without government authorization may be subject to fines, confiscation of property, and criminal sanctions.

Some impacts of state control are less effective of course. The State also specifies the field or specialized subject areas of every publishing institution, so that market competition between different publishing houses will not break down the publishing monopoly system from the inside. In

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5 Regulations on the Administration of Publishing art. 10 (promulgated by the St. Council, Dec. 12, 2001).
6 Notice Regarding Striking Hard Against Illegal Publishing Activities art. 1 (promulgated by the St. Council, July 6, 1987), art. 1 [hereinafter Notice Regarding Striking Hard].
8 Regulations on the Administration of Publishing art. 8 (promulgated by the St. Council, Jan. 2, 1997).
9 Notice Regarding Striking Hard, supra note 6, art. 9.
10 Id. art. 55.
this respect the system adopted in the 1950s has largely continued. Publishing houses specialize in certain specific fields corresponding to their sponsors’ subject areas (education, health, trade, railways, etc.). Thus, despite the substantial changes brought about by market-driven reform in the publishing industry since 1978, GAPP still officially aims to maintain publishing specialization and has issued repeated notices to this effect. However, these notices appear to be ineffective and the Party-state seems to acquiesce in some publishing houses operating outside of their area of specialization, while still keeping tight control in certain areas such as the publication of primary school and middle school textbooks, and books subsidized by the State.\textsuperscript{11}

\textbf{B. Only Public Institutions May Establish Publishing Units}

In addition to creating a state monopoly over publishing institutions, the administrative regulations and rules on publishing further raise the threshold for establishing a press house. They set up another level of supervision by providing that every publishing institution must be established by an approved state-affiliated sponsor (sponsoring institution) which must be supervised by an approved government department (managing institution).\textsuperscript{12} The publishing institution must answer to its sponsoring/managing institution.\textsuperscript{13} The sponsor need not be a government department, but must be a public institution which is directly, not nominally, administered by a government department.\textsuperscript{14} For example, an institute or association established by a government department may apply to set up a publishing house, while a private or non-public organization may not. Only the sponsoring institution, not any individual, has the power to file an application to establish a publishing unit. Through these provisions the state can achieve direct control over the whole publishing sector in China.

In addition to the above conditions, the establishment of a new publishing house also has to be in accordance with the State plan for the number, structure, and distribution of publishing institutions. Founded in the pre-reform era, the basic framework of the publishing industry follows the organizational structure of the Party-state. At the central level, every division of the Party-state, such as departments of the CCP central committee,


\textsuperscript{12} Notice Regarding Striking Hard, \textit{supra} note 6, art. 11.

\textsuperscript{13} The Interim Provisions on the Functions of the Sponsoring Unit and the Managing Unit for Publishing Units art. 6 (promulgated by the Gen. Admin. of Press & Publ’n, June 29, 1993).

\textsuperscript{14} \textit{Id.} art. 5.
the government ministries, the People’s Liberation Army, mass organizations, and democratic Parties, might own one or two publishing houses. At the local level, each province, autonomous region, or municipality under the direct control of the central government also has a publishing sector with a similar structure. For example, Jiangsu province has the Jiangsu People’s Publishing House, the Jiangsu Educational Publishing House, the Jiangsu Literature and Art Publishing House, the Jiangsu Science and Technology Publishing House, and the Jiangsu Children’s Publishing House. In addition to this central or local government system, some important public institutions such as universities and research institutes may also have their own publishing houses. The establishment of state-owned publishing houses is based on the interests of the Party-state rather than market demand. For example, in order to promote China’s Olympic bid, GAPP approved the establishment of Olympic Publishing House in 1991 and then dismissed it after Beijing failed to host the 2000 Olympic Games.

There have occasionally been experiments in reducing the monopoly of the State in publishing. In the late 1980s, three private publishing houses were approved as an experiment in reform. However, after the Tiananmen Square Incident in 1989, the ban on private publishing was tightened again and these three private publishing houses were closed shortly after. In some exceptional cases foreign publishers have been allowed to establish joint ventures with state-owned publishing houses. For example, the British publisher Pergamon Press invested in China Academic Publishing House in 1988, and established International Academic Press, the first publishing joint venture in China. The People’s Post, Telecommunication Publishing House, and Egmont, the largest publisher of children’s books in Europe, established the Children’s Fun Publishing Company in 1994. However, in these experiments, state-owned institutions always hold the majority of stock. Thus, to date, all book publishing houses are integrated into the structure of the Party-state.

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C. Only State-Owned Publishing Houses May Obtain Publication Numbers

Control over publishers is not limited to the authorization and registration of the publishing entity. Newspapers, periodicals and books are also registered separately through a book and periodical numbering system. In 2002, China fully adopted the International Standard Book Number (ISBN) and International Standard Serial Number (ISSN) system, bringing the book numbering system in China in line with the international system. However, the function of China’s book number system is quite different from that of the rest of the world. In most countries, ISBN and ISSN only provide the means of classifying and locating information about publications, and can be voluntarily and freely applied for by publishers without examination. In China, the book number is supervised by the GAPP to ensure that every published copy comes from a state-owned publisher and can be traced back to its publisher. According to the administrative regulations and rules on publishing, all books published in China must have a book number, but only official registered publishing houses are eligible to get such book numbers. The national numbering system in China therefore presents an additional obstacle to illegal publishers, as they cannot openly sell or distribute their products without these essential and centrally assigned numbers.

In addition to controlling the distribution of book numbers, the state also exercised gross control over the quantity of book numbers for more than a decade, that is, 1998 to 2009. According to the Notice Regarding Strengthening of the Gross Control of the Amount of Book Numbers of 1998, the distribution of book numbers is correlated with the numbers of editors in a press house. Generally, every qualified editor is assigned five book numbers per year, although those publishing houses which earn the trust of the GAPP by loyally complying with the publishing policies will in turn be given more book numbers. In responding to the trade in book numbers (see below), the macro-control of book numbers was introduced in the mid-1990s to match the supply of book numbers to the productivity of state-owned publishing houses. The intention was to limit the supply of book numbers so that state-owned publishing houses would have no extra numbers to sell.

19 Notice Regarding Striking Hard, supra note 6, art. 29.
D. Only State-Owned Publishing Houses May Issue a Printing Warrant

State control also extends to the printing of publications. A legally-printed book has to meet three conditions. First, only legally established publishing units have the right to commission a printer to print a book. Article 15 of the Regulations on the Administration of Printing Enterprises states that printing enterprises must not print publications that are not published by a publishing unit.

Second, to commission the printing of a book, the publisher has to apply for a printing warrant from the Administration of Press and Publication of the province in which it is located. These printing warrants are printed and sealed by the provincial Administration of Press and Publication. Only a publishing unit can obtain a printing warrant. Without a printing warrant issued by the publishing unit, printing enterprises cannot accept commissions to print books or periodicals.²²

Finally, whenever a printing enterprise accepts a commission to print a book or periodical, the enterprise must examine and keep the original copy of the printing warrant and register it at the provincial Administration of Press and Publication before printing.²³ Thus, in addition to the book number system, printing warrants constitute another mechanism to prevent private participation in publishing.

E. The Ongoing Changes in Publishing Control Policy

Despite the restrictions imposed by the above measures, private publishers still seek ways to enter the publishing sector. In the face of the reality that nearly half of production by value in the publishing sector is created by private publishing, the ongoing state monopoly has been criticized by many commentators, including some high-level officials, as being out of date.²⁴ Many private publishers have appealed to GAPP to abolish the book number system, and to replace it with an open registration system under which every legal enterprise would be “permitted to do busi-

²⁴ Transcript of Colloquium of Investigation of Private Cultural Studio (Mar. 20, 2008). This colloquium was organized by the GAPP in order to gather first-hand information about private publishing and conducted by Government officials from the Office of Book Publication, the Office of Book Distribution, and the Office of Policy and Law of GAPP, and scholars from the China Institute of Publishing Science. As interviewees, administrative staff from the Working Committee of Non State-owned Sector in China Association of Book and Periodical Distribution, and private publishers from fifteen large-scale culture companies and studios attended this colloquium [hereinafter Colloquium Transcript].
ness as a publisher and bring out as many books as it felt able to, based entirely on market demand.”

Reform of publishing policy is not keeping pace with the expectations of private publishers. Gross control over the supply of book numbers was removed in January 2009. Private publishing was deemed a highly desirable economic activity, and cooperation between state-owned publishing houses and private publishers was encouraged in the Directive Guideline on Advancing the Reform of Press and Publication System issued by the GAPP in April 2009. Although these measures are praiseworthy, they are far from entirely satisfactory. There is still no sign that book numbers and publishing rights will be granted even to large-scale (easy to police) private publishers in the near future, let alone available to all.

III. PUBLISHING ON THE EDGE OF LEGALITY AND ITS IMPACT ON COPYRIGHT ENFORCEMENT

A. Problems Caused by Strict Publishing Regulation

Under the regulations described above, China’s publishing industry has been split into two parts. One is the publishing sector which is strictly controlled by the government; the other is the distribution and retail sector which is relatively freer and more market-driven. This separation and differential regulation breaks the connection between demand and supply. Heavily restricted by press control, the publishing sector cannot meet the needs of the book distribution sector or consumer demand. All of the regulating measures mentioned in the second part have various degrees of negative influence on the productivity of the publishing sector.

