

国际出版与传播英语系列教材

版权管理 简明英语教程

陈凤兰/编 著

A Concise English Course for
Rights Management

 中国人民大学出版社

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本书由北京印刷学院校级教学团队
(国际出版与传播)建设项目资助出版。
项目编号: 22150116006/006。

中国人民大学出版社
·北京·

图书在版编目(CIP)数据

版权管理简明英语教程 / 陈凤兰编著. —北京: 中国人民大学出版社, 2017.7

国际出版与传播英语系列教材

ISBN 978-7-300-24456-3

I. ①版… II. ①陈… III. ①版权—管理—英语—高等学校—教材 IV. ①D913.4

中国版本图书馆 CIP 数据核字 (2017) 第 115378 号

国际出版与传播英语系列教材

版权管理简明英语教程

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Banquan Guanli Jianming Yingyu Jiaocheng

出版发行 中国人民大学出版社

社 址 北京中关村大街 31 号

邮政编码 100080

电 话 010-62511242 (总编室)

010-62511770 (质管部)

010-82501766 (邮购部)

010-62514148 (门市部)

010-62515195 (发行公司)

010-62515275 (盗版举报)

网 址 <http://www.crup.com.cn>

<http://www.ttrnet.com> (人大教研网)

经 销 新华书店

印 刷 北京东君印刷有限公司

规 格 185 mm × 240 mm 16 开本

版 次 2017 年 7 月第 1 版

印 张 12

印 次 2017 年 7 月第 1 次印刷

字 数 223 000

定 价 39.00 元

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侵权必究

印装差错

负责调换

丛书编委

孙万军 陈凤兰 吕静薇 叶文芳

谢 婧 孟 辉 刘小梅 孟静宜

Preface 总序

人类进入到了 21 世纪，全球化的飓风吹遍了世界的各个角落，作为“地球村”的公民，我们日益感受到了空间距离的缩小，昔日远隔重洋的距离，在网络时代缩短到了鼠标的一次点击。

为适应全球化时代的需求，人才培养的国际化已经成为了一种趋势。教育部发布的数据显示，2015 年，共有来自 202 个国家和地区的近 40 万外国留学人员在我国 31 个省、自治区、直辖市的 811 所高等学校、科研院所和其他教学机构中学习。截至 2015 年底，改革开放后我国累计出国留学人数已经达到 404.21 万人。随着来华留学生人数以及我国高校学生出国交流学习人数的不断增长，教育部门越来越意识到全英文教学和双语教学对于提高我国高等教育国际化水平的重要意义。2001 年，教育部颁发的《关于加强高等学校本科教学工作提高教学质量的若干意见》中明确提出本科教育要创造条件使用英语等外语进行公共课和专业课教学。

课程国际化是我国高校和境外高校开展全面和深入合作交流的重要保障。传播学作为一个学科形成于 20 世纪上半叶的美国，而且许多重要的理论也来源于欧美，所以很多内容更适于用英文表达，这也构成了出版传播类课程英文或双语授课的必要性和可能性。但是在英文授课的实践中，我们发现目前适合中国学生学习的出版与传播类的英文教材缺乏，并已经成为英文或双语授课的瓶颈。为了更好地推动和开展出版与传播课程的全英文或双语授课，提高出版与传播课程的国际化水平，我们组织力量编写了这一套“国际出版与传播英语系列教材”。

“国际出版与传播英语系列教材”共包括八部，分别为：《传播学简明英语教程》《跨文化传播简明英语教程》《新媒体写作简明英语教程》《出版理论与实务简明英语教程》《版权管理简明英语教程》《出版历史与文化简明英语教程》《当代出版产业简明英语教程》《国际出版管理简明英语教程》。

本套教材的编著者均为多年从事出版与传播类全英文教学的一线教师，这套教材凝结着他们多年的教学经验和专业素养。本套教材力求深入浅出、循序渐进、简明实用、科学系统。这套教材的适用对象为传播、出版或相关传媒类专业本科生、研究生，以及留学生，本套教材也可以作为外语类专业学生的专业英语教材使用，还可以作为我国出版传媒产业及相关产业专业人士的业务参考书。

身处文化全球化、人才培养国际化的时代，能在课程国际化方面发挥一定的积极作用，为国际化人才的培养尽一点力是我们最大的心愿。希望教材的使用者和各界人士多提宝贵的意见和建议，帮助我们进一步改进和完善。

编者谨识 2016年10月
于北京印刷学院

Foreword

前言

依托内容产生的版权是许多文化企业赖以生存和发展的基础资源，成为企业最重要的无形资产，版权开发的巨大潜力也引起文化企业的广泛重视，版权资产管理已成为文化企业提高核心竞争力和经营绩效的重要抓手。通过科学有效的方法、手段对其进行配置、管理、经营，从版权产品获益已成为文化企业的发展战略。同时，由于版权管理人才缺口极大，培养专业人才成为我国各相关阶层的关注。一些高校审时度势，结合各自的办学特色，调整专业人才培养方案，重新配置人才培养资源，力求为社会输送具备国际化视野与素质、熟悉国际贸易环境与规则的栋梁之才。其中，采用英文教材进行全英文授课成为具体手段之一。

