

COPYRIGHT PROTECTION FOR CREATIVE INDUSTRIES: COMPARISON AMONG CHINA AND EUROPE

CRISTINA ORTEGA NUERE*
SILVIA MARIA GONZÁLEZ**

Abstract

The impact and creativity has increase in the last years in Europe. It was focused by an United Nations report on creative economy in 2008 .Cooperation and trade in goods and services has increased. Today, the EU is the biggest destination for China's exports and the second supplier to China. For the EU, China is the second trading partner, after the United States.

Based on current agreements between the two continents, we can mention the following documents that justify our research: The bilateral issues and cooperation, including people-to-people exchanges in 2011¹; EU-China Youth Policy Dialogue about education, culture and youth policies;² The EU-China high level people to people dialogue, celebrated in Chengdu, 2012.³ EU-China Business Summit, which took place in September 2012, in Brussels.⁴ The EU is committed to strengthening its partnership with China, as demonstrated by the fourteenth EU-China summit that took place in Beijing, 2012.⁵ Also there are some forums and conferences that are relevant for our research such as, the EU- China high level cultural forum celebrated, in Brussels 2010,⁶ Beijing in 2011; the Louvre in 2012,⁷ and the China- EU Seminar on cultural and creative industries cooperation.⁸

The rights of intellectual property law are more vulnerable in the cultural and creative sector. For this reason, it is essential that we protect ideas and designs; they are the new creations and they need to be sheltered. In this article, we are going to explain what intellectual property (IP) law is, specifically copyright, and how it began to appear in China in order to understand the concept of copyright

To gather this information, we will discuss the copyright protection for creative industries in China. And we will do a brief comparison about the copyright protection for creative industries in EU, including legal mechanisms in EU that relates to China. The methodology is the investigation and examination of documentation and we will elaborate a diagnose to observe the main differences between the Chinese and European legislation.

In the end, we will summarize the previous material, and draw a conclusion.

Key words: Creative industries, copyright, China, Europe, EU-China agreements

* Cristina Ortega Nuere, PhD, ENCATC President, European Network Leader in Cultural Management and Cultural Policy Education. Institute of Leisures Studies. University of Deusto (Cristina.ortega@deusto.es).

** Silvia María González Fernández, PhD Candidate in Leisure and human development at University of Deusto (Silviamaria.gonzalez@gmail.com).

¹ EU and China set to boost co-operation on education, culture, youth and research (2011). Accessed December 20, 2012. http://eeas.europa.eu/delegations/china/press_corner/all_news/news/2011/201111023_en.htm

² Education & culture: EU and China launch people-to-people dialogue. 2012. Accessed December 20, 2012.

http://europa.eu/rapid/press-release_IP-12-381_en.htm?locale=en

³ EU-China Youth Policy Dialogue. Accessed December 29, 2012. http://euchinayouth.eu/wp-content/uploads/YOPOD_Action_Plan_for_EU-China_Cooperation.pdf

⁴ 15th EU-China Summit (2012). Accessed December 20, 2012. http://www.ibec.ie/IBEC/DFB.nsf/vPages/Trade_and_international_relations~Asia_Business_Network~china-eu-china-business-summit-20-september-2012-brussels-23-10-2012?OpenDocument. Further information : http://eeas.europa.eu/china/summits_en.htm

⁵ European commission Report: EU-China High level people to people dialogue. Accessed December 26, 2012. http://ec.europa.eu/education/external-relation-programmes/china_en.htm

⁶ EU- China cultural Forum 2010. Accessed December, 27, 2012. http://ec.europa.eu/culture/news/first-eu-china-high-level-cultural-forum-brussels_en.htm

⁷ EU china high level transcultural forum. Accessed December 27, 2012. <http://www.euchinaculturalforum.com/>

⁸ EU-China Seminar of cultural cooperation. Accessed December 28, 2012. http://ec.europa.eu/culture/eu-china/events/event_172_en.htm

Introduction

Few economic sectors have research as much economic potential in China and the EU as the cultural and creative industries. (CCIs) have over the past few years. China is leading Asia in the development of a creative economy. Its cultural sector contributes to 2.45% of Chinese GDP, rising 6.4% higher than the growth of the general economy. European CCIs are worth 2.6% of the EU's GDP and generate 654 billion € in 2003, much more than the car manufacturing industry.⁹ We can say that copyright in the creative markets is “the soul” of the creation to prevent plagiarism. It is the incentive for the creation. And it is for that, there is a local and global trade through the copyright mechanism, the piracy has a huge impact on these industries, and that is why copyright is a necessary tool to protect the profits of these industries. Europe believes that with the directives, regulations, rules, and normative that protects designs and copyright law, the piracy could decrease in a near future and the talent will rise again.¹⁰ The European Union admits it has cost the creative industry over 185 billion Euros in employment alone in 2008, that's why the observatory of counterfeiting and piracy created in Europe has offered a competition called "hands off my design."¹¹

This article will explain the impact of copyright law in the creative industries between China and the European Union and the opportunities for trade and exchange among both continents. The importance of this topic is on the agenda of many international organizations. (UNESCO,¹² WTO¹³, UNCTAD¹⁴, WIPO¹⁵). The procedure of the methodology consists in content analysis of the Chinese legislation and the main differences in the Chinese and European legislation concerning copyright in the creative and cultural industries. Also we will support the analysis in the main organizations and treaties that exist in both continents that are important for this topic. For example; The UNCTAD is his 2008 report on the creative economy has mention:

*“It has the potential to generate income, jobs and export earnings while at the same time promoting social inclusion, cultural diversity and human development. This is what the emerging creative economy has already begun to do as a leading component of economic growth, employment, trade, innovation and social cohesion in most advanced economies. The creative economy also seems to be a feasible option for developing countries”*¹⁶ “

Policies must therefore be designed to support all forms of innovation, not only technological innovation. Specific approaches may also be needed for innovative services with high growth potential, particularly in the cultural and creative industries”^{17,18}

⁹ KEA. “China EU creative industries mapping. December 2010.” Accessed January 23, 2013. <http://www.keanet.eu/report/china%20eu%20mapping%20exec%20sum%20english.pdf>.

¹⁰ European Patent office report. “Scenarios for the future”. 2007.22-30,106 110. http://www.marcaspatentes.pt/files/collections/pt_PT/1/178/EPO%20Scenarios%20For%20The%20Future.pdf

¹¹ “Intellectual property rights : Winners of "Hands off my Design. Accessed on January 01, 2013. <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/93&format=HTML&aged=0&language=en&guiLanguage=en>,

¹² United Nations, Educational, Scientific and Cultural Organization. (UNESCO). More information available on UNESCO report 2009. What is and what it does. Accessed January 03, 2013. <http://unesdoc.unesco.org/images/0014/001473/147330s.pdf>

¹³ World Trade Organization. (WTO). Accessed January 03, 2013. More information available on http://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm

¹⁴ United Nations conference on trade and development. (UNCTAD). Accessed January 03, 2013. More information available on : <http://unctad.org/en/Pages/Home.aspx>

¹⁵ Intellectual Property Organization. (WIPO): Accessed on January 03, 2013. More information available on: <http://www.wipo.int/about-wipo/en/>

¹⁶ UNCTAD (Conferencia de las Naciones Unidas sobre Comercio y Desarrollo) 2008, *Creative Economy: Report 2008*, New York, ONU. Accessed February 18, 2013. [http://unctad.org/en/Pages/Publications/Creative-Economy-Report-\(Series\).aspx](http://unctad.org/en/Pages/Publications/Creative-Economy-Report-(Series).aspx).

¹⁷ European Commission . Europe 2020 Flagship Initiative Innovation Union, Brussels, 6.10.2010, COM (2010) 546 final. 2010.18.

Is the role of copyright important for the development and exchange in the creative and cultural industries (ICC)?