Due to the abovementioned controls over the scale of the publishing sector, establishing a new publishing house is extremely difficult. In fact, less than ten new publishing houses were approved by GAPP between


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1997 and 2007. Taking Guangxi Province as an example, not even one new publishing house has been approved in the last fifteen years.\(^{28}\) In fact, there were only 573 publishing houses in China in 2005. Compared with the several thousand publishing houses which exist in Taiwan,\(^{29}\) the population of which is only 23 million, the number of publishing houses in mainland China with its population of 1.4 billion is far too low. Moreover, it must be remembered that publishing houses are strictly prohibited from setting up branches outside of their provincial territories as assigned by GAPP. Consequently, there is no prospect of the small group of state-owned publishing houses meeting the market demand.

Gross control over the supply of book numbers further limits the development of publishing productivity. As was noted above, gross control of the quantity of book numbers was a response to the book number trade in the early 1990s. However, instead of stamping out this trade, this measure only served to increase the scarcity of book numbers. As a result, the price of book numbers in the black-market increased an estimated 600% between 1990 and 1995.\(^{30}\) The average price of a book number increased from 5,000 Yuan in the early 1990s to around 20,000 to 50,000 Yuan in 2007.\(^{31}\) Although gross control over the supply of book numbers was removed in January 2009, the supply of book numbers has not yet been opened to private publishers.\(^{32}\) As long as the book number monopoly persists, publishing productivity cannot be completely released.

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\(^{28}\) See Zhao Shulei, supra note 11.

\(^{29}\) According to official statistics, in 2004 there were 7,437 publishing institutions in Taiwan, which included government agencies, social organizations, academic and educational institutions, and commercial publishing houses. Among these institutions, there were around 3,000 commercial publishing houses. See Press Office of the Executive Council of R.O.C., Survey of the Book Publishing Industry: 2004 (2005).


\(^{31}\) A book number for a single book is around 12,000 to 25,000 Yuan, a book number for a series of books is around 23,000 to 35,000 Yuan, and a single book in a series needs to pay 5,500 to 7,000 Yuan. See Bao Hong, supra note 16.

\(^{32}\) Trial Administrative Measures of Application of Book Numbers in Real Name (promulgated by the Gen. Admin. of Press & Publ’n, Jan. 7, 2009). According to this document, the assignment of book numbers is no longer linked to the number of editors of a publishing house. In order to get a book number, publishing houses now need to apply online and register the real name of the manuscript they plan to publish. GAPP intended to eliminate book number trade by use of this measure. According to the official announcement, under this application system publishing houses will not have extra book numbers for sale. However, some private publishers are worried that this measure might not eliminate book number trade but increase the scarcity of book numbers.
Not only are there insufficient numbers of books being published, but those that are published often fail to meet consumer demand. State-owned publishing houses are designed to meet the needs of propaganda and transmit the state’s will, not to reflect consumer interest. Between 1999 and 2007, the overstock of books remained high. The value of annual overstock is equivalent to 40% to 50% of the total value of the books published every year. The value of the overstocks increased from 0.242 billion Yuan in 1999 to 0.566 billion Yuan in 2007, increasing at an average annual rate of 11%. The persistently high overstock rate shows that state-owned publishing houses are inefficient at meeting market demand. The inefficiency of state-owned publishing houses makes the disparity between demand and supply even greater.

The survival of state-owned publishing houses depends on their monopoly over key resources, such as book numbers, and the right to publish titles in certain specialized fields. This further reduces their incentives to explore the potential publishing market. Selling book numbers is the easiest and most reliable way for the state-owned publishing houses to keep their heads above water. Almost every publishing house is involved in the book number trade. A state-owned publishing house in Beijing can obtain 10 million Yuan just from the trade in book numbers every year. Of the 291 titles published by the Reform Publishing House in 1998 and 1999, for example, 127 titles were in truth published by private publishers who purchased book numbers from the Reform Publishing House. As a result, GAPP deregistered this publishing house as a punishment. It is well accepted by the publishing industry that at least 50% of the income of state-owned publishing houses comes from the book number trade. Even the chief director of the legal office of GAPP also acknowledged that at least 30% of publishing houses depend solely on the book number trade to survive.

Moreover, the publication of books that are monopolized by certain publishing houses, such as textbooks, propaganda books, trade codes, and training books in certain industries, brings significant profits for publishers.

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35 See Bao Hong, supra note 16.

36 See Wang Tao, Chief Director of the Office of Policy and Law of GAPP, speech at the Conference on the Reform of Transforming Publishing House into Enterprise (Mar. 9, 2007).
who have these kinds of monopoly privileges. In 2006, the five publishing houses with the highest average profit all monopolized certain publishing areas. For example, at the top of the list, the Publishing House of the Party Construction published eight titles of books that each sold more than 400,000 copies. The most profitable of these was *100 Questions for the Study of the Decision of the Third Plenary Session of the Sixteenth Central Committee*, a propaganda book about a recently concluded meeting of the Party’s Central Committee, which made 78,723,000 Yuan for the publishing house. Similarly, another seven books are serial textbooks for national cadre training. The second most profitable publishing house is the Customs Press House, whose best selling books are *Names and Codes of Importing and Exporting Goods*, *Textbook of the National Customs Broker Exam (2006)*, *Answers to the Questions from the National Customs Broker Exams: 2001–2005*. In third place is the Studying Press House whose bestsellers are *Reading Materials of the View of Scientific Development*, and *Theoretical Hot Topics*, the major customers of which are Party organs and government offices on different levels. Number four is the China Publishing House of Maps which monopolizes the publication of all kinds of maps in China. Number five is the Hunan Press House of Fine Arts which controls the publication of fine arts textbooks for compulsory education. The income of state-owned publishing houses is highly dependent on the publication of textbooks. According to statistics, from 2000 to 2007, the value of textbooks always fluctuated between 35% and 42% of the total value of book publication.

Because of distorted supply and demand together with a lack of competition, the publishing sector has a much higher profit margin than the distribution sector, although the statistics from various sources are different. According to a report of the China Institute of Publishing Science, in the publishing sector the average profit margin was 66%, while in the distribution sector the average profit margin was around 26%. According to the GAPP, the average profit margin of publishing houses was 24.75% in 1999, while the average profit margin of the entire publishing industry

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37 The sale of these books is guaranteed by the orders from government offices and Party organs which are required to buy these books.

38 These books are also propaganda books to advocate the thoughts of Hu Jintao, the General Secretary of the Party, and clarify other major ideological issues.


which includes book publication, distribution and retail, was 2.04%.

In 2001, the average profit margin of publishing houses was 23.63%, while the average profit margin of the whole industry was only 7.69%. Ironically (although perhaps not atypically) state regulation produces the opportunity to make significant profits, which inevitably attracts private resources to publishing.

B. The Patterns of Cooperation between Public and Private Publishers

Two main groups have been trying to enter the publishing business. One group is made up of private book dealers who seek to expand their business vertically from downstream distribution and retailing channels. For example, the four most famous private bookshops in Beijing all established their own working studios to participate in book publishing in the 1990s. In addition to having ready-made distribution channels, private book dealers are also in tune with market demand.

The other group consists of editors from state-owned publishing houses and the contractors who undertake the editorial work of publishing houses. Compared to book dealers, this group is more familiar with the publishing process and in a more favorable position to access authors. This group was able to move into publishing gradually, beginning by contracting to completing certain upstream stages of publishing, such as project planning, contributions soliciting, editing, and cover design.

After thirty years of reform, although publishing is still theoretically under exclusive state control, almost every upstream and downstream stage of the book production process has been opened up to private investment. Nowadays, private investment can legally be involved in book design, creation, soliciting contributions, binding and layout of books, printing, distribution, and sale. The only real obstacle to private investment entering the publishing sector is the state monopoly on book numbers. In this respect, private publishers have no alternative but to cooperate with state-owned publishing houses.

The simplest way to bypass state control is to purchase book numbers from state-owned publishing houses. State-owned publishing houses only need to provide the book number and issue a printing warrant (or directly

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42 See Zhu Shenglong, supra note 34.
44 See KONG, supra note 25, at 82-87.
45 See id. at 73-77.
46 See Yan Xiaohong, Private Book Industry and Book Publishing, in 2004 REPORT OF THE DEVELOPMENT OF THE PRIVATE BOOK INDUSTRY IN CHINA 27-36 (Yu Min ed., 2005). The author of this article is the deputy chief director of GAPP and NCA.
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hand the printing warrant to private publishers, let them fill it in and issue it); the rest of the publishing work, such as editing, printing, marketing, and distribution, is carried out solely by the private publishers who pay a lump sum to buy the book number. In this operation, state-owned publishing houses give up their duty and privilege in the press control system, and no longer serve as gatekeepers and publishers, but instead become dealers in book numbers.47 Some publishing houses do not even know the title of the book that bears the book number provided by them, let alone review the content.48 Because the entire publishing process is completed outside the state-owned publishing house, this operation is referred to as “external circulation” and prohibited by the publication authority.49

Because of the threat it poses to state control over the publishing process, purchasing book numbers was deemed illegal in 1989.50 In order to avoid breaching this prohibition on the face of the transaction, many clandestine ways of purchasing book numbers have been developed by publishing houses and private publishers in the name of cooperative publishing, in which the purchasing fee is masked as a publishing subsidy, editing and review fee, or project management expenses. However, although publishing houses and private publishers are careful to avoid express mention of the purchase of a book number, these practices could still readily be treated as a kind of “external circulation” by the authority.51