《版权管理简明英语教程》是“国际出版与传播英语系列教材”之一，鉴于版权管理尤其是版权贸易在我国多为涉外经营与贸易活动，英语能力尤其是相关版权管理与贸易的特殊用途英语的运用能力非常重要，因此，本书采用英文编撰，目的在于使学习者在了解版权管理专业基础理论知识、掌握基本技能的同时，通过阅读英语文章来提高其专业英语实际操作能力。

《版权管理简明英语教程》共十章。本书在总体介绍版权管理基础知识及管理体的基础上，系统阐述版权的取得、运用和保护。本书分别对版权的商业利用、版权价值评估、版权许可、版权合同管理、版权集体管理、版权保护措施等专题进行了论述。考虑各章全文均为英文，为了便于读者能够更好地理解内容表述，编者在文中对专业术语及重要概念用中文进行了注释，在各章后附加了中英文对照单词表，并设计了供复习和讨论的问题，以便学习者掌握主要内容并对相关重要问题进行批判性思考。

本书的编写得到同事及业界专业人士的大力协助，在此表示感谢。他们是付元刚、王淑艳、尹淑华、刘亚平、陈风贤、付辰子、杨艳华、韩静、周丹、姜丽以及何国良。

Contents 目录

Chapter One Intellectual Property Management / 1

1. Intellectual Property / 1
 2. The Importance of Intellectual Property / 2
 3. Intellectual Property Management / 4
 4. Issues to Consider before Undertaking IP Commercialization / 6
 5. IP Commercialization Structures / 7
 6. Risks of IP Commercialization / 15
 7. Management of Copyrights / 17
- Words and Expressions / 19
- Questions for Review / 20
- Questions for Critical Thinking and Discussion / 21

Chapter Two Understanding Copyright and Related Rights / 22

1. Rights Provided by Copyright and Related Rights / 25
 2. Benefits of Protecting Copyright and Related Rights / 28
 3. Copyright and Related Rights with Technological Advances / 29
 4. Regulations on Copyright and Related Rights / 29
 5. Copyrightable Works / 30
 6. Limitations on Rights / 34
 7. Duration of Copyright / 36
 8. Ownership, Exercise and Transfer of Copyright / 37
 9. Related Rights / 39
- Words and Expressions / 43

Questions for Review / 45

Questions for Critical Thinking and Discussion / 46

Chapter Three The Ownership of Copyright / 47

1. Authorship and Ownership / 47

2. Using Works Owned by Others / 51

3. Reducing the Risks of Infringement / 57

4. Summary Checklist / 58

Words and Expressions / 58

Questions for Review / 59

Questions for Critical Thinking and Discussion / 60

Chapter Four Commercialization of Copyrights / 61

1. Commercialization of Intellectual Property / 61

2. Negotiations and Payment / 67

3. Royalty Rates / 68

4. Benefiting from Copyright and Related Rights / 68

5. How Are Rights Licensed? / 71

6. Commercialization of Music Copyright / 72

Words and Expressions / 74

Questions for Review / 75

Questions for Critical Thinking and Discussion / 76

Chapter Five Copyright Valuation Analysis / 77

1. Description of Copyright-related Intangible Assets / 77

2. Economic Benefits Associated with Copyright-related Intangible Assets / 78

3. Three Basic Copyright Valuation Methodologies / 81

4. An Illustrative Example of Copyright Valuation / 85

5. Application of Copyright Valuation Approaches and Methods / 87

6. Royalties and Royalty Rates / 91

Words and Expressions / 96

Questions for Review / 98

Questions for Critical Thinking and Discussion / 98

Chapter Six Collective Management of Copyright and Related Rights / 100

1. Rights under Collective Management / 101
 2. Collective Management by Field / 103
 3. Practical Advantages of Collective Management / 104
 4. Forms of Collective Management Organizations / 108
 5. General Theory and Efficiency of Collective Management of Copyright / 110
- Words and Expressions / 113
- Questions for Review / 114
- Questions for Critical Thinking and Discussion / 115

Chapter Seven Copyright License / 116

1. Relevant Legal Principles / 118
 2. Specific License Provisions / 121
 3. Copyright Licensing in the Digital Environment / 129
- Words and Expressions / 132
- Questions for Review / 133
- Questions for Critical Thinking and Discussion / 134

Chapter Eight Rights and Contracts Enforcement / 135

1. Copyright Infringement / 135
 2. Contract Enforcement / 139
- Words and Expressions / 143
- Questions for Review / 144
- Questions for Critical Thinking and Discussion / 144

Chapter Nine Digital Copyright Management / 145

1. Common DRM Techniques / 146
 2. Specific Technologies / 146
 3. DRM and Documents / 149
 4. Laws Regarding DRM / 159
- Words and Expressions / 161
- Questions for Review / 163
- Questions for Critical Thinking and Discussion / 163

Chapter Ten Implementation of Copyright Protection / 164

1. General Issues in Making IP Protection Decisions / 164
 2. How to Implement Copyright Protection / 167
 3. Dealing with Moral Rights and Performers' Rights / 174
 4. Copyright Protection Abroad / 174
- Words and Expressions / 175
- Questions for Review / 176
- Questions for Critical Thinking and Discussion / 176

参考文献 / 178

Intellectual Property Management

1. Intellectual Property

1.1 What is intellectual property?

Intellectual property (IP)¹ refers to creations of the mind, such as inventions, literary and artistic works, designs, and symbols, names and images used in commerce.