In April 2012, the commission has written a report “policy handbook”¹⁹ in which notes the importance that creative and cultural industries have in the world economy. It says: “Cultural and creative industries are in a strategic position to promote smart, sustainable and inclusive growth in all EU regions and cities, and thus contribute fully to the Europe 2020 Strategy, which is the EU's growth strategy for the coming decade”.²⁰

The copyright has experienced a process of harmonization worldwide through the Berne Convention, which is now coordinated by WIPO that negotiates with international treaties. For example; the diplomatic conference on the protection of audiovisual performances, in 2011.²¹

China has developed his copyright system since the adhesion of the WIPO in 1980. Currently, China is leading the market. In the last two parts of this paper we will explain the importance of the creative industries in China and Europe and why copyright is so important for both in the commerce. China is as potential future second worldwide in 2017²², it will be very important for trade and development of creative industries. China has moved to design in china to create in China, and there are many opportunities for business between China and Europe.²³²⁴

Creating opportunities in the creative industries sector between China and Europe:

Copyright is a part of intellectual property (IP) law. Intellectual property law refers to some of the rights related to ideas and innovations. Most countries agree that some inventions and creative works must be protected in a legal form. This is because the vast majority of workers and owners should be entitled to receive some benefit from the fruits of their labor. If they are guaranteed protection, they maintain incentives to innovate, otherwise creativity is discouraged. For this reason, IP law is divided into two big branches, industrial property and *copyright*.²⁵

Since the adhesion of the P.R China to the World Intellectual Property Organization (WIPO) in 1980 and the entry in the World Trade Organization (WTO) in 2001, the protection of intellectual property rights (IPR) has been an issue of rising importance for new legislation.²⁶ Also the Agreement on Trade Related Intellectual Property Rights 1994 (TRIPS) and the Berne Convention on Literary and Artistic Works of 1886 has helped china to increase the cooperation abroad.²⁷²⁸

¹⁸ We remember the creative industries concept. The world cultural industry refers to those industries that combine the creation, production and marketing of creative content that is tangible and cultural by nature. These contents are usually protected by copyright, and may take the form of a good or service. The ideas and designs need to be sheltered; it is for that the copyright concept is important for this industry. We can mention the UNESCO : Understanding creative Industries report: pp 3. http://portal.unesco.org/culture/es/files/30297/11942616973cultural_stat_EN.pdf/cultural_stat_EN.pdf

¹⁹ EC (2012), Working Group of EU Members States Experts, *Policy Handbook*, Brussels, April 2012. Accessed February 29, 2013. <http://ec.europa.eu/culture/our-policy-development/documents/policy-handbook.pdf>

²⁰ *Ibid.*, p. 3.

²¹ Diplomatic conference on the protection of Audiovisual performances. (2012). Accessed on February 18, 2013. http://www.wipo.int/meetings/en/details.jsp?meeting_id=25602

²² Chamber of commerce and industry of the Russian federation report. China to become world's biggest economy. February, 11, 2013. Accessed February 25, 2013. http://eng.tpp-inform.ru/principle_theme/845.html

²³ Creative Industries in China. Opportunities for business. Uk trade & investment report. London. 2008. Accessed February 25, 2013. http://www.cbcc.org/guide/downloads/uktilondon_creative

²⁴ Dr Zhen Ye. Wales- China Creative industries forum. Mega trends in China's creative industries report. 2009. <http://waleschinacreativeindustries.net/wp-content/uploads/DrZhenYepaper1.pdf>

²⁵ Xhu, Yuquan. Concise Chinese law. Beijing, China Law Press 2007, 81.

²⁶ Zhang, Yuwing; Gebhardt Immanuel. Chinese intellectual property law. Comparative cases studies part 2. Department of treaty and law. Volume V Ministry of commerce PRC advisory service to the legal reform in china..(1997). 102-103

²⁷ Montgomery, Lucy; Fitzgerald, Brian F. “Copyright and the Creative Industries in China”. *International Journal of Cultural Studies* 9(3) (2006): 407-418

Trade in copyright between the P.R. China and other countries are increasing rapidly and therefore require protection on both national and international levels. With the international trade in copyright growing at an annual rate of 50% during the period between 1994 and 1999 and continuing to grow, copyright protection requires new legislation to keep up with technical developments, such as through the use of the internet. In spite of the described development, Chinese Copyright Law (hereinafter *CCL*) was amended in October 2001 for the first time. The revision mainly incorporated the necessary changes due to the accession of the PRC to the WTO and the requirements of the Accession Protocol.

In Feb. 2010, *CCL* was revised for the second time and went into effect on Apr.1, 2010. Notably, the amendment to Article 4 contained in the *CCL* (2nd Revision) was adopted primarily in response to recent findings by a WTO panel that China's denial of copyright protection of certain censored works was inconsistent with its TRIPs Agreement obligations.²⁹ Copyright protection is now extended to all "works," without regard to restrictions on publication and distribution that are imposed by PRC authorities under other laws and regulations (these restrictions are unaffected by the amendments).

In 2006, the council of international Affairs and External Relations in Brussels, (Council 2771), had begun searching solutions of global problems and China played a key role, The EU and China have important commitments and responsibilities whose base is the United Nations.

The Council welcomes the agreement reached in September 2006 to set up negotiations with China as a Partnership and they have signed a cooperation Agreement. This agreement began to cover all aspects of bilateral relations, including the strengthening of the agreements between the two continents, supports dialogue, cooperation and integration in East Asia considering that this agreement could promote stability and prosperity and that will lead to further progress towards resolving territorial disputes in the region. The cooperation with China aimed at strengthening stability in East Asia, including through multilateral mechanisms such as the Regional Forum of the Association of Southeast Asian Nations (ASEAN) and the Asia-Europe Meeting (ASEM), and the role of China as a country host the seventh summit ASEM7. On that date the Council recognizes that trade and economic relations are an increasingly important element between the EU and China. It is very probable that the extraordinary growth of exports, imports and Chinese investment in recent years continue to occur in the immediate future. This represents both a challenge and an opportunity. The challenge for the EU, and for China, is to manage and deepen relationships on a sustainable, predictable, and balanced. The best way to overcome this challenge is the association, through cooperation and common standards and mutual agreements.

Currently, in the creative industries sector China and Europe has signed so many action plans in 2012. For example: EU-China Youth Policy Dialogue in Chengdu, 23 of February of 2012³⁰. Furthermore, China and Europe has agreed an EU-China high-level people-to-people dialogue in 2012, in Beijing³¹. EU diplomatic relations with China were established in 1975 and are governed by the 1985.³² On the other hand, EU-China trade and cooperation agreement and seven other legally binding agreements were reached on those years. China has emerged as the world's third economy,

²⁸ The original version of the Berne Convention for the Protection of Literary and Artistic Works dates from 1886.

²⁹ See *Report of the Panel* □ *China C* "Measures affecting the protection and enforcement of intellectual property rights." WT/DS362/R .(2009). 41 Accessed December 13, 2012. [http://www.worldtradelaw.net/reports/wtopanels/china-iprights\(panel\).pdf](http://www.worldtradelaw.net/reports/wtopanels/china-iprights(panel).pdf)

³⁰ Education & culture: EU and China launch people-to-people dialogue. 2012. Accessed December 20, 2012. http://europa.eu/rapid/press-release_IP-12-381_en.htm?locale=en

³¹ Eu- China high level people to people dialogue 2012. Accessed December, 20, 2012. http://ec.europa.eu/education/external-relation-programmes/china_en.htm

³² W. John Morgan & Tujnman, Albert. "Europe and China: a new era of cultural contact and cooperation in education." *European Journal of Education*, Vol. 44, No. 1. (2009) 1-142.

after the EU and the US, the biggest exporter in the global economy, and an increasingly important political power. EU-China trade has risen dramatically in the last decades. The EU remains China's biggest trading partner while China is now close to becoming the EU's largest trading partner as well.³³

Also, on December 19, 2012, China-Central and Eastern Europe Cooperation Secretariat held its annual meeting in Diaoyutai State Guesthouse in Beijing. At the meeting, progress that has been made in cooperation between China and Central and Eastern European countries was reviewed and plans made for the Secretariat's work in 2013.³⁴

We have to mention as well that Europe and China has signed in 2012 many cultural agreements and forums and seminars in which copyright has a relevant part. For example, the "High level cultural forum" and 3rd edition that took place in Beijing in November to cooperate in culture.³⁵

The history and prospect of China's Copyright Law

Since the late 1980's China has taken major steps in the legislation improving its copyright law. The Chinese desire to open their doors to trade in order to encourage foreign direct investment.