As restrictions on the trade in book numbers strengthened, more sophisticated methods emerged to circumvent the regulation. Private publishers no longer pay the book number fee explicitly. Instead, some of them transfer money to the state publishers’ account in the name of printing expenses. The actual printing fee is deducted and the rest is payment for the book number. Some private publishers share distribution channels with state publishers in cooperative publishing projects. In this operation, private publishers take charge of the entire publishing process and distribution through private channels, while state publishers take charge of distribution in state-owned bookstores. Private publishers do not pay a book number price per se; rather they sell copies to the state publishers at a heavily discounted rate, normally around 35% to 40% of the recom-

47 See Lynch, supra note 30, at 86-88.
51 See Lynch, supra note 30, at 87.
mended retail price, which is then 20% lower than the normal wholesale price. This price differential covers the cost of the book numbers. On other occasions, private publishers may agree that the state-owned publishing houses will print a certain quantity of books independently, and sell them through the state-owned bookstore. Under both agreements, state publishers will invent all of the necessary documents required at different publishing stages, such as the publishing contract, the editing and review reports, and the printing warrant, so that the entire publishing process looks like it is under the control of the state entity.\textsuperscript{52} However, although these practices are more covert, they can still be classified by the publication authority as breaching the restriction on purchase of book numbers.\textsuperscript{53}

Several Rules on Strict Prohibition of the Trade of Book Numbers, Periodical Numbers, and Publication Numbers provide conditions that are to be used when determining if an activity constitutes a prohibited transaction involving a book number. First, a charge must be imposed for transfer of the number, but whether a charge has been imposed is to be determined by the substance of the transaction and not how the transaction is described by the parties. The second condition is giving up, in substance, the privilege granted by the publication authority. The third condition is that there must be an abandonment of the duty to supervise the publishing process, through editing, proofreading, printing, and distributing, etc. If the cooperation between private and public publishers fulfills these conditions, it could constitute a prohibited purchase of book number.\textsuperscript{54} As has already been noted, all of the abovementioned practices could be deemed to fall within the prohibition on the trade in book numbers, despite the best efforts of the parties to disguise the true nature of the deal between them. In each case, in the process of cooperation, the book number will in substance be transferred from the public publisher to the private publisher in exchange for a pecuniary interest, and the supervision of the publishing house will be bypassed at some stage of the publishing process.

Meanwhile, some private publishers also try to carry out this business more legally. Some private publishers develop closer cooperation with state-owned publishing houses, and let these publishing houses keep a degree of control over most stages of the publishing process. The private publisher will follow the internal procedures of its project department set up by the publishing house.\textsuperscript{55} From the very beginning of the publishing

\textsuperscript{52} Interview 081102 (Beijing, Nov. 2, 2008), Interview 081103 (Beijing, Nov. 3, 2008), Interview 081105 (Beijing, Nov. 5, 2008), Interview 081107 (Beijing, Nov. 7, 2008), Interview 081124 (Shanghai, Nov. 24, 2008).

\textsuperscript{53} See Notice on Nationwide Regulating, supra note 50.

\textsuperscript{54} See id.

\textsuperscript{55} Interview 081111 (Beijing, Nov. 11, 2008).
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process, the topics selected by private publishers will be examined by the publishing house and included in its annual publication plan submitted to the GAPP. After its topic selection has been accepted, the private publisher may apply for a book number through the internal system of the publishing house. The private publisher then starts to prepare the content. Author’s remuneration can either be paid by private publishers directly or through the account of the publishing house. In the editing stage, the private publishers normally do the bulk of work; the state-owned publishing house will do a final review that will concentrate on potential political problems. According to the publishing procedure of the state-owned publishing houses, the book needs to be proofread three times and reviewed three times. However, normally the publishing houses only control the final review and let the private publisher do the rest. After the final review, the publication office of the state-owned publishing house issues the printing warrant to the private publisher. In the printing stage, after the parties have fixed the price and the size of the print run, the publishing house will commission the printer, sometimes on the recommendation of the private publisher. According to the publishing regulations, publishing houses should supervise the printing quality, but normally publishing houses will let the private publisher do this. The private publishers will be required to pay certain fees (for example to cover a review fee and printing expenses) to the publishing houses in advance, and publishing houses will settle the printing charge afterwards. In the distribution stage, the publishing houses take responsibility as the primary distributor, while the private publisher guarantees the sale of a certain number of books via private distribution channels. The publishing house normally will pay the private publishers 35% of the recommended retail price of the books distributed by them. The publishing houses also keep the plate after books are published. The private publisher will therefore need to rent the plate from the publishing house if it wants to reprint the book. Although the private publisher carries all the publishing expenses and carries out all publishing works except for the final review, this kind of cooperation fills all the procedural requirements stressed by GAPP, and thus at least superficially does not contradict the conditions set up by GAPP in Several Rules on Strict Prohibition of the Trade of Book Number, Periodical Number and Publication Number.

In summary, therefore, state-owned publishing houses and private publishers may choose different ways in which to cooperate, and these different models challenge the system of state control to different degrees.

56 See Notice on Nationwide Regulating, supra note 50.
57 Interview 081111 (Beijing, Nov. 11, 2008).
The decision as to which method to use is not, however, determined solely or even primarily by perceptions of the political risks attached to particular options. On the contrary, it will normally be market factors that will serve to shape the relationship between public and private publishers.\textsuperscript{59}

Publishing houses without well-developed distribution channels tend to simply sell their book numbers to private publishers. These publishing houses are essentially parasitic on private publishers and only serve as weak gatekeepers for GAPP. Powerful private publishers with strong distribution capacities tend to cooperate with weak publishing houses so that they can control both state-owned and private distribution channels and maximize their profit. Weak publishing houses also expect to improve their market influence by dint of private publishers' bestsellers and break away from their dependence on selling book numbers.\textsuperscript{60}

When publishing house and private publisher are of roughly equal power, they tend to share the distribution channels. This produces the relationship described above, where publishing houses buy a certain quantity of books from private publishers at a discount price and distribute them via state-owned bookstores, while private publishers take charge of distribution through private owned channels. This form of cooperation mostly occurs between medium-sized or small publishing houses and private publishers. The advantage of this form of cooperation for state-owned publishing houses is that they can use the capital of private publishers to maintain their operation. All publishing expenses are paid by private publishers and the publishing houses need to pay only the discounted book price. Normally private publishers will give publishing houses a six-month payment term. If publishing houses keep purchasing books from the same private publisher, they will always appropriate a certain amount of capital from these private publishers.\textsuperscript{61}

When state-owned publishing houses are in a superior position to their private partners, they tend to seek more control over the publishing process. With strong brand and market influence, these publishing houses usually require exclusive distribution in the state-owned channel. Through closer cooperation, the publishing houses do not need to risk getting caught by GAPP for selling book numbers. To cooperate with these publishing houses, private publishers have to hand over at least half of their profit. One large publishing house may cooperate with several different private publishers at the same time, and contract different parts of its business to different partners.\textsuperscript{62} For example, a university press contracts the publishing of economic and management books to a private cultural com-

\textsuperscript{59} Interview 081107 (Beijing, Nov. 7, 2008).
\textsuperscript{60} \textit{Id.}
\textsuperscript{61} \textit{Id.}
\textsuperscript{62} \textit{Id.}
pany which specializes in this area, while it contracts the publishing of legal books to another private publisher. The operational form of this kind of publishing house is similar to that of a shopping mall, within the space of which every shop operates on its own capital and sells its own product. Except for book numbers and publishing privileges, publishing houses do not need to provide any other resources to their cooperator. Private publishers pay all publishing expenses.63

In arrangements between state-owned publishing houses and private publishers, the party with the publishing privilege often overwhelms the party with market resources. State-owned publishing houses barely invest anything except their publishing privilege, whereas private publishers have to bear all the publishing expenses. However, recent developments in cooperation between private and public publishers show some progress. As a result of the growth of private publishers and increases in market competition, more and more state-owned publishing houses are forced to cooperate with private publishers on more equal conditions. Some publishing houses and private publishers have started to invest jointly in publishing projects. For example, in the cooperation between Light Books, a private publisher, and the Social Sciences Publishing House, the private publisher is in charge of topic selection, content preparation, and distribution through private channels, and the publishing house takes charge of editing, proofreading, reviewing, printing, and the distribution via state-owned channels. The publishing expenses which include investment in copyright, author’s remuneration, translation, and printing, etc., are split between the two parties.64

Some state-owned publishing houses have also established joint ventures with private publishers. In 2005, the state-owned Changjiang Publishing Group bought 51% of the Dolphin Cartoon Company. In 2006, Changjiang Publishing Group and two famous individual publishers, Jin Lihong and Li Bo, invested two million Yuan, and established New Century Culture Company in which the two private publishers hold 34% of the issued shares. In 2007, October Literary and Artistic Publishing House and Thinkingdom House jointly established the October Cultural Media Company. In 2008, the state-owned Liaoning Publishing Group purchased 51% of Zhipin Book Company (a private publishing company owned by Li Ke, a book dealer), and established another joint venture with the best-known private publisher, Lu Jinbo. After March 2009, encouraged by the GAPP Directive Guideline on Advancing the Reform of the Press and Publication System, capital cooperation between state-owned publishing houses and private publishers became more active. Al-

63 Interview 081111 (Beijing, Nov. 11, 2008).
64 See Bao Hong, supra note 16, at 26-27.
most every leading private publisher has since received offers of establishing joint ventures from state-owned publishing houses. As early as April 2009, Jiangsu People’s Publishing House and Beijing Konghong Book Company invested 100 million Yuan to establish a joint venture. In the same month, Changjiang Publishing Group and Wang Maimai, a well-known private publisher, established a joint-stock company.65

Undoubtedly, establishing joint ventures with state-owned publishing houses has a positive influence on the operation of private publishers. First, private publishers do not need to bear all the risk of publication. Second, the intangible assets of private publishers are recognized and specifically valued. In some joint ventures, private publishers do not even need to invest any tangible assets, but only market resources such as distribution channels and author networks, and intangible assets such as copyright and trademarks. For example, state-owned Liaoning Publishing Group and Lu Jinbo established a company with 40 million in registered capital, which includes 20 million Yuan invested by Liaoning Publishing Group, and intangible assets of Lu Jinbo valued at 20 million Yuan. When Liaoning Publishing Group bought Zhipin Company, the intangible assets of Zhipin were fully valued and accounted for a 49% share in the new joint venture.66 Third, as a subsidiary company of a state-owned publishing house, the joint venture’s access to book numbers is more reliable and stable.

