

版权法导论

汉 英 对 照

The ABC of Copyright

联合国教科文组织 / 著

张雨泽◎译 郭寿康◎审校

知识产权出版社

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内容提要

本书以浅显的语言概述版权的历史和现在,除介绍传统的版权之外,还介绍了伴随着新技术发展而产生的新型权利,全面反映了版权法的最新发展,具有崭新的内容。

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序 言

版权是知识产权的一个重要组成部分。知识产权在我国现代社会中越来越具有重要的作用。胡锦涛主席指出：“当今世界，国家的核心竞争越来越表现为对智力资源和智慧成果的培育、配置、调控能力，表现为对知识产权的拥有、运用能力”；“加强我国知识产权制度建设，大力提高知识产权创造管理、保护、运用能力”；“要充分发挥知识产权在增强国家经济科技实力和国际竞争力、维护国家利益和经济安全方面的重要作用，为我国进入创新型国家行列提供强有力的支撑”。

《版权法导论》的翻译和出版，是为了给广大公众提供一本学习、了解版权法的优秀读物。本书由联合国教科文组织编写，于20多年前初版发行，并曾译成中文出版。时至今日，随着科学技术的重大进步和社会经济的迅速发展，版权法也产生了重大变化，国际上缔结并实施了 TRIPs 协定、WIPO 版权条约以及 WIPO 表演和录音制品条约。本书新版全面反映了版权法的最新发展，具有崭新的内容。从而，中国人民大学联合国教科文组织版权与邻接权教席受联合国教科文组织的委托，将新版译成中文，并以中英文对照的方式出版。希望能够对愿意了解、学习版权法的广大公众和有志于攻读版权法外文原著的青年学子有所帮助。

本书的特点，一是浅显易懂，尽可能避免晦涩艰深的术语而使用较为平直的语言，使从未接触过版权的读者也能明了相关内容；二是篇幅虽然短小，但内容丰富，基本囊括了版权的历史和现在，除介绍传统的版权之外，还介绍了伴随着新技术发展而产生的新型权利。

限于译校者的水平，译文不妥之处，诚恳希望读者不吝指正。

郭寿康

2008 年 10 月 9 日

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版权——过去和现在

引言

今天，我们生活在一个全球瞬时交流的世界。每个人对技术令人眩目的迅猛发展已经习以为常。对文件、声音或者可视图像进行录制和传播的新技术激增。数字技术为知识的存储、传播和检索创造出巨大的潜力。

这些技术为人们的交流和文化产业的发展以及全球范围内作品的使用提供了空前的可能性。同时，对受保护作品的盗版的可能性也显著增加。因此，在许多国家，包括在国际社会内，对版权法和国际标准的定期修订以应对新技术的挑战也就不令人感到意外了。

在当今世界，版权法发挥的作用较以往任何时候都重要。引言这一章的目的是通过观察版权法的基本原则和其几个世纪以来为适应技术进步和社会需求而逐渐形成的过程，从而使人对这一复杂的法律领域有所理解。

2 Copyright—Past and Present

Copyright

- Central role in culture and communication
- Intrinsically linked to technological advances
- Challenged by rampant piracy in many countries

What is copyright?

Copyright is a branch of law that grants authors (writers, musicians, artists and other creators) protection over their works. Such protection consists in providing authors with ownership or property rights (or exploitation rights), which take into account their material interests. Under copyright, authors are entitled to protection against unauthorised use of their works as well as possibly to a share in any earnings from its use by the public.

But copyright laws may also provide protection for another set of interests, of a more personal nature, which are commonly called the “moral rights” of authors. These rights allow the author to claim authorship in her work as well as respect for its integrity.

The protection of moral and material interests resulting from any scientific, literary or artistic production is also recognised as a human right under the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966)

Copyright is part of the law of intellectual property (IP), which protects other subject matter as well, such as trade marks, patents, designs, plant seed varieties, trade secrets, integrated circuits, and topographies. All topics that come under the heading of intellectual

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而且，版权法还可以对另外一些更具有人身性质的利益提供保护，这通常被称做作者的“精神权利”。此类权利使作者可以享有作品的署名权和完整权。

对于科学研究，文学和艺术创作而产生的精神利益和物质利益进行保护也是《世界人权宣言》（1948）和《经济、社会和文化权利国际公约》（1966）所承认的人权。

版权是知识产权法的一部分，知识产权法还保护其他客体，诸如商标、专利、外观设计、植物品种、商业秘密、集成电路和拓扑图。所有这些被知识产权所保护的项目都有共同的一个事实，即被保护者为获得她所受保护的成果而投入了大量的智力劳动。

4 Copyright—Past and Present

property have in common the fact that the protected person has displayed an amount of her intellect in achieving the results for which she is protected.

Yet copyright laws do not only aim at establishing individual rights for the benefit of authors, they also take into account the needs of users and of society at large for access to knowledge and information. In order to maintain a fair balance between the conflicting interests, copyright protection is subject to a number of exceptions and limitations. The interplay between exclusive rights, on the one hand, and exceptions and limitations to these rights, on the other, forms the legal framework within which creativity and communication may develop.

The Essence of Copyright

- Right of ownership in creative works
- Protection against unauthorised uses
- Limitations for the benefit of society at large

How is copyright protection justified?

There are two main justifications for the legal protection provided by copyright. The first argumentation is linked to economic considerations, the second line of thought stems from theories referring to natural law. Practically all copyright laws have taken into account elements from these two lines of argument, although different countries may give varying emphasis to each of them.

From an economic point of view, the grant of an exclusive right ensures for the author an economic reward for the exploitation of the