There was no copyright norm in Chinese feudal history. Copyright was a purely western concept that was introduced in China in the 20th century under pressure from the western countries. On the other hand, the concept of copyright is contrary to the Chinese and Confucius culture, and is contradictory with the Marxist socialist ideology.³⁶ Chinese law always encourages the society over the interests of individuals.

China has one of the most distinct and deep philosophies, which is essentially contradictory with the notion of copyrights.³⁷ History indicates that China was ahead of Europe when it came to printing techniques that had been invented in the middle of the 11th century. China has an incredible traditional culture, and Confucianism was so basic to feudal Chinese philosophy and social conduct that is almost contradictory to the notion of copyright.

"As a legal concept, copyright seems even less attuned to the Chinese concept of law with its reluctance to rely upon rigid codification and abhorrence of litigation. The traditional Chinese conception of law is so different from the western concept that it has often been described as a rejection of the idea of law".³⁸

Confucianism always believes in the concepts of equality and individuality, and provides a basic premise for claiming copyright. Confucianism believed that past experiences were indispensable for personal moral growth. Confucius said: "I transmit rather than create, I believe and I love the ancients."³⁹ He believed that intellectual knowledge, as a whole, was the common heritage of all Chinese. They monopolized authority based on the wisdom of the past, spent time on literature, and tried to express them through art.

³³ European Union. EU-CHINA SUMMIT (Beijing, 14 February 2012) .EU RELATIONS WITH CHINA. in this context, the 2012 EU-China Year of intercultural dialogue aims to enhance cultural relations and cooperation and was officially launched on 1 February. Activities will include not only artistic exchanges, but all forms of people-to-people contacts and mobility contributing to mutual understanding. More information on the activities can be found at: http://ec.europa.eu/culture/eu-china/intercultural-dialogue-2012_en.htm. Accessed January 3, 2013.

³⁴ Vice Foreign Minister Song Tao Attends Annual Meeting of China-Central and Eastern Europe Cooperation Secretariat. Ministry of Foreigners Affairs of the people's Republic of China. December, 12, 2012. Accessed January, 4, 2013. <http://www.fmprc.gov.cn/eng/zxxx/t1000583.shtml>.

³⁵ High level cultural forum. Beijing. 2010. Accessed January 05, 2013. http://ec.europa.eu/culture/eu-china/index_en.htm

³⁶ Ploman, E.W and Hamilton, L.C, copyright, London, Routledge&Kegan Paul,(1980) 140.

³⁷ Qu, Sanqiang .To understand the copyright in China. Copyright in China. 2002.4-8.

³⁸ Ploman and Hamilton..see supra note 4 , at 142.

³⁹ Early models of collaboration before the eighteen century. Accessed February 03, 2013. http://mako.cc/academic/collablit/writing/BenjMakoHill-CollabLit_and_Control/x243.html. More information available on Chinese Intellectual property protection.<http://www.123helpme.com/view.asp?id=35245>

In China, the protection of printers, publishers and authors on occasions by means of official prohibitions had remained unchanged for more than eight hundred years, although in the Ming Dynasty this form of protection seems to have been suspended for some time. Neither written law for the protection of copyright nor clauses in statute law have been discovered. 40. By the 17th and 18th centuries, with the European industrial revolution, Europe had begun to develop a concept of copyright. Nevertheless, as early as 800 years ago China had some definitive notions regarding the idea of copyright or, intellectual property. The stamp, first appearing between the years 1190 to 1194 would read: this book was published and distributed by the Cheng Family of Meishan, any reproduction without permission is forbidden. The notice is strikingly similar to the modern copyright notice --© "All rights reserved". The question might still be raised, then: why has there been no copyright law in China for such a long time? 41 When the west pressured China to open its doors to trade, they had to make special concessions and foreigners were permitted to live in Guangdong and Macao to do business with licensed Chinese intermediaries, known as the Hong. 42 After the Opium War (1839-1842) the social contradictions and conflicts with China became more intense. Prior to the opium war, there was a little foreign investment in China and trade was confined to items, such as opium, tea, raw silk, sold as bulk commodities instead of under brand names. 43

In the second half of the 19th century, the western economic involvement in China expanded. At the same time, the infringements of intellectual property, such as foreign trade names and trademarks began to work. 44 To protect the interest of foreigners, the Qing government commenced a series of negotiations regarding protection of copyright. China did not have universal national laws to deal with the problem of copyright infringement. So, as China began to industrialize, they also began to duplicate the copyrighted works of foreigners. China did not provide any legal protection for copyrights until 1910. In 1928, the KMT government promulgated its first copyright law. In 1949, the People's Republic of China was founded. 45 The copyright law changed and the nation had been influenced by the Mao ideology, and the creation of literature and art had to serve the overall social interest. 46. During the Cultural Revolution, (1967-1977) China made no progress at all in improving its copyright scheme. On the contrary, many aspects of copyright protection regressed considerably. Almost all kinds of what the west would consider creative literature were regarded as bourgeois liberalism and restricted from publication and dissemination. 47 From 1979 to 1985, the administration responsible for publication drafted a succession of administrative regulations with respect to copyright protection. The interim provisions declared by the Ministry of Radio and Television in 1982 also emphasized that the rights of authors, performers and audio-radio recorders would be protected in effective ways. The copyright law in 1990 was promulgated and after these regulations they created the protection of computer software. The law is enacted according to the Chinese Constitution with the aim to protect the copyright of the authors and the creative workers, as

⁴⁰ Chengsi, Zhen and Pendleton, Michael. Copyright law in China. 1990. 16

⁴¹ See Zhou Lin, Copyright Law In China, accessed January 24, 2013. <http://www.chinaiprlaw.com/english/forum/forum59.htm>

⁴² Described in Fairbank, J.K, Trade and diplomacy on the china coast: the opening of the treaty ports, (Cambridge. Harvard University Press, 1953), 45.

⁴³ Gardella, R. " Boom years of the Fukien Tea trade, 1842-1888" in May E, and Fairbank, J.K. America's china trade in historical perspective: the Chinese and American performance, council on East Asian studies, (Cambridge, Harvard University 1986), .69.

⁴⁴ See also Allen G and Donnithorne A: " Western enterprise in far eastern economic development", (New York, Mcmillan 1954). 61.

⁴⁵ Id. at .33.

⁴⁶ See 1967, quotations of Chairman Mao Tse-tung, People's Publishing House, Beijing, 1973.

⁴⁷ Qu, Sanqiang, supra note 5, at p. 40.

inventors or designers in their literary, artistic and/or scientific works related with the copyright, in order to encourage them to continue to innovate and develop a better world. 48

Understanding Chinese copyright. Definition and analysis.

Copyright is defined as the personal right and property right legally enjoyed by authors and creators of literary, artistic and scientific works. This law stipulates that the copyright includes two categories; spiritual right and economic right.⁴⁹

Art. 6 of the *CCL* provide that copyright arises at the date when creation of the work is complete. Para. 2 and 3, Art 21 provide that the term copyright of a work owned by an employer, or the copyright in a film, television broadcast, photograph, video or sound recording is 50 years from the date of publication. If the author is the owner of the copyright, the term is the life-time of the author plus 50 years after his death, in the case of published work. According to para. 1, Art. 2, foreign works receive the same treatment as works created by Chinese persons and entities. Any work of a foreigner or stateless person published for the first time and within the territory of China shall enjoy copyright in accordance with this Law. (See para. 2-4, Art. 2, *CCL*). Art. 8 of the Implementing Regulations of the Copyright Law of the People's Republic of China (*hereinafter Implementing Regulation*) also provides that where works of foreigners or stateless persons are first published outside the territory of China and then, within thirty days, published in the territory of China, the works shall be deemed to have been simultaneously published in the territory of China., but the moral rights will be perpetual.⁵⁰

Copyright Object, Subject and Content

Works are the result of intellectual creation in the literary, artistic, and scientific fields and may be reproduced in a material form in accordance with Art. 2 of *CCL* and the *Implementing Regulation* formulated by the state council in 2002. They have to follow three requirements:

- They should be the expression of ideas and feelings.
- They should be original
- They should be able to be reproduced in a material form.