Nevertheless, the foremost problem of private publishing has not been resolved. Private and public publishers can only set up joint ventures in the form of distribution or culture companies rather than publishing companies. A joint venture cannot have official authorization to publish books. Although providing book numbers to a subsidiary company is less controversial than providing them to a private publisher, it is still hard to say this operation is completely legal. According to the current policy, the state-owned publishing house must hold at least 51% of shares of the joint venture. This limitation has caused private publishers to fear a loss of control over their business, and hence deterred them from participating in joint ventures with state-owned publishing houses.67

C. Gray Status of Private Publishing

In summary, therefore, private publishing operations at present in China are based on informal arrangements that exist without explicit legal authority. Although few private publishers have been punished solely be-

66 Id.
67 Interview 081107 (Beijing, Nov. 7, 2008).
cause they purchased a book number, the current situation is that private publishing is still technically illegal. There are three major legal obstacles to private publishing at present. In an interview conducted for this article, one private publisher compared these obstacles to three swords hanging over the heads of private publishers.

The first sword is the Administration of Press and Publication. Without substantial change, private investment can never legally enter the publishing sector. Despite all the measures invented to circumvent the publishing monopoly, none of the private publishers have obtained publishing authorization from the GAPP as yet. Although private publishers avoid overt breaches of press control rules, they still cannot get authorization to undertake publishing legally but can act only as ghost publishers. All publication must be done in the name of a state-owned press house. The name of the private publisher who actually does all the work cannot even appear on the book or any other legal documents as a real publisher. Naturally, the publisher will not have any formal legal status in such an arrangement.

The second sword is the Administration of Industry and Commerce. According to the Regulations for the Administration of the Registration of the Business Scope of Enterprises, the business scope of an enterprise must be registered with the Enterprise Registration Authority pursuant to an application made by the investor or the enterprise. The business activities in which an enterprise engages ought not as a matter of law to exceed the registered business scope. The possible registered business scope of private publishers includes book distribution, book retailing, book design, publishing project management, publishing consultation, advertisements, internet service, or even computer technology. But none of the existing private publishers can register publishing in their business scope. This means all private publishers are doing their business beyond their registered business scope and breaching the administrative regulations of in-

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68 See Yan Xiaohong, supra note 46; KONG, supra note 25, at 80.
69 Interview 081107 (Beijing, Nov. 7, 2008).
70 Id.
71 Id.
72 Regulations for the Administration of the Registration of the Business Scope of Enterprises, (promulgated by the St. Admin. of Indus. & Commerce, June 14, 2004).
73 Most of these businesses are relevant to the real business of private publishers. For example, a private publisher, the business of which is managing a literature Web site and publishing books, may register Internet service or computer technology as its business scope. Some of these businesses, such as publishing consultation, are invented by private publishers to cover their real business.
dustry and commerce, even if they obtain book numbers from state-owned publishing houses and bypass the supervision of GAPP.

The third sword is taxation administration. Private publishers who engage in publishing can normally get an invoice from printers and paper mills as a record of their transaction. However, because publishing is not within the registered business scope of private publishers, for the most part these costs cannot be offset against tax. Moreover, in order to pay tax, private publishers have to disguise their publishing business in a form which is acceptable to the taxation authority. A widely adopted measure is obtaining an invoice from state-owned publishing houses. Because book distribution is in the registered business scope of most private publishers, invoices from publishing houses can be accepted by the Taxation authorities. In order to get invoices from publishing houses, private publishers initially have to transfer paper and printing payment to the state publishers' account and let publishing houses pay the printer and paper mill. After getting paper and printing invoices, publishing houses then can issue invoices for book wholesales to private publishers. Although publishing houses can benefit from this kind of money laundering, without real business corresponding to the cash flow they also have to bear high risks. Therefore, publishing houses normally are only willing to provide a limited number of invoices to private publishers. Without enough publishing invoices, private publishers are not able to issue invoices to their downstream business, and accordingly cannot pay the corresponding tax. As a result, behavior that at least technically amounts to tax evasion is inevitable in the private publishing sector.

In addition to the direct problems caused by the abovementioned three “swords,” it is also difficult for private publishers to find independent auditors prepared to sign off on their books. Because of the inherent illegality of private publishing, it is impossible for private publishers to produce accounts that reflect their real business. Their accounts have to include fictional transactions, and even if an auditor can be persuaded to sign off on the accounts, the process will involve a further fraudulent course of dealing that carries additional legal risk.

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74 Interview 081107 (Beijing, Nov. 7, 2008).
75 Id.
76 Interview 081124 (Shanghai, Nov. 24, 2008).
77 Interview 081107 (Beijing, Nov. 7, 2008).
78 For example, when private publishers and publishing houses share distribution channels, it is in practice a publishing house purchasing books from a private publisher. However, according to the accounting guideline this transaction would not appear on the account books as it is, because a private publisher, normally a distributor, is only allowed to buy books from a publishing house, not sell books to a publishing house. Private publishers have to disguise the real transaction with purchasing books from publishing
From the above analysis, it is clear that the existence of private publishing is based not on reliable legal arrangements, but on collusion between private publishers and state-owned publishing houses and the ambiguous acquiescence of press control authorities. As one private publisher expressed the situation in one of the interviews, the entire private publishing business is grounded on informal rules.\(^7\) No contract can define the whole relationship between private publisher and publishing house. In the course of cooperation, private publishers and publishing houses need to sign various formal contracts, such as a commissioning contract in which state-owned publishing houses commission book design, project planning, and editing to private publishers, a publishing contract in which private publishers commission publishing houses to publish their books, a copyright contract in which private publishers or authors authorize publishing houses to reproduce their works, and a printing contract in which a publishing house commissions a printer to print the books. But these formal contracts disguise the real arrangement, rather than reflect the actual deal between the parties. The “under the table” elements of the transaction, such as the book number trade, money laundering, and circumvention of the publishing monopoly cannot be written into contracts. Moreover, even in the unlikely event that these elements have been written into a contract, the relevant provisions will be void for illegality.\(^8\) If the covert deals and collusion between private publishers and publishing houses are exposed, none of them can escape punishment, and this result certainly contravenes the interest of both parties. It is actually their common interest and the balance of terror that maintain the relations between private publishers and publishing houses.\(^9\)

The specific transactions have no reliable legal foundation, but beyond this the whole private publishing business is built on the ambiguous acquiescence of press control authorities. On the one hand, because a strong profit incentive frequently leads to private publishers testing the houses, and record the disguised transaction in their account books. Problems are seemingly resolved; however, this measure may cause another more serious problem because it may constitute account book forgery. Caught in this dilemma, it is almost impossible for a private publisher to make a proper accounting record. See Interview 081107 (Beijing, Nov. 7, 2008), Interview 081124 (Shanghai, Nov. 24, 2008).

\(^7\) Interview 081103 (Beijing, Nov. 3, 2008).

\(^8\) Article 52 of the Contract Law of China provides that a contract is invalid if the parties colluded in bad faith, thereby harming the interests of the state, the collective or any third party, or the parties intended to conceal an illegal purpose under the guise of a legitimate transaction. Contract Law of the People’s Republic of China (promulgated by the Nat’l People’s Cong., Order No. 15, Mar. 15, 1999).

\(^9\) Interview 081107 (Beijing, Nov. 7, 2008).
line on publishing policy, the publishing authority tends to regard private publishing as a challenge to press control. The ban on the sale of book numbers has been repeatedly reaffirmed by the GAPP, and enormous efforts have been undertaken by the GAPP to stamp out the book number trade. Since 1987, GAPP has issued more than 200 administrative orders to ban the practice; fifty-eight publishing houses have been punished because of their involvement in the book number sale, six of them were wound up, and the operations of fifty-two of them were temporarily suspended.\footnote{See Zhu Shenglong, supra note 34.}

On the other hand, because private publishing now plays a very important role in the publishing industry, the press control authority is reluctant to clamp down on this business. More than 50% of publications in terms of value in China come from private publishers, and more than 30% of state-owned publishers rely on the income from selling publication numbers. Via the book number trade and cooperative publishing, the private publishers transfer significant resources that maintain the survival of most state-owned publishing houses. One estimate in 2008 suggested that the book number trade in that year could reach 1 billion Yuan.\footnote{See Colloquium Transcript, supra note 25. See also Wang Xinting, Private Publishers Might Save 1 Billion Expenses on Book Number, ECON. HERALD, Apr. 13, 2009.} Without private publishers, China’s publishing industry cannot maintain its current productivity and creativity. Estimates suggest that in China as high a proportion as 25% of all titles, the majority of all works of literary fiction, and 80% of bestsellers, are actually published by independent book agents and private publishers and not by the “official” publisher whose book number and logo appear on the jacket.\footnote{See Barry, supra note 15, at 87.} In 1999, the value of publications distributed by state-owned publishers was 10 billion Yuan, while national book sales reached 43.6 billion Yuan. Although an imperfect measure, it has been suggested that the margin between the two figures reflects the fact that the contribution of private publishers may exceed half of the production value of the publishing industry.\footnote{Xu Xiao, The Evolution of Private Publishing in Contemporary China, 66 21ST CENTURY (2001); Qiu Feng, Private Publishing Waiting For Real Marketization, 6 CHINA REP. 33-34 (2006).}