The subject of the copyright enjoys the rights and bears the obligations of the copyright. It has three categories: includes the natural person, legal entity or other organizations that create the works: the authors. Second category includes the natural person, legal entities or other organizations, besides the author, who enjoy the copyright. The third category includes the natural person, legal entity or other organizations that is entitled to the copyright by trust contract or service the contract.

The object of the copyright refers to literary, artistic, and scientific works protected by copyright law.

⁴⁸ Copyright Law of the People's Republic of China" (Revised in 2010) UPDATED: June 1, 2010 NO. 20 MAY 20, 2010. Accessed December 12, 2012. http://www.bjreview.com.cn/document/txt/2010-06/01/content_275779.htm

Adopted in the 15th meeting of the Standing Committee of the Seventh National People's Congress on September 7, 1990 and revised in the 24th meeting of the Standing Committee of the Ninth National People's Congress on October 27, 2001 in accordance with the Decision on Revision of the Copyright Law of the People's Republic of China for the first time and in the 13th meeting of the Standing Committee of the 11th National People's Congress of the People's Republic of China on February 26, 2010 in accordance with the Decision on Revision of the Copyright Law of the People's Republic of China for the second time.

⁴⁹ "China law guideline in protection of intellectual property rights." China Council For the Promotion of International Trade Law Department (China market press. 2006). 1.

⁵⁰ Zhang, Yuwing and Gebhard Inmanuel. Chinese intellectual property law. Comparative cases studies part 2. Department of Treaty and Law. Ministry of commerce PRC advisory service to the legal reform in china. Volume V. (1997). 113.

What is protected?

The legal term work is defined in Art. 2 of the *Implementing Regulation* as an intellectual creation which is in the field of literature, arts or science, displays originality and is capable of reproduction in a certain tangible form

Art. 3 of *CCL* supplemented by Art. 4 of the *Implementing Regulation* identifies particular categories of works as including:⁵¹ Literary works; Oral works; Musical, dramatic and choreographic works; Acrobatic works; Works of fine arts and architecture; Photographic and cinematographic works; Graphic works and software works.

Copyright Limitations

The Chinese Copyright Law imposes two limitations on the exercise of copyright by its owner, namely fair use and statutory license Fair Use Consistent with the Copyright Law 2001, 12 kinds of fair uses have been identified (Art.22, *CCL*). As a civil law country, *CCL* provides detailed circumstances for “fair use” in legislation, and the court may exercise the interpretation rights only according to the specific circumstances set forth in *CCL* and cannot rule “fair use” under other circumstances beyond the scope set by *CCL*.

Statutory License .The statutory license includes that where the copyright owner has not declared that the work concerned is forbidden to be exploited by others, a newspaper or periodical may reprint or print an abstract of the work which was published in another newspaper or periodical (see Para.2, Art.33,*CCL*), and work published may also be exploited for public performance or for the production of a sound recording, video recording, radio program or television program; but subject to the payment of remuneration (see Art.37,40&43,*CCL*).

Related Rights China’s Copyright Law protects not only works by traditional copyright (author’s right), but also subject matters other than works by “related rights”. Related rights mean “rights and interests related to copyright”. According to Art.26 of *Implementing Regulation*, the so called “rights and interests related to copyright”, as mentioned in China’s Copyright Law (see Art.1) and these regulations mean the rights enjoyed by publishers in the typographical arrangements of their books or periodicals published, the rights enjoyed by performers in their performances, the rights enjoyed by producers of sound recordings and video recordings in their sound recordings and video recordings and the rights enjoyed by radio and television stations in their broadcast radio or television programs. (Art 34, 36, 38 *CCL*).

Copyright Infringement and Enforcement

Chinese Copyright Law enumerates acts of infringement in Art. 47 and 48. According to Item (1) to (11), Art. 47 of *CCL*, one who commits any of the following acts of infringement shall bear the civil liability for such remedies as ceasing the infringing act, eliminating the effects of the act, making a public apology, or paying compensation for damages, depending on the circumstances. The copyright administrative departments under the local governments shall be responsible for investigating and handling infringements of copyright, with prejudice of the social and public interests, as enumerated in Article 47 of the Copyright Law. The copyright administrative department under the State Council may investigate and handle copyright infringements that are of nationwide influence (Art. 37, *the Implementing Regulation*).

According to Item (1) to (8), the Art. 48 of *CCL* says: one who commits any of the following acts of infringement shall bear the civil liability for such remedies as ceasing the infringements, eliminating the effects of the act, making a public apology, or paying compensation for damages, depending on the circumstances; where he damages public interests at the same time, the copyright administration department may order him to cease the act of tort, may confiscate his illegal gains, confiscate and destroy the reproductions of infringement, and impose a fine on him; if the case is

⁵¹ Yuwing ,Zhang; Gebhardt, Inmanuel.Author: Chinese intellectual property law. Comparative cases studies part 2. Department of treaty and law. Ministry of commerce PRC advisory service to the legal reform in china. Volume V. (1997). 104-105

serious, the copyright administration department may also confiscate the materials, instruments, equipment, etc. mainly used to make the reproductions of infringement; where his act has constituted a crime, he shall be investigated for criminal liabilities in accordance with the law.

Copyright enforcement

Protection against copyright infringements and the enforcement of copyrights may still prove to be a difficult task in the PRC. However, the situation changed when China entered the WTO. Copyright can be enforced by administrative or judicial means.

Administrative Action

With respect to the infringement of copyright, with prejudice of the social and public interests, as enumerated in Article 47 of the Copyright Law, the copyright administrative departments may impose a fine not exceeding three times the amount of the illegal business turnover. When it is difficult to calculate the amount of illegal business turnover, it may impose a fine of no more than RMB 100,000 Yuan (Art. 36, *the Implementing Regulation*).

Judicial Enforcement

According to Art 55 of *CCL*, a dispute over copyright may be settled by mediation or be submitted for arbitration to a copyright arbitration institution under a written arbitration agreement concluded between the parties concerned, or under the arbitration clause in the copyright contract. In fact, the copyright infringement disputes shall be settled via mediation. If the mediation fails, it should be submitted to the court. Also, in the copyright contract disputes, it must be sent to the arbitration organization (designated in the clauses of the contract). In the case of no clauses or arbitration agreement, the concerned party goes directly to the court.⁵² The courts in China are divided into basic courts, Intermediate Courts, High Courts and the Supreme Court. The court where the initial dispute is brought is known as the court of first instance, while the appellate court is known as the second instance court. This appellate system is similar to that which is in place in the United States. In major metropolitan areas, the intermediate court will be the court of first instance for many of the intellectual property cases. Jurisdictions in major metropolitan areas, such as Beijing, Shanghai and Guangzhou handle the majority of intellectual property cases. Because of this specialized capability and the associated protection existing largely only in major metropolitan areas, there should be a heightened awareness among companies in China with regard to where they bring claims in Chinese courts. Venue, as such, becomes a very important issue when litigating intellectual property claims in China

Creative industries in China

What is the first idea that comes to mind when someone asks us about the creative industries? What can we understand about this? Are Cultural industries the same as creative industries? According to UNESCO, culture must be considered to be the distinct spiritual, material, intellectual, and effective identity that characterizes a society or social group and encompasses, in addition to literature and art, lifestyles, the way to live together, value systems, traditions, and beliefs. The term cultural industries concern those industries that merge the creation, the production, and the commercialization of creative contents which are cultural by nature. All of these contents and designs are protected by copyright and they can take the form of a good or a service. (These industries normally include printing, publishing, multimedia, audiovisual, phonographic and cinema, crafts, and design). However, the creative industries are involved with more activities than the cultural industries. This includes architecture and advertising, so, in general, creative industries are those that have an artistic and creative element.

Chinese government has banned an official definition that differentiates core peripheral and culture related industries. (10th five-year plan, 2002). However, this exists with other classifications developed by large cities, such as Beijing and Shanghai.

⁵² China law guideline in protection of intellectual property rights. China market press. 2006.6

Inside the cultural industries there are many associations that were created to transmit ideas and create initiatives. Also, they want to unify their rights and have more power in their decisions. Of the categories that we can frame in art are the following: Architecture, customs and traditions, theater, music, literature, visual arts, dance, crafts, audiovisual, multimedia and digital culture.