Facing this reality, the attitude of publishing authorities towards private publishers swings between periodic crackdowns to keeping one eye closed as long as these publishers do not cause “political” trouble.\footnote{See Kong, supra note 25, at 81.} With the ambiguous acquiescence of publishing authorities and collusion with state-owned publishing houses, and although still operating in a gray area,
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private publishing keeps expanding as it attracts more and more private investment and develops a momentum of its own, and consequently drives the publishing authorities to reform the press control system.\footnote{See id. at 81.}

The publishing authorities thus cannot completely ban private publishing; nor dare they acknowledge its legitimacy. In April 2004, GAPP decided to transform most state-owned publishing houses into enterprises and allow private publishers to become shareholders. However, this reform was quickly reversed by the central leadership. In May 2005, in a classified speech and fearful of the risk of a color revolution akin to that experienced in Ukraine, President Hu Jintao ordered a complete cleanup aimed at the publishing industry.\footnote{Hu Jintao, Fight a War Without Smoke of Gunpowder: Take Strict Precautions Against the Color Revolution Launched by Europe and America; see Gu Chuan, The Development of Free Media Under the Regime of Lie, in DEATH OF REFORM (Yu Shicun ed., 2008).}

In 2005, the newly appointed chief director of GAPP started to enforce the publishing regulations more rigidly than before. Dozens of publishing houses were suspended for selling book numbers, private enterprises were prohibited from involvement in publishing business, and the names and brands of private publishers were not allowed to appear on books.\footnote{Gu Chuan, supra note 88; Interview 081107 (Beijing, Nov. 7, 2008).}

Although private publishers are eager to establish a reputation in the publishing market, they dare not declare themselves as publishers. When Sohu, a famous gateway website, classified Dushuren as a publisher, the manager of Dushuren immediately contacted Sohu to change this classification to avoid any violation of publishing regulations.\footnote{Wang Yihan, The Puzzledom and Future of “Dushuren”, 5 FRIEND OF EDITOR 43-45 (2005).}

In a round of speeches in 2005 aimed at culling pornography and other “illegal publications jeopardizing social stability,” government officials vowed to crack down on “culture houses,” calling them “malignant tumors that must be excised.”\footnote{RICHARD CURT Kraus, THE ARTY AND THE PARTY: THE NEW POLITICS OF CULTURE 81 (2004).}

Those charged with illicit publication may be heavily fined or even imprisoned and have their property confiscated. However, this harsh policy could not last long. It is impossible to deracinate private publishing without sacrificing the flourishing of the publishing industry. When the advocates of the harsh policy left GAPP, the temporarily-opened eye of the publishing authority closed again.

In March 2009, GAPP issued the Guideline on Advancing the Reform of the Press and Publication System, which indicated a new round of reform of publishing policy. In this guideline, for the first time private publishing is regarded as a highly desirable economic activity and an im-

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87 See id. at 81.
89 Gu Chuan, supra note 88; Interview 081107 (Beijing, Nov. 7, 2008).
important component of the publishing industry. Joint ventures and project cooperation with private publishers are encouraged as long as political correctness and the dominant position of state-owned publishing houses are guaranteed in the cooperation.92 While this is a significant step forward, its significance should not however be overestimated. There is no sign that the GAPP will give private publishers publishing rights. Without publishing rights, private publishing will remain in a gray area.93

D. Impact on Copyright Practice and Enforcement

The gray status of private publishing not only has an influence on the implementation of publishing regulations but also on the enforcement of copyright law. In order to circumvent the state’s publishing monopoly, private publishers and publishing houses have to disguise their deals with the appearance of arrangements within permitted formal rules. However, while the legal regulations are thus circumvented, private publishers lose, as a result, the protection of copyright.

In the formal arrangement between private publishers and publishing houses, copyright has to be transferred to the state-owned publishing house whose name is on the cover of book, even where the entire publishing process is actually under the control of a private publisher. On the surface, the copyright license is invariably unreasonable, because the private publisher not only unconditionally authorizes the publishing house to use their copyright without charging a copyright royalty, but also needs to pay authors’ remuneration. Although the transfer of copyright is actually not unconditional and publishing houses have to provide a book number and issue a printing warrant, these parts of the deal are not reflected in the contract.94 This arrangement may cause a series of very tricky legal problems for the copyright owner.

One problem is that it will be impossible for the private publisher to prevent piracy in his own name because he does not have any lawful status to do so, being neither owner nor exclusive licensee. Meanwhile, the state-owned publisher, especially one that does not take part in distribution, may have no incentive to prevent piracy because it has already achieved its profit through the publication number transaction; any further action will only increase its cost. Except those who have very close cooperation with state-owned publishing houses,95 most private publishers in-

94 Interview 081102 (Beijing, Nov. 2, 2008), Interview 081103 (Beijing, Nov. 3, 2008), Interview 081105 (Beijing, Nov. 5, 2008), Interview 081107 (Beijing, Nov. 7, 2008).
95 Interview 081111 (Beijing, Nov. 11, 2008).
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Interviewed by the author feel unable to get any help in preventing piracy. For example, one interviewee reported that a series of books published by a private publisher were pirated by another state-owned publishing house. The private publisher requested the publishing house whose name was on the jacket of his books to take legal action against piracy. But the nominal publisher refused even to issue a warning letter to the infringer, to say nothing of taking any further legal action.

Another even worse problem is that as a result of the transfer of copyright the state-owned publishers have the lawful right to print more copies if they want, and the real publishers have no legal measure to prevent them even if this breaches their informal agreement. This is more likely to happen where a book has proved popular in the market. Although publishing houses usually will comply with their informal understanding with private publishers, unauthorized reprinting happens from time to time. For example, in 2001, Beijing Readers (Du Shu Ren) Culture Company (“Readers” hereafter), a private publisher, got the exclusive license to publish Spencer Johnson’s Who Moved My Cheese in China, and published this book with the cooperation of CITIC Press, a state-owned publishing house. Readers took charge of the entire publishing process and the distribution via private channels, and CITIC Press was only required to provide the book number and distribute the book through state-owned channels. Because of the successful promotion and marketing of Readers, the book became China’s all-time best-selling translated book, with official sales of two million in the five-year cooperation. Along with the success, however, conflict arose because of diverging views on how to share the significant profits. In order to appropriate all the profits, CITIC Press threw over Readers and directly contacted the copyright holder at the expiration of their cooperation. After getting the copyright license, CITIC Press reprinted the book alone despite the objection of Readers. Notwithstanding all its previous work and investment in marketing, Readers had no choice but to give up the book without any compensation.

Readers should perhaps feel grateful compared with those private publishers whose painstaking efforts are appropriated while the cooperation is ongoing. For example, He Xiongfei, a famous private publisher, published The Biography of Mother Teresa with the cooperation of Shandong Pictorial Publishing House. The original arrangement was that

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96 Interview 081102 (Beijing, Nov. 2, 2008), Interview 081103 (Beijing, Nov. 3, 2008), Interview 081105 (Beijing, Nov. 5, 2008), Interview 081107 (Beijing, Nov. 7, 2008), Interview 081124 (Shanghai, Nov. 24, 2008).
97 Interview 081107 (Beijing, Nov. 7, 2008).
99 Interview 081105 (Beijing, Nov. 5, 2008).
Shandong Pictorial Publishing House would purchase a certain quantity of books from the private publisher at a heavily discounted rate. However, instead of purchasing from the private publisher, the publishing house reprinted this book in collusion with the printer.100

The whole deal between private publisher and publishing house relies solely on the goodwill of the state-owned publisher. Formal rules in the form of copyright and contract law cannot provide protection for the private publisher under these circumstances. The dispute between the private publisher, Beijing Dushu Xinzhi Educational Book Company (“Dushu Xinzhi” hereafter) and Science and Technology Literature Publishing House illustrates the predicament that private publishers face.101

In January 1999, Dushu Xinzhi signed a contract with Science and Technology Literature Publishing House to publish a series of books. Dushu Xinzhi took charge of book design and printing, while the publishing house took charge of final review, final proofreading and book numbers. In this contract, Dushu Xinzhi granted exclusive publishing rights to the publishing house for five years, and promised to pay a 12,000 Yuan administrative fee to the publishing house. Although Dushu Xinzhi could not use its business name on the book, it printed its trademark, the logo of “Double Doctor (Shuang Boshi),” on the cover, back cover, and spine of the book, and declared its rights over the trademark. In 2002, without the consent of Dushu Xinzhi, the publishing house printed one book in the series with the plaintiff’s trademark on the cover, back cover, and spine. In court, the defendant confessed that the reprinting did not get the plaintiff’s consent, but argued that, with the exclusive publishing right in its hands, it had the lawful right to reprint. Unable to sue for copyright infringement, Dushu Xinzhi could only pursue its lawsuit based on a claim for trademark infringement.102 Although the private publisher finally won the trademark litigation, had the defendant avoided use of the plaintiff’s logo there would have been no liability. In reality this is clearly a copyright dispute.

Moreover, because the right of publishing is generally transferred to the state-owned publishing house, if the contract has not been phrased carefully, the private publisher who actually manages the publishing process itself risks copyright infringement. Building Material Industry Publishing House v. Printery of Beijing Technology University shows that suits

100 Interview 081103 (Beijing, Nov. 3, 2008).
102 Id.
of this kind are possible. Building Material Industry Publishing House signed a book publishing contract with Beijing Yapai Culture Center, a private publisher, to publish seven books. In the contract, Beijing Yapai Culture Center authorized the publishing house to exercise the exclusive publishing right for five years without any payment, while the publishing house authorized the private publisher to print the books. The contract also provided that the private publisher needed to pay the administrative fee in the form of providing books to the publishing house at a discount price or consent to the publishing house printing certain numbers of books itself. Later the private publisher commissioned the Printery of Beijing Technology University to print the seven books in the name of the publishing house, but the quantity of printed copies exceeded the quantity in the printing warrant issued by the publishing house. As is the normal arrangement between a private publisher and publishing house, in this case the printing fee had to be transferred to the account of the publishing house by the private publisher on the understanding that the publishing house would pay the printer. Because the publishing house did not pay the printing fee after the books were printed, the printer issued litigation against the publishing house to demand the printing fee. As a counter, the publishing house sued on the basis that the printer had printed extra copies without authorization and hence had infringed the exclusive publishing right. In the trial of this case, the judge appeared to be confused by the strange arrangement of the publishing contract between the private publisher and the publishing house. On the one hand, the copyright owner not only gave up his copyright royalties, but even agreed to pay an administrative fee to the publishing house. On the other hand, the publishing house was not obliged to publish the books, but on the contrary was required to purchase books from the copyright owner. Because of the self-contradictory nature of the contract, the court could not determine the scope of the copyright license, and thus decided that the plaintiff’s claim did not have sufficient support from the publishing contract. The state-owned publishing house lost this case only because of the ambiguous contract, which means the publishing house may well win in similar cases in the future if the publishing house drafts the publishing contract more carefully and avoids mentioning all the illegalities in it.

Nor are the state-owned publishers the only ones who may take advantage of the private publisher’s uncertain legal status. In the absence of effective control from copyright owners, it is very hard to maintain orderly management of copyright in the publishing industry more generally.


104 Id.
Other parties who can access the printing plates, such as the staff of the publishing house, or the printer, may reproduce books without fear of any consequences. In many cases, when the state-owned publisher commissions a printing factory to print additional copies without the authorization of its co-publisher, the printer often produces even more copies than the state-owned publisher commissioned, and sells them directly to bookstores.105

Another problem is that as a result of these complications, it is very hard, if not impossible, for authors to know the real number of printed copies of their books, and to collect remuneration accordingly. Indeed, it may be the case that no one knows the actual numbers of a book that have been printed, especially when private publishers and publishing houses print books separately. Printing extra copies is so common in the publishing industry that it has almost become a conventional practice of private publishers.106 This situation undoubtedly has a negative impact on the income of authors, and hence on creativity.

Finally, the anonymous status of private publishers in the publishing process makes it more difficult to enforce copyrights against them where necessary. It is common that private publishers produce a copyright-infringing book, but the state-owned publisher whose name is on the book must take the responsibility. The copyright dispute between Shanghai Rongshuxia Computer Co. Ltd. and China Social Publishing House illustrates this problem nicely.107 In April 2000, the defendant, China Social Publishing House, published the Cyber Life Series in cooperation with a private publisher. Nine articles in the series were originally released on Rongshuxia, a website operated by the plaintiff, who also obtained the exclusive publishing right to these articles from their authors. Facing copyright infringement claims, the defendant argued that the private publisher who compiled the series should take full responsibility. However, the plaintiff only chose the publishing house as the defendant, and the publishing house finally was held to be solely liable for copyright infringement. In some cases, publishing houses have become the shield of copyright pirates. When copyright piracy is exposed, private publishers need only shut down their small business and leave all liability to the publishing houses.108

Various measures have been taken by private publishers to reduce their copyright risk. Most private publishers print their trademark or busi-

105 Interview 081103 (Beijing, Nov. 3, 2008).
108 See Li Kaiyun, supra note 48.
ness name on books as an alternative to copyright to prevent reproduction of their books (although, as was noted above, the Party-state has tried to outlaw this practice from time to time). Some of them choose to cooperate with less powerful state-owned publishers, so that they can force them to accept shorter licenses. Some of them closely supervise the printing process so that the risk that their cooperators will print extra copies is reduced. Some of them try to establish closer relationships with state-owned publishers, such as joint venture and co-investment in publishing projects, to increase their incentive to protect copyright. Although these measures may ease copyright risk to a certain extent, none can really eliminate it.

In any effective system of copyright protection, large parties with both the resources and the interest to enforce copyright, such as publishers, are essential. Compared with authors and other individual copyright holders, publishers, especially large-scale publishers, can mobilize more resources to fight against copyright piracy. Compared with government agencies such as the police or other enforcement bodies, publishers have greater initiative and can bring more constant pressure on copyright pirates for the sake of their own interest. However, most of the state-owned publishing houses in China rarely concern themselves with the many alternative editions of the same titles appearing in the bookstalls, as long as they can sell a certain number of their books through the state-owned channels, get their subsidy from the state, and additional income from selling book license numbers, especially when to take action would involve both effort and risk. On the other hand, those private publishers which have the commercial incentive to fight against copyright piracy are not entitled to do so due to the restrictions resulting from the publishing monopoly.

The absence of effective surveillance from publishers is the inherent flaw in China’s publishing system, and bears considerable responsibility for the rampant book piracy. As mentioned above, 80% of bestsellers in China are in fact produced by private publishers. Thus, lack of effective copyright protection on private publishing means that most bestsellers, the favorite target of copyright piracy, become even more vulnerable, and also means little control from publishers over the majority of pirated books (mostly piracy of bestsellers). This situation undoubtedly encourages piracy in the bestseller market.

109 See Part III.C supra; see also Zhu Shenglong, supra note 34.
110 Interview 081111 (Beijing, Nov. 11, 2008).
111 Interview 081107 (Beijing, Nov. 7, 2008).
112 Interview 081111 (Beijing, Nov. 11, 2008).
113 See KONG, supra note 25, at 92-93.
Copyright is not only about enforcement, it is also about encouraging investment in works with originality. To some extent, the copyright system in fact has helped private publishers to explore publishing markets and cooperate with state-owned publishing houses. With the more regular and certain part of the publishing market such as textbook sales monopolized by the state-owned publishers, and fierce market competition, private publishers are more likely to be willing to invest in innovation and creation than state publishers. Copyright can play a number of important roles in protecting this investment.

On the one hand, copyright as an important form of property which is guaranteed by formal rules could enhance the bargaining position of authors and private publishers against the state-owned publishing houses, and thus become a powerful weapon to confront the monopoly power of the state-owned press houses. As has already been seen, several state-owned publishers have recently invested large amounts of money and established joint ventures with private publishers who only provided their copyright, marketing channels, and other intangible assets, as investment. Without copyright, private publishers’ investment would undoubtedly be valued substantially lower. These cases illustrate the key role of copyright in the negotiation between state-owned publishing houses and private publishers. On the other hand, copyright (especially copyright in bestsellers), can help private publishers gain an advantageous position in market competition. In fact, facing more competition, private publishers seem more concerned about the quality of book content than state-owned publishers. In an extreme case, a group of independent book dealers even wrote an open letter to a creditable state-owned publisher, Joint Bookstore, to urge the chief manager not to ruin the publishing house’s reputation by publishing inferior books.

However, the current and developing publishing policy is averse to the functioning of a copyright system. Chasing after profit is in the nature of private investment. If policy favors making profit from investment in copyright, more private investment will flow into copyright exploitation. Otherwise, private investment will flee from publishing books with origi-
nalit and flow into imitation and piracy. China’s publishing policy and its side effects cannot provide sufficient support to investment in copyright exploitation. The current publishing policy cannot provide sufficient certainty to support long-term investment in new copyright materials; complicated arrangements to circumvent the publishing monopoly not only increase the cost of private publishing, but also compromise its legitimacy. The anonymous status of private publishers in the publishing process also has a negative influence on the possession and accumulation of intangible assets. The following sections will further explain how publishing policy impedes investment in copyright exploitation and publishing works with originality.

A. Strict Regulation Distorting the Structure of Book Industry

Publication control splits the publishing industry into two parts: one is the publishing sector strictly controlled by the government; the other is the distribution and retail sector which is relatively freer and more market-driven. With its productivity restricted by government publishing policy, the publishing sector cannot supply sufficient new books to meet demand in the distribution and retail sector. The abnormal structure of China’s publishing industry reflects this disparity between supply and demand. The most obvious reflection is the high overstock rate. As mentioned above,\(^\text{117}\) the value of annual overstock is equivalent to 40% to 50% of the total value of the books published every year. The value of this overstock increased from 0.242 billion Yuan in 1999 to 0.566 billion Yuan in 2007, at the average annual increase rate of 11%. The persistently high overstock rate shows that most products of the state-owned publishing houses are not tailored to meet the market demand.\(^\text{118}\) Another indicator of the disparity between supply and demand is that the state-owned publishing houses rely heavily on textbook publishing. From 2000 to 2005, 37% to 43% of the value of the publishing sector came from textbooks, the publication of which is monopolized by state-run publishing houses.\(^\text{119}\) In China, the majority of textbook consumption comes from the subscription of schools and universities according to the Party-state’s requirement. This means nearly half of China’s publishing output is not being used to fulfill the demand arising from discretionary spending.