Chinese and European cultural and creative industries are important sectors (they contribute 2.45% and 3% to the Chinese and EU GDP's, respectively), and account for a growing portion of trade between the two zones. Europe and China are important partners and their cultural exchanges are still to be fully developed. In this table we can check the different contributions to each economy:⁵³⁵⁴

Figure 1. GDP in EU and China

Economic data	EU	China
Turnover	More than € 654 billion in 2003	€ 47.6 billion in 2006
Value added to GDP	2.6% of EU GDP in 2003	2.45% of GDP in 2006
Employment	In 2004, almost 6 million people were employed = 3.1% of total employed population in EU27	In 2006, 11.32 million employed = 1.48% of total employed population
Trade	The export of cultural services from the EU 27 to China has increased, growing from € 31 million in 2004 to € 49 million (+58%)	China has become the third largest exporter (€ 3.7 billion) and the sixth largest importer (€ 2.2 billion) of cultural goods in the world in 2005
Contribution to growth	12.3% higher than growth of the general economy	6.4% higher than growth of the general economy

Source: Creative industries working paper.2012

Over 70% of total exports of cultural products are produced by foreign-funded enterprises. The cultural exports from the U.S., EU, and Hong Kong account for more than 85% of China's export of cultural products, with the share from the Guangdong province accounting for over 70%. Of China's total exports of cultural products, 50% are videogames, 30% are sculpture and visual arts products, while exports of products with real Chinese content account for no more than 15%⁵⁵

Currently, the added value of China's cultural industry has increased 25.8% and now represents 2.75% of GDP, as counted by the National Bureau of Statistics. The Minister of Culture expects this to represent 5% of the GDP, as this trend continues to rise. A more detailed review of events shows that profits in sectors, such as-film, exceed 1,600 billion. Another business in design, digital animation, architecture and performing arts continues to grow, to the extent that the bank of China has supported the creation of capital funds and successful companies to take public stock market.⁵⁶

Currently, as is being developed jointly by the General Office of CPC Central Committee and the General Office of the State Council, the reform plan of China cultural development for the period between 2011 and 2015, defines the development of cultural industry how to make it a pillar in the global economy. Also, China will intensify the union between effective copyright enforcement

⁵³ China and Europe Trade. Accessed on Jan.2, 2013. http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/china/index_en.htm

⁵⁴ China EU bilateral Trade and Trade with the World.. 2012. Accessed February 20, 2013. http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113366.pdf

⁵⁵ <http://culture360.org/news/mapping-the-cultural-and-creative-sectors-in-the-eu-and-china/> Accessed on Jan, 22, 2013.

⁵⁶ China to develop cultural industry into pillar one. Accessed January.22,2013.

http://www.chinaipr.gov.cn/newsarticle/news/government/201202/1280107_1.html.

administrative and judicial protection, stop the different kinds of infringement and piracy actions and raise the awareness of the whole society in copyright protection. Lastly, the country will develop other industries relevant to copyrights.

What is the main purpose of the legislation? Releasing the potential of the creative industries in Europe

The European Competitiveness Report, dated in 2010, told: "Innovation and competitiveness in the creative industries" as one of the four factors that determine the competitiveness of the EU in world market".⁵⁷ The ICC's are innovative and they are catalysts for innovation.⁵⁸ In conclusion, the EC has defined SCC sector as one of the key sectors of the new European Agenda 2020:

"We must strengthen the potential for growth and innovation in the creative industries, we must take action"⁵⁹.

Thousand of designs, pictures, and photographs are copied and when the plagiarism is discovered, their company's designers, and the company itself, lose their prestige and credibility. We need to protect the talent, so the European Union (EU) decided to create a regulation and law that could protect the inventions and the drawings of the designers and artists.

Attempts to harmonize copyright law in Europe can be dated back to the signature of the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886. All Member States of the European Union are signatories to the Berne Convention, and compliance with its provisions is now mandatory before accession. The first important step taken by the European Economic Community (EEC) to harmonize copyright laws came with the decision to apply the common standard for copyright protection of computer programs, enacted in the directive on computer programs in 1991. A common term of copyright protection, 70 years after the death of the author, was established in 1993 as the duration of the Copyright Directive.

The application of the directives on copyright has been rather more controversial than many other subjects, as shown by the six trials for non-transposition of the Copyright Directive. Traditionally, copyright laws vary considerably among Member States, especially among common law jurisdictions (Cyprus, Ireland, Malta and the UK) and civil law countries. Changes in copyright law have also become linked to the protests against the WTO and globalization in general.

The main treaties concerning copyright and relative rights are as follows:

- Berne Convention for the Protection of Literary and Artistic Works (WIPO)

- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

- Agreement on Trade-Related Intellectual Property Rights (WTO)

- WIPO Copyright Treaty (WIPO)

- WIPO Performers and Phonograms Treaty (WIPO)

The European copyright law is based in the following directives:

- COUNCIL DIRECTIVE 93/83/EEC OF 27 SEPTEMBER 1993 on the coordination of certain rules concerning copyright and rights related to copyright in the field of satellite broadcasting and cable retransmission. Transposed into Spanish law by Law 28/1995, which is now part of the IPL.

- DIRECTIVE 96/9/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 11 MARCH 1996 on the legal protection of databases. The term of protection of this right "sui generis" is 15 years.

⁵⁷ European Commission (2010), *European Competitiveness Report 2010*, Brussels 28.10.2010, Commission Staff Working Document, SEC (2010)Volume 1. 1276 final. Accessed February, 27, 2013.<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SEC:2010:1276:FIN:EN:PDF>

⁵⁸ *Ibid.*, p. 5.

⁵⁹ *Ibid.*, p. 14.

- DIRECTIVE 98/71/EC of the European Parliament of the council of 13 October 1998 on the legal protection of designs.

- DIRECTIVE 2000/31/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF JUNE 8, 2000 on certain legal aspects of the services of the information society, in particular electronic commerce in the internal market.

- DIRECTIVE 2001/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 22 MAY 2001⁶⁰ on the harmonization of certain aspects of copyright and rights related to copyright in the information society. Confers on authors the right to authorize public communication and distribution in all its forms.

- DIRECTIVE 2001/84/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 27 SEPTEMBER 2001 on the right for the benefit of the author of an original artwork. Establishes an inalienable right, the author of original artwork to participate in certain percentages in resales involving art market professionals.

- DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 29 APRIL 2004. This directive requires member states to take specific procedural measures to ensure the possibility of obtaining evidence (for example; distribution networks of illegal products) and the efficiency of judicial decisions (interim measures), and determine the scope of compensation.

- DIRECTIVE 2006/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12 DECEMBER 2006 on rental right and lending right and certain rights related to copyright in the field of IP. Recognizes rights of performers, phonogram producers and film and broadcasting.

- DIRECTIVE 2006/116/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 12 DECEMBER 2006 concerning the term of protection of copyright and related rights. Amended by Directive 2011/77/EU, the European Parliament and the Council of 27 September 2011, cited below.

- DIRECTIVE 2009/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 23 APRIL 2009 on the legal protection of computer programs. Establishes the obligation to protect computer programs as literary works, with a minimum of 70 years harmonized protection.

- 2011/77/EU DIRECTIVE OF 27 SEPTEMBER, THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2006/116/EC of 12 December on the term of protection of copyright and certain related rights. Extend the term of protection of the rights of performers, and sound recordings from 50 to 70 years after the death of the owner or the date of posting.⁶¹

There are important differences from country to country in the Europe. We do not have enough time to analyze in this paper more deeply to observe the heterogeneity of the legislation between European countries. The main difference among them is the manner in which moral rights and economic rights under copyright are interpreted in relation to each other, with important

⁶⁰“Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society“. Official Journal L 167 , 22/06/2001 P. 0010 – 0019. Accessed January 25, 2013.

<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

⁶¹ Conclusiones del Consejo y de los Representantes de los Gobiernos de los Estados miembros reunidos en el seno del Consejo, sobre el plan de trabajo en materia de cultura (2011-2014) *Diario Oficial n° C 325 de 02/12/2010 p. 0001 – 0009*. Accessed January, 03, 2013.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:325:0001:01:ES:HTML>.

consequences for alienability and its limits in the fields of both moral rights and economic rights.^{62,63,64}

The European Union believes it has cost the creative industry over 185 billion Euros in employment alone in 2008, that's why the observatory of counterfeiting and piracy created in Europe has offered a competition called "hands off my design."⁶⁵

Main treaties and mechanism related with China copyright legislation

To comply with the topic of this paper, it is not necessary to discuss in detail the EU copyright law, so this paper will focus on the main difference with China and how the system works there in general.

Very few economic sectors have revealed as much economic potential in China and the EU as the cultural and creative industries (CCIs) have over the past few years. China is leading Asia in the development of a creative economy. Its cultural sector records € 50.32 billion of value added, contributes to 2.45% of Chinese GDP, registering growth 6.4% higher than growth of the general economy. European CCIs are worth 2.6% of the EU's GDP and generate a turnover of more than € 654 billion (2003), much more than that generated by the car manufacturing industry (€ 271 billion in 2001) and by that of the ICT manufacturers (€ 541 billion in 2003).

There is no law that can protect an idea which has not yet been expressed. Hence, copyright does not protect ideas. In Europe and Spain, Copyright is a legal concept describing *rights given to creators* for their literary and artistic works, which include books, music, works of fine art, such as paintings and sculpture, as well as technology-based works, such as computer programs and electronic databases. *A work does not need to be published or 'made available to the public' to be protected.* It is protected from its creation.

Culture also contributes to social cohesion. The development of cultural and creative industries is intrinsically linked with brand strategies. Copyright in Europe provides not only the same economic rights as those in China, but also they include the same moral rights as in China, including:

- ✧ *the right of paternity* (the right to claim authorship of the work); and
- ✧ *the right of integrity* (the right to object to any distortion, mutilation, modification, or other derogatory action in relation to the said work, which would be prejudicial to the author's honour or reputation).⁶⁶

There is no better way to demonstrate the power of the publisher over the intellectual property under his control than to provide examples of how the unscrupulous use of it can deprive creative workers of their fair rewards.

What we can conclude about the economical aspects in the cultural and creative industries in Europe?

Value Added to EU -GDP.

⁶² R. Rosenthal Kwall, *The Soul of Creativity – Forging a Moral Rights Law for the United States*, Stanford. 2010.

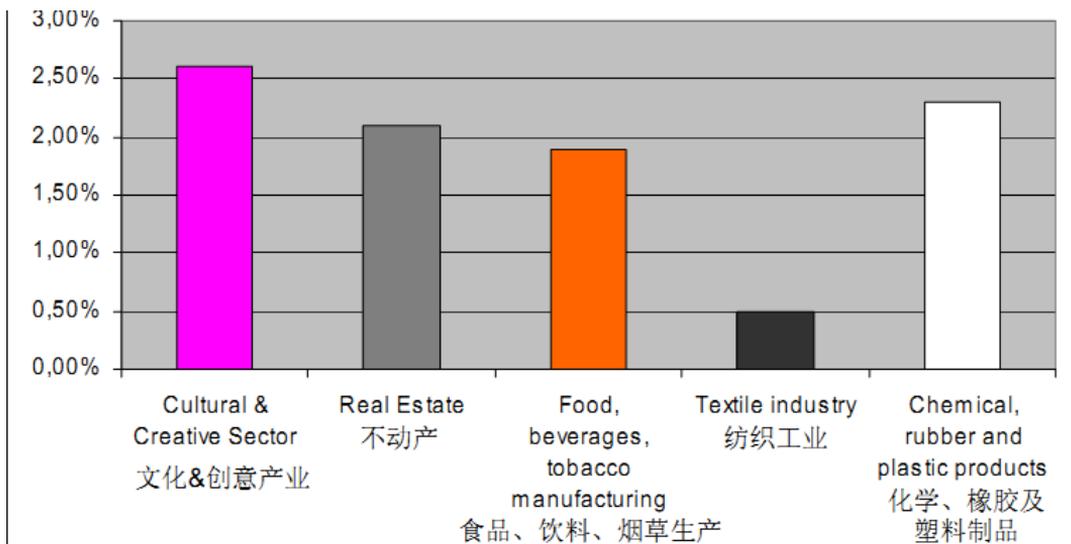
⁶³ See in particular, A. Dietz, *Legal Principles of Moral Rights (Civil Law)*. General report, in: ALAI (ed.), *Le droit moral de l'auteur/the moral right of the author*, Congress of Antwerp (1993), Paris 1994. 54- 60

⁶⁴ Dietz, Adolf. *Chinese Copyright System: Anglo-American or Continental European model?* International Forum on the Centennial of Chinese Copyright Legislation. Renmin University of China. Beijing. 2010.

⁶⁵ Intellectual property rights : Winners of "Hands off my Design" competition announced. Accessed January, 03, 2013.

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/12/93&format=HTML&aged=0&language=en&guiLanguage=en>,

⁶⁶ *Managing Intellectual Property in the Book Publishing Industry A business-oriented information booklet Creative industries – Booklet No. 1 World intellectual organization. 2011. 15 and 27-30*



Source: Kern Philippe, KEA. IPR. Workshop.2011.

We can observe in the graph that Chinese CCI is one of the most important sectors that add GDP to the country. European CCIs (Cultural and Creative Services) are equal in value to (or simply “are equal to”) 2.6% of the EU’s GDP, and produce a turnover of € 654 billion (2003), much more than that which is produced by the car manufacturing industry (271 billion⁶⁶ in 2001) and by ICT manufacturers (€ 541 billion in 2003)⁶⁷. Overall, the growth of CCIs in 1999-2003 was 12.3% higher than the growth of the general economy⁶⁸. Almost five million people work in the cultural sector (2005), or 2.4% of the active population in the EU27⁶⁹ (6 million if we include people working in cultural tourism⁷⁰).

However, Europe and China ensure their full development in particular through a better use of IP. The economic overview still needs to improve:

- Developing statistics and collaborating more with each other,
- Collecting data, especially cultural and creative SMEs.
- The spilling over effect - for example on tourism or ICT, new devices for cultural, such music or videos.

In some cultural aspects, China and Europe’s creative industries suffer the same problems as those in the U.S., domination and oligopolistic behaviours. Also, they suffer piracy.⁷¹ 30% of books

⁶⁷ Restoring European economic and social progress: unleashing the potential of ICT”, a report for the Brussels Round

Table (BRT) by Indepen, Brussels, January 2006. Accessed January, 25, 2013. <http://www.indepen.uk.com/docs/brt-main-report.pdf>

⁶⁸ KEA, *The Economy of Culture in Europe*, Study completed for the European Commission – DG Education and Culture,2006- Accessed January 25, 2013.http://ec.europa.eu/culture/key-documents/doc873_en.htm

⁶⁹ EUROSTAT, Cultural Statistics, 2007. Accessed January 26, 2013. http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-77-07-296/EN/KS-77-07-296-EN.PDF

⁷⁰ Media Consulting Group, *The Potential for Cultural exchanges Between the EU and Third Countries: the case of China*, Study prepared for the European Parliament – Directorate General for Internal Policies, 2009. Accessed January, 26, 2013.

⁷¹ Pricewaterhousecoopers, global Entertainment and media Outlook 2009-2013- Accessed January 27, 2013. http://www.pwc.es/en_ES/es/sectores/entretenimiento-medios/gemo/assets/informe-gemo-09-13.pdf

sales are pirated and 95% of CDs are of pirate origin. In Europe, it is estimated that piracy will cost 1.2 billion jobs and 240 € billion in lost profits by 2015. In Europe, small and medium size companies are 99% of the total enterprise and provide one third of the employment. On the other hand, architects tend to be self employed. They need to take more risk and invest in talent.

In Beijing, Shanghai and Shenzhen, local authorities that exist under the municipal government comply with laws and regulations that affect banks, tax, and copyright rules. The local government collaborates with the creative industry leadership groups for the big projects.