The gap between supply and demand provides great opportunities for gray and black market publishing which includes copyright piracy. Although private publishers, restricted by uncertain legal status and constrained book number supply, have already found various ways to

\(^{117}\) See supra Part III.D, para. 4.
\(^{118}\) See note 33, supra.
\(^{119}\) See GAPP, supra note 39, at 58-59; BARRY, supra note 15, at 36.
circumvent the publishing monopoly and enter the publishing sector, it is impossible for them to fill the gap entirely. So the black market and pirated production have stepped in. Thus, the piracy problem is intractable without substantial deregulation of the publishing sector.

B. Uncertainty and Instability Discouraging Long-Term Investment

Investment in innovation which is reliant on the copyright system requires confidence on the part of an investor and, in the long term, stability of the legal framework. Private publishers can be ranked according to the originality of their publications. On the top are publishers who have their own copyright, or buy copyright from authors or foreign copyright holders. These publishers represent the leading force in the publishing market. The second group is formed by those who imitate the first group. These publishers follow the bestsellers in the market and develop similar books to build market share. Imitation in this form can be an important part of a healthy publishing market, although it must be said that toward the bottom end of this segment the outputs can appear little different from copyright piracy, the lowest end of private publishing. Compared with imitation and piracy, exploitation of original works needs a longer term to prepare. For example, it usually takes six to nine months to sign a copyright contract with a foreign author, and three to five months to commission an original book from an author. The investment cycle of imitation and piracy is much shorter. Very often the imitation or piracy of a bestseller comes into the market simultaneously with or even prior to the original book. In addition to the higher investment in a copyrighted book, a longer time is needed to recoup that investment.

An effective copyright system is meant to provide the abovementioned long-term stability and certainty. However, the following investigation into China’s publishing sector will show that copyright alone is not sufficient to provide certainty for potential investors in creation when current publishing policies are unlikely to encourage long-term investment in private publishing. The high turnover of qualified personnel and the constant disappearance and reappearance of private publishers under new names and guises at new locations suggest that without the explicit support of formal rules many private publishers cannot enjoy stable operations. The general instability and vulnerability of private publishing is unlikely to encourage private publishers to establish long-term business

120 See Qiu Feng, supra note 85.
121 Interview 081107 (Beijing, Nov. 7, 2008).
122 Id.
123 See KONG, supra note 25, at 87-88.
124 See Qiu Feng, supra note 85.
and aim for consistent quality and the high end of the market.\textsuperscript{125} Instead, it is more likely to encourage a degree of short-term thinking in pursuit of a quick profit — and even encourage some at the lower end to engage in piracy.\textsuperscript{126}

Because the publication period for foreign copyrighted books is longest of all the various kinds of books, the percentage of foreign copyrighted books in the total annual new publications provides some indication of the degree of long-term investment in publishing. Currently, foreign copyrighted books only account for around 7\% to 10\% of the total annual new publications in mainland China.\textsuperscript{127} Compared with a proportion of foreign copyright books of around 25\% to 30\% in Taiwan in the same period,\textsuperscript{128} this figure is low. This figure suggests (although it does not prove), that current publishing policy is not encouraging long-term investment.

The influence of the fluctuations in publishing policy on investment in new copyright materials also shows the same result. From the mid-1980s to the early 1990s, the publishing authorities kept depressing private publishing with strong-arm methods, although cooperative publishing was permitted in a very limited way.\textsuperscript{129} During this period, private publishing was on the whole an underground business. Due to the covert nature of private publishing, the operation of private publishers was mostly short-term and speculative. Although a few high-quality books were occasionally developed by private publishers, the output of private publishing mostly comprised low-quality, pornographic, pirated, or other banned works.\textsuperscript{130}

By the late 1990s, the situation had been transformed. Although still lacking explicit recognition in formal rules and policy, the existence of private publishing increased with the acquiescence of publishing authorities. The relaxation of publishing regulations and the improved policy environment attracted better human resources and capital into the private publishing sector. In the 1990s, partly owing to increased market competition

\textsuperscript{125} See Kong, supra note 25, at 87-88.
\textsuperscript{126} See Barry, above n15, 93.
\textsuperscript{129} The Press and Publication Administration and the Propaganda Department issued Some Opinions on Current Publishing Houses Reforms in 1988, which stated clearly that “[Publishing houses] should open many different channels, make use of social resources, expand their capital, and become involved in cooperative publishing arrangements and subcontracting of printing and distribution in order to publish more good books quickly.” Publ’n Admin. & the Central Propaganda Dep’t, Some Opinions on Current Publishing Houses Reforms (1988).
\textsuperscript{130} See Kong, supra note 25, at 75-77.
and the entry of more educated and professional players, private publishing started producing much better books in terms of both content and production quality than in the previous decade. Motivated by more predictable profits, independent book producers and literary agents started to initiate long-term investment projects to promote new and interesting literature and turn works of high art into bestsellers. According to one commentator, “In fact, with few exceptions, most literary works that have come out under the imprint of art and literature publishing houses since the late 1990s have actually been produced by freelance book agents. These independent publishers have without a doubt changed the whole structure and attitude of the publishing industry.”

The direction of private investment also demonstrates a high degree of sensitivity to temporary setbacks or progress in publishing policies. In early 2005, as a result of ideological concerns on the part of Party leadership, GAPP started to enforce publishing regulations more rigidly than before, and threatened to withdraw its tolerance of private publishing. Many publishing houses were punished for selling book numbers, and logos of private publishers were forbidden to appear on the jackets of books. According to OpenBook, the leading non-governmental publishing market research institute, this tightening in publishing policy heavily influenced private publishing. Private publishers adjusted their operations and reduced their investment in innovative book contents and promotion. As a result, sales of bestsellers fell by about 30% to 50% in 2005 compared with the previous year. Once the difficult period passed, private investment resumed. For example, when another relaxation of publishing policy was issued by GAPP in early 2009, encouraged by the expectation of further deregulation of publishing, a new round of cooperation and joint ventures between private publishers and state-run publishing houses started immediately, with almost every leading private publisher considering capital cooperation with state-owned publishing houses.

Because of ongoing uncertainty, capital accumulated in private publishing also tends to escape from this area to other more legitimate businesses. The experience of Yin Mingshan, a former private publisher, illustrates how the uncertain publishing policy and unreliable legal framework drove private investment out of the publishing industry. Yin Mingshan, a billionaire who owns the biggest private motorcycle company in China at present, was a private publisher and book dealer in the 1980s. He

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131 See id. at 75-77.
132 See id. at 77.
133 See Gu Chuan, supra note 88.
135 See Ren Diashun & He Wenjing, supra note 65.
Dancing in Shackles

made his first fortune from the book business by publishing a series of cheap books. In 1985, as the former editor of the Chongqing Publishing House, he resigned from his job in a state-owned enterprise and established a private book store, Chongqing Vocational Education Book Store. The sales of the *Ten-Cent Series for Middle School Students*, the first book series he edited, totaled over ten million volumes. By 1989, Yin Mingshan had already become the biggest private book dealer in Chongqing, the largest city in Southwest China. Contrary to everyone’s expectations, Yin Mingshan decided to quit the book business at the peak of his career as a book dealer. From his experience in private publishing, Yin Mingshan believed that the limitations in publishing policy meant that private publishing did not have a bright future, and a business that could not be exposed to sunshine could never be a promising career. His decision has proved wise, not only sparing him the crackdown against illegal publications after 1989, but also causing him to switch his business to motorcycle manufacture, which made him a billionaire ten years later. Meanwhile, the deregulation of the book publishing industry has always fallen behind other areas and together with the tobacco industry remains one of the last two mass-consumption industries under strict state control. Due to this unstable policy environment, just as Yin Mingshan predicted, private publishing enterprises still remain on a relatively small scale compared with private enterprises in other industries. While billionaires are constantly emerging from other parts of the private sector, there is still no sign of even one billionaire in private publishing.\(^\text{136}\)

As with his exit from private publishing, Yin Mingshan’s reentrance into the publishing industry is also symbolic. In 2000, ten years after he quit the book publishing business, Yin Mingshan invested ten million Yuan into Pudong Electronic Publishing House and became its second largest shareholder, holding a 30% stake. Encouraged by China’s entry into the WTO and the opening of nation-wide distribution to private enterprise, Yin Mingshan chose the relatively less limited electronic publishing as the springboard for his return to the publishing industry and became the first private investor in the electronic publishing sector, which has been opened to private investment ahead of book publishing.\(^\text{137}\) Along with the relaxation in publishing policy, Yin Mingshan’s perspective on private publishing had also changed. Because of insufficient competition, Yin Mingshan believes that publishing, once the forbidden zone for private


\(^{137}\) Implement Methods of Relaxing the Fields of Private Investment of Guangdong Province (promulgated by the Government of Guangdong Province, Sept. 29, 2003).
investment, now hides great profit potential. Ying Mingshan's return shows the influence of publishing policy on long-term investment in private publishing.

C. Informal Status Deters Formal Investment

Without official acceptance, the status of private publishing will remain uncertain. Although the publishing authorities acquiesce in its existence, private publishing is still technically illegal. As mentioned in the third part of this article, this murky status forces private publishers to make complicated arrangements to circumvent legal restrictions, not only in the publishing regulations, but also in taxation law, in the administrative rules of industry and commerce, and in accounting guidelines. The “original sin” of private publishing deters formal investment and leads to a multitude of further illicit behaviors. There are few investors willing to enter an area under strict government regulation such as publishing. As well, private publishing, the operation of which mostly follows informal rules, is incompatible with formal investment from banks, venture funds, share market, or foreign enterprise, the operation of which follows formal rules, such as contract law, copyright law, taxation law, and administrative regulations of commerce and industry. Up to 2009, there were only three cases of formal investments from these sources into private publishing enterprises: Bertelsmann and Rongshuxia establishing a joint venture, Xiron Book Company accepting thirty four million Yuan investment from Huawen Media Investment Corporation, and IDGVC Partners investing three million U.S. dollars in Joustar Corporation.