The national government applies the different rules and laws and the different administrative measurements. The state administration of radio, TV, and film has the role of planning, legislating, and supervising the audiovisual sectors. They also act as agents, because GAPP manages the state owned publishing companies. GAPP also approves publication licenses for periodicals, books, and music.⁷² China has to focus more on the international cultural impact via the creation of a platform of cooperation. Also, they have to export more cultural products that are created in China and not just made/manufactured/produced in China. They have to reinforce domestic brands and cultural companies. Chinese industry has another problem; some people do not want to convert cultural industries into businesses and profit making companies.

Globalization and Europe are becoming closer everyday, mixing and generating new expressions and lifestyles. Digital networks become a perfect cultural space. Chinese Statistical Bureau and Culture Bureau with Eurostat should consider a joint development project.⁷³⁷⁴ The public sector provides notably to the cultural and creative activities, but its contribution is difficult to grasp. It has an impact via public funds⁷⁵, but also through reducing VAT, or by giving fiscal advantages to attract private donations and sponsorship.⁷⁶ The overall economic and social weight of the cultural and creative sectors is, however, largely underestimated.

What can do copyright for China and Europe.

Right now, we have an idea of how we can relate the copyright and the Chinese creative industries and why it is so important for these kinds of companies. The copyright is not only important for the license, but it is really significant for those companies that always generate profits using designs and those in which the first product or service made is the original one, and the core of the company. We are going to explain and demonstrate why copyright is so important for the creative industries.

First of all, we can check which kind of companies inside the creative industries contributes more to the GDP. As we can see in the graphic, the press and literature in China contributes 40% to the GDP, afterwards comes the visual and cinema industry with a total of 23%, and in third place, we have radio and television contributing 12%.

⁷² Media Consulting Group, the potential for cultural exchanges between EU and Third countries. The case of china, study prepared for the European parliament. 2009. http://www.marcaspatentes.pt/files/collections/pt_PT/1/178/IPR2%20-%20Mapping%20the%20Cultural%20and%20Creative%20Sectors%20in%20the%20EU%20and%20China.pdf

⁷³ <http://www.eucopyright.com/en/why-should-i-register-my-work-if-copyright-protection-is-automatic>, accessed on Feb, 20, 2013.

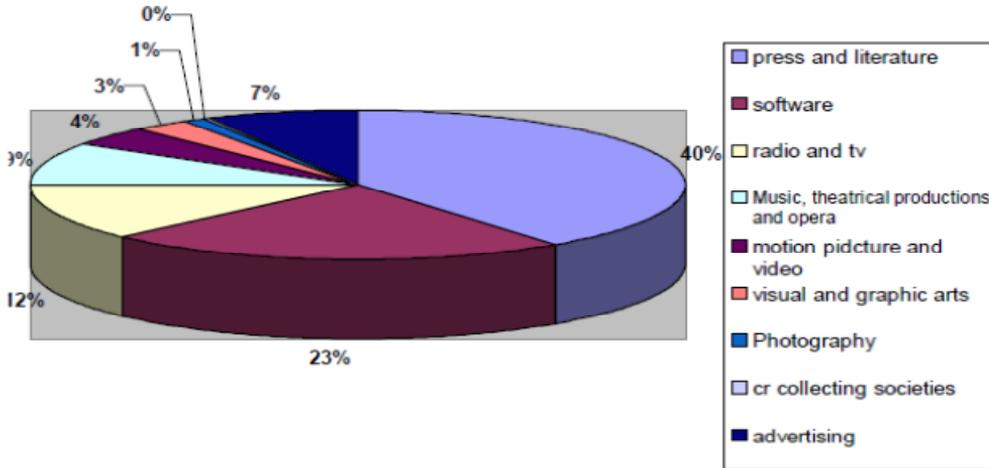
⁷⁴ http://ec.europa.eu/internal_market/copyright/term-protection/term-protection_en.htm, accessed on Feb, 20, 2013..

⁷⁵ The estimated total public expenditure is € 46.6 billion, varying from 0.5% to 1% of national GDPs. KEA, *The Economy of Culture in Europe*, 2006. Accessed January 28, 2013. <http://www.keanet.eu/ecoculture/studynew.pdf>

⁷⁶ Although no comprehensive assessment at EU level exists, in the UK, for instance, private support represented around 5% of the total public support to culture in 2004. KEA (2006) – see presentation footnotes in previous studies

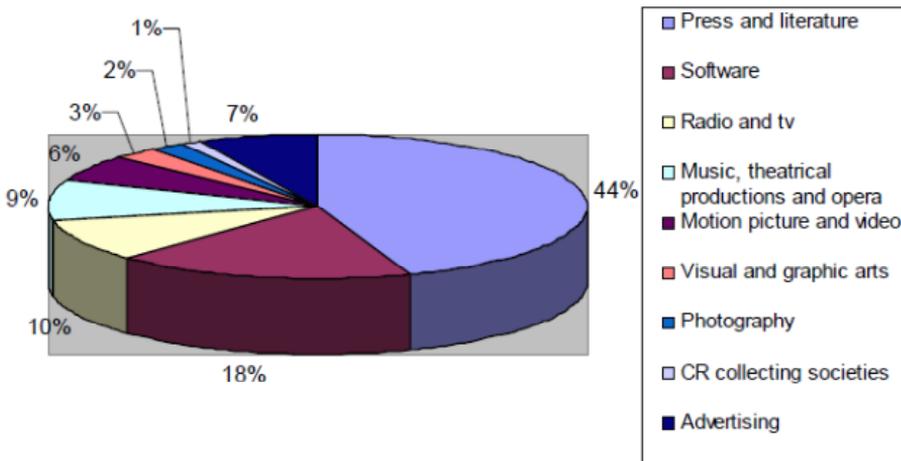
GFK Consultancy, Study conducted for the German Federal Board of Performing Arts Sector, 2004.

Figure 2 Contribution to the PGD Industry.



Source: Source: WIPO.Nantong, China, January 13-14, 2011

Figure 3. Contribution to employment by Industry



Source: WIPO.Nantong, China, January 13-14, 2011

By looking at the above charts, we can analyze that 44% of employment belongs to the press and literature sector, while 18% belongs to the visual and graphic arts industry, and in the third place comes radio and TV. We can check to make sure that this coincides with the previous graphic showing the GDP.⁷⁷

Thanks to copyright tool, we can control the exploitation of the product on the market. Without this tool to protect inventions, all findings would be copied when sold on the market. When it comes to musical performances, choreography, and theatre, this is very important, because the first

⁷⁷ Gantchev, Dimiter. The role of the copyright in the creative industries. WIPO:China. 2011.21-32

showing, their work would lose its value because other competitors would have no fear of copying it without any scruple. Intellectual property law encourages creators and designers and is an incentive to create. The creator not only designs to commercialize his work, but often times is not even thinking about the profits, but rather thinking that his work will make history, and this must be protected. Therefore, many times it is for the act of pure innovation, rather than thinking solely for profit.⁷⁸⁷⁹⁸⁰

The creative industries are, therefore, not only economically valuable, but also function as a catalyst and provider of intangible value in other ways to the organizational processes, relationships, and dynamic and diverse economic sectors. These industries range from something as simple as designing clothing using local knowledge to something as complex and cutting edge as computer chips in Silicon Valley. In the creative economy, industry and services are increasingly merging. As mentioned by Pernille Askerud, to analyze the Asian situation: Increasingly, the cultural industry and information concerned new sectors of production and distribution (for example, production in Beijing or creative clusters entertainment in Shanghai.)⁸¹

We have to remember Ramanathan and the politics consideration about the document of the PCC in 2002 that said: "we have to improve the socialist culture and attend the spiritual and cultural needs under the conditions of a market economy."⁸²

Nowadays, UNESCO in an article tries to make us understand that for example, Hong Kong, (Special Administrative Region of China), and Singapore, have been rising in analyzing the creative industries sector in an effort to keep their economic dynamism. Both cities have produced detailed studies; for example, a study on Creativity Index, Hong Kong and Economic Contributions of Singapore's Creative Industries, of the role and scale of the creative economy, largely adopting the analytical models developed in the UK and adapting them to take account of their local specificities. Shanghai, the most high-profile of China's more rapidly modernizing cities, is well aware of the potential of the creative industries for economic growth and in 2006 planned to initiate a comprehensive city and district mapping exercise upon which future policy decisions will be based. Furthermore, Shanghai's Creative Industry Centre is currently conducting research in cooperation with the Shanghai Intellectual Property Administration into the creative industries sector as well as a research project on how to make full use of IPRs to promote the growth of creative industries. In order to harness the opportunities offered by the creative industries, governments first need to undertake thorough mapping and statistical research to better understand them.⁸³

The Agreement on Aspects of Intellectual Property Rights Related to Trade (TRIPS Agreement) may promote a significant increase in the level of protection and enforcement of intellectual property rights in developing countries. The critical issue for the cultural and creative industries is that of the copyright and related rights, especially the need to increase national law copyright and institutions. The absence of collecting societies in many developing countries is a crucial problem. The issue of protection of traditional knowledge related to cultural expressions and folklore has not yet received much attention. It is expected that loopholes in the IPR regimes will be fixed internationally by the World Intellectual Property Organization (WIPO). The Development

⁷⁸ Brian Fitzgerald, Copyright and the Creative Industries in China, <http://eprints.qut.edu.au/2961/1/2961.pdf>, Accessed on Jan, 23, 2013.

⁷⁹ Montgomery, Lucy; Fitzgerald, Brian F. (2006). Copyright and the Creative Industries in China. *International Journal of Cultural Studies* 9(3): 407-418

⁸⁰ Ronan Deazley. Copyright in Historical Perspective, or Six Observations in Search of an Act. University of Glasgow, 2010. Accessed on Jan, 23, 2013. Available in <http://www.ipr2.org/storage/Deazley966.pdf>

⁸¹ www.tdctrade.com/alert/cba-e0705e.htm Accessed January, 28, 2013-

⁸² <http://www.cityfringe.gov.uk> Accessed January, 29, 2013.

⁸³ Art. UNESCO. Understanding Creative Industries Cultural statistics for public-policy making. 7-8

Agenda of WIPO should review the issues of IPRs to assure the interest of developing countries development issues related to intellectual property rights.⁸⁴

Copyright is a 'bundle' of exclusive rights awarded by law to the authors of literary, artistic or musical works for a limited duration of time. Copyright protects the original expression of idea with the "soul"

Copyright law guarantees that the owner has the right to control the use of his work.

Copyright allows receiving remuneration for using the works (see Para.2, Art. 10, *CCL*)

We can define copyright as a set of economic and moral rights given to the authors to control the use of their works. It is a financial mechanism to compensate creators that is also the basic pillar for these kinds of industries and multinationals. We can say that copyright is in the creative markets in which the demand of these markets has specific characteristics, such as unpredictable consumption. There is a local and global trade through the copyright mechanism, they are income dependant and piracy has a huge impact on these industries, and that is why copyright is a necessary tool to protect the profits of these industries.

Besides, there are some problems that a creative industry has when one tries to enter into the market, some examples being low entry barriers, high fixed cost for creation and the low marginal cost of delivery, excess of supply, and the uncertainty of distribution of the products to the final customer. Likewise, the different products are a handicap, because they increase the cost in the production. They cannot generate economies of scale.⁸⁵

Conclusion

As a conclusion, we can say that the culture and the new Communications marketing is so important nowadays, but how can they project the new inventions, the new culture, and creations, without losing Chinese culture, or how can they innovate and develop a country without taking the risk of losing its culture and traditions? Through the legislation and copyright, the folklore is an issue that also needs be protected and is still not really researched.

China is developing its relationship with the rest of the world really fast. China has undergone historic changes. As a new, emerging nation, it will stay unswervingly on the road of peaceful development and unflinchingly implement the opening-up strategy that will lead to mutual benefit and a win-win outcome. Therefore, this path differs widely from the beaten track of the Big Powers throughout history, and this also represents the nation's contributions to the world.

Secondly, China can contribute to the world in different aspects as: its historical culture, which is one of the unique cultures around the world that has continued unbroken for thousands of years. Also, China has a long standing culture of being very independent and unique, which is the sole culture around the world that has remained uninterrupted for thousands of years. Due to the heavy influence of western culture on the world during the last few centuries, in general, there is a greater overall understanding of western culture throughout the world. Western culture refers to the culture of European origin. The term "Western culture" is used very broadly to refer to a legacy of social norms, ethical values, traditional religious belief and practice. To date, people in the world know very well the enormous contributions made by Western culture to the world, but no culture is perfect, there are always some shortcomings and disadvantages. Therefore, in a sense, the complex problems of the world have a lot to do with the shortcomings of Western culture.

Western culture is based on the civilization of Christendom, in which good and evil, beautiful and ugly things, and the legitimacy and heterodoxy are diametrically opposed to each other and cannot be reconciled.

⁸⁴ Edna dos Santos-Duisenberg. The entry into force of the provisions of intellectual property rights. UNCTAD, E-Newsletter, No. 5, May 2007.74.

⁸⁵ Giné, Jaime . China, del right to copyright. *Economía exterior*. Número 53. 2010.4-15.

The world, however, is vivid, colorful and richly-endowed, and it cannot be simply deemed as either black or white. People in China 2000 years ago put forth an outlook of harmony with differences as they came to realize that it was impossible to get rid of diversity, and began to recognize it and proceed to co-exist with it.

The globalization phenomenon allows information to spread extremely rapidly, and sometimes this creates the risk of losing traditions and customs. The function of the copyright is to protect the author's creativity. Naturally, copying something is not always a bad thing; however, from an economical point of view, it is normal that the owner and designer or author of the creation wants to be protected. For this reason, copyright incentivizes the creation and creativity of the work.

Europe is more culturally diverse and as a developed continent already has an artistic and literary culture that is consolidated. Here in Europe, they copy programs and buy copyrights to perform TV shows similar to those in the United States, but people have plenty of cultural products and exposure, so they can simply choose the medium of entertainment, for example, "that suits them the best"

In addition to being an essential driver of cultural diversity in Europe, these industries which include notably architecture, archives and libraries, artistic crafts, audiovisual (such as film, television, video games and multimedia), cultural heritage, design, festivals, music, performing arts, publishing, radio and visual arts make up one of Europe's most dynamic economic sectors.⁸⁶

One of these industries is so dynamic and changes so fast that to invest in design is almost too risky for some of the new companies if they want to make profit in a long term. This industry is fashion, and one day it can be up and then follow down. They have to adapt extremely fast to the new market and environment, so the legislation is still developing and improving. Now, the designers do not have to go to the office to protect the design, or the artist does not have to go to the copyright office to pay a fee for the registration. If they can prove that the design or creation or picture is made by them, it is not necessary to register. This is a really good point to save the handwork and save money. Otherwise, there would be problems with fakes and plagiarism everyday in the new globalized market. The small and medium sized companies are fighting to survive everyday and they are constantly encountering difficulties and obstacles that they must overcome. The current economic crisis is also having an adverse effect on these industries, making it even more difficult for them to access the resources that they need to finance their activities and adapt to the new environment.

That is why The European Commission has elaborated the Green Paper (2010) to promote and encourage the entrepreneurial spirit in this industry. Perhaps, the main problem has always been that it has taken so long to prioritize and establish appropriate guidelines for the assistance and encouragement in this sector.

Furthermore, as part of the implementation of the European Agenda for Culture:

- A Group of experts from Member States has been working on the topic since 2008. Its mandate is now focusing on the strategic use of EU support programs, including structural funds (in 2011); export and internationalization support strategies (in 2012-2013); and good practices on financial engineering for SMEs in cultural and creative sector - A Civil Society Platform set up in 2008 produced policy recommendations, in 2010 and is currently working on topics, such as financing and taxation; Regional cohesion; Digital environment; Mobility; and Education and skills.⁸⁷

In general terms we can conclude that both continents are working hard to promote the creative industry because this industry is not only a way to generate wealth, but is a tool to promote peace and tolerance between countries. Culture is a guarantor of peace and a basic component of the international relations. It is for that we need to promote it, to preserve and develop.

⁸⁶ Accessed February, 20, 2013.http://ec.europa.eu/culture/our-policy-development/cultural-and-creative-industries_en.htm

⁸⁷ Accessed February, 20, 2013.Green paper information: http://ec.europa.eu/culture/our-policy-development/cultural-and-creative-industries/green-paper_en.htm.