Even if some investors from the venture and banking sectors are prepared to enter private publishing, it will be difficult for them to accept the informal operation of private publishers. For example, Beirong, a joint venture established by Bertelsmann and Rongshuxia, which was registered as a book distribution company, actually engaged in private publishing. Because of the disparity between the registered business scope and the real business, the international auditing firm commissioned by the investor found that it was impossible to keep an accounting record that both reflected the real nature of the business and was acceptable to the taxation authority. The auditors eventually had no choice but to allow the joint

140 Id.
company to disguise its real business by providing a deceitful accounting record.\footnote{Interview 081124 (Shanghai, Nov. 24, 2008).}

Without legal status, the return on investment in private publishing is also at risk. Private publishing not only faces potential punishment from the government, but is also afflicted with the potential for default by downstream dealers. It is customary in the book trade for booksellers to take books on consignment and pay the publisher after those books are sold, instead of paying in advance. “When a bookseller then refuses to pay its debt, the private publisher cannot expect support from the courts, because it is engaged in an ‘illegal’ business.”\footnote{See \textit{Kong}, supra note 25, at 87-88.}

From the mid-1980s when private publishers first appeared in China, most have suffered from a lack of capital, and hence have only been able to engage in imitation or piracy, which has lower operating expenses and quicker returns. Without sufficient investment from outside, most private publishers will continue to struggle for survival by any means, including foul, and it becomes more difficult for them to upgrade their business from the lower end of the publishing industry to promoting innovation through a business model structured around copyright protection. Meanwhile, not only investment but also better human resources and business administration are also dissuaded from entering private publishing.\footnote{Interview 081107 (Beijing, Nov. 7, 2008); see also note 24 supra.} Even where capable people do enter the private publishing sector they tend to move quickly to other industries with ampler rewards, such as Internet companies or the movie industry.\footnote{Interview 081107 (Beijing, Nov. 7, 2008).}

\section*{D. State-Owned Publishing Houses Squeezing the Profit from Private Publishing}

To exchange book numbers and to take advantage of other privileges that rest solely in the hands of state-owned publishing houses, private publishers are forced to pay high prices which increase the cost of private publishing. A book number for a single book is worth 12,000 to 25,000 Yuan on the black market. According to an estimate of the Working Committee of the Non-State Book Industry, the private publishing industry annually produces books worth around 20 billion Yuan, and consumes 30,000 to 50,000 book numbers, which may cost at least 1 billion Yuan. The average private publisher pays between two and five million Yuan for book numbers annually.\footnote{See note 25 supra.}

In addition to the cost of book numbers, by virtue of their privileges as authorized by the publishing authorities, publishing houses are also able
to appropriate the endeavors of private publishers and squeeze their profit by a number of other mechanisms. First, in order to get the cooperation of publishing houses, private publishers mostly have to supply the state-owned distribution channels to publishing houses or establish a joint venture with them, in which case state-owned publishing houses may take a proportion of the private publishers’ profit, the amount of which is also estimated at around 1 billion Yuan in the entire private publishing sector annually.146 Second, in order to circumvent the publishing and taxation restrictions, private publishers need assistance from state-owned publishing houses, which is, of course, not free. For example, when private publishers transfer money through the accounts of publishing houses to printers, state-owned publishing houses impose a “handling charge.”147 Third, when publishing houses buy books from their partners, they usually defer payment for between six and eight months. As long as the cooperation continues, state-owned publishing houses may in fact use private publishers’ money to supply their running expenses.148

The cooperation between private publishers and state-run publishing houses is, in reality, like an unfair agreement. Private publishers take all the risks in the market and need to buy the right to publish. By these means, they support the inefficient state-run publishing houses. All these burdens not only increase the costs and reduce the profits of private publishing, but they also further impair the ability of private publishers to invest in long-term projects. Without sufficient profit, private publishers, especially small-scale publishers, cannot afford the high authors’ remuneration for new copyright books, and have little choice but to earn quick profits from imitation or piracy.149

E. The Anonymous Status of Private Publishers Negatively Influences Their Ability to Accumulate Intangible Assets

Without the acknowledgement of publishing authorities and the protection of formal rules, private publishers can only participate in publishing as ghost publishers. This anonymous status inevitably restricts the capability of private publishers to accumulate and enjoy their intangible assets. As was mentioned in the third part of this paper, as a precondition to receiving book numbers and other publishing privileges from state-owned publishing houses, private publishers have to assign or license copyright to them. Without official status as a publisher, the private publisher cannot enjoy copyright in his/her book, no matter how much money and

146 See id.
147 Interview 081103 (Beijing, Nov. 3, 2008).
148 Interview 081107 (Beijing, Nov. 7, 2008).
149 Id.
endeavour has been thrown into it. Even if private publishers may reduce the side effects by signing a shorter copyright license, they can do nothing to retrieve the neighboring rights which can only be owned by the official publishers. According to China’s Copyright Law, publishers enjoy a ten-year exclusive right on the typographical arrangement of books, which is designed to protect the special interests of publishers against slavish imitation. Although private publishers take charge of the entire publishing process, including the typographical arrangement, all the fruits of their labor are reaped by the state-owned publishing houses.

Another result is that the private publisher will only appear in the book as a project planner or editor. This status makes it very difficult for private publishers to appeal directly to their customers, or establish their brand, reputation, or goodwill in the publishing market. Even if private publishers develop a bestseller, the biggest beneficiary is the state-owned publishing houses which cooperated with them. In all probability, the consumer will remember the publishing house whose name appears on the cover if they remember anyone other than the author/s, but neglect the private publisher whose name appears in an inconspicuous way on the inside front cover or back cover as the project planner or editor.

Without the legal right to engage in publishing, it is also very hard for private publishers to get credit from clients and suppliers. For example, it is conventional in the publishing industry that private publishers give six to eight months’ credit to book dealers and publishing houses who buy their books, but private publishers have to pay cash to printeries and paper mills.

Under these circumstances, the incentive for private publishers to invest in copyright and other intangible assets which need longer term development, such as credit, business reputation, trademarks, or a unique style, is very likely to be insufficient, because most long-term investment in intangible assets benefits state-run publishing houses with little corresponding benefit to private publishers.

Most importantly, lack of effective copyright protection of private publishing also means little copyright enforcement in the bestseller market, the major profit generator in the publishing sector, because 80% of best sellers in China are in fact produced by private publishers. Without monopoly resources, most private publishers rely heavily on the bestseller market. Weak copyright enforcement and rampant piracy in the bestseller market means less profit flows into the pockets of those private publishers who engage in copyright exploitation. The less profitable the copyright

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151 Interview 081107 (Beijing, Nov. 7, 2008).
exploitation is, the less private publishers will stay in this business, the more private publishers will move into book piracy or imitation.

V. CONCLUSION

In spite of dramatic privatization and marketization in upstream and downstream sectors, China’s publishing sector is still operating by way of a strict state monopoly in one key link in the chain — the publisher. Under this state monopoly, the operation of publishing in China is different from publishing in a free market. State-owned publishing houses mostly depend on their publishing privilege and other monopoly resources, which reduces their incentive to explore new markets to meet consumer demand, to generate new materials, or to enforce copyright. Also, because of the state monopoly, private publishers and other market forces can only enter the publishing sector by illegal or semi-legal business operation, such as the book number trade or cooperative publishing, which is based, not on reliable legal arrangements, but on collusion between private publishers and state-owned publishing houses and the ambiguous acquiescence of press control authorities.

In this business environment, copyright owners without a publishing privilege cannot legally exploit their copyright. Private publishers have no choice but to cooperate with state-owned publishing houses as ghost publishers with no ability to claim legal rights as publishers, and thus with no legal status to enforce copyright in their publications. In the absence of effective control from the copyright owner, it is very hard to maintain any copyright “order” in the publishing industry, and provide effective copyright protection for private publishers. In addition to the negative influence on copyright enforcement, this state monopoly is also unfavorable for copyright exploitation and investment in private publishing, which require long-term certainty and official acknowledgment.

Because of the unfavorable impact of the state monopoly on both copyright enforcement and investment in copyright exploitation, copyright cannot play its essential role in protecting private publishers’ business interests and encouraging innovation and creativity. On the contrary, the unfavorable publishing policy may drive more private investment into imitation and piracy by making copyright investment less profitable. Even more seriously, without a profitable and sustainable business model structured around copyright protection, it is hard to create local support for copyright, without which a copyright system can never be successfully transplanted to China.

In addition to the incompatibility and conflict between state monopoly and the copyright system, the business pattern of the publishing sector in China also reflects the adaptation and collaboration between copyright owners and the elements of press control. By cooperating with state-
owned publishing houses, private publishers are able to exploit their copy-
right and make profits from book publishing. By acquiescing to private
publishing, the press control authorities also allow state-owned publishing
houses to suck substantial profits out of private publishing, and hence re-
duce their dependency on state subsidies. Under this business pattern, the
state-monopolized publishing sector, which is critical to China’s press con-
trol system, can benefit from copyright revenue generated from the mar-
ket. From this perspective, market mechanisms and a copyright system in
fact enhance press control to some extent, by transfusing “blood” to the
inefficient state-monopolized publishing sector.