IP is protected in law by, for example, **patents**, **copyright** and **trademarks**, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.²

1.2 What are the forms of intellectual property?

Intellectual property is divided into two categories: Industrial Property includes patents for inventions, trademarks, industrial designs and **geographical indications**³. Copyright

1 知识产权 (Intellectual Property) 是指智力创造的成果, 包括发明、文学和艺术作品, 以及商业中使用的符号、名称、图像和外观设计等。知识产权可以分为工业产权与版权两类, 工业产权包括发明 (专利)、商标、工业品外观设计和地理标志, 版权则包括文学和艺术作品。

知识产权被概括为一切来自知识活动领域的权利, 始于 17 世纪中叶法国学者卡普佐夫的著作, 后由比利时法学家皮尔第所发展; 1967 年《成立世界知识产权组织公约》签订后, 知识产权的概念得到了世界上大多数国家的认可。

2 <http://www.wipo.int/about-ip/en/>.

3 地理标志 (Geographical Indication) 是一种用于具有特定地理来源的商品的标志, 这些商品具有可主要归因于产地的品质、声誉或特征。最普遍的情况是, 地理标志包括商品产地的名称。农产品是这方面的典型, 它们具有根源于产地的品质, 受气候和土壤等当地特定因素的影响。一个标志是否被承认是地理标志是由各国法律决定的。地理标志可用于形形色色的产品, 例如天然产品、农产品和制成品。原产地名称是一种特殊的地理标志。原产地名称一般由地名或传统名称构成, 用在那些主要因产品生产的地理环境而具有某种特定品质或特征的产品上。地理标志的概念涵盖原产地名称。

covers literary works (such as novels, poems and plays), films, music, artistic works (e.g. drawings, paintings, photographs and sculptures) and architectural design. Rights related to copyright include those of performing artists in their performances, producers of phonograms in their recordings, and broadcasters in their radio and television programs.

1.3 What are intellectual property rights?

Intellectual property rights are like any other property right. They allow creators, or owners, of patents, trademarks or copyrighted works to benefit from their own work or investment in a creation. These rights are outlined in Article 27 of the *Universal Declaration of Human Rights*¹, which provides for the right to benefit from the protection of moral and material interests resulting from authorship of scientific, literary or artistic productions. The importance of intellectual property was first recognized in the *Paris Convention for the Protection of Industrial Property*² (1883) and the *Berne Convention for the Protection of Literary and Artistic Works*³ (1886). Both treaties are administered³ by the World Intellectual Property Organization (WIPO)⁴.

2. The Importance of Intellectual Property

Every organization has a reason for being. It might be a unique ability to offer a

- 1 《世界人权宣言》(*Universal Declaration of Human Rights*) 是联合国大会于 1948 年 12 月 10 日在法国巴黎夏乐宫通过的一份旨在维护人类基本权利的文件(联合国大会第 217 号决议, A/RES/217)。宣言起草的直接原因是第二次世界大战的反省,这是第一份在全球范围内表述所有人类都应该享有的权利的文件。《世界人权宣言》共有 30 条。与经济、社会及文化权利国际公约、公民权利和政治权利国际公约和其他两个可选协约一起包含在《国际人权法案》中。前两者都是在 1966 年通过的,于 1967 年执行。
- 2 《保护工业产权巴黎公约》(*Paris Convention for the Protection of Industrial Property*): 1883 年通过的《保护工业产权巴黎公约》(简称《巴黎公约》)适用于最广义的工业产权,包括专利、商标、工业品外观设计、实用新型、服务标记、厂商名称、地理标志以及制止不正当竞争。本项国际协议是帮助创作者在别国确保自己的智力作品受到保护的首要一步。
- 3 《保护文学和艺术作品伯尔尼公约》(*Berne Convention for the Protection of Literary and Artistic Works*): 1886 年通过的《保护文学和艺术作品伯尔尼公约》(简称《伯尔尼公约》)涉及对作品及其作者权利的保护。公约为作者、音乐家、诗人以及画家等创作者提供了控制其作品依什么条件由谁使用的手段。公约以三项基本原则为基础,载有一系列确定所必须给予的最低保护方面的规定;并载有为希望利用这些规定的发展中国家所作出的特别规定。
- 4 世界知识产权组织(the World Intellectual Property Organization) (WIPO) 是关于知识产权服务、政策、合作与信息的全球论坛。它是一个自筹资金的联合国机构,有 189 个成员国。其使命是领导发展兼顾各方利益的有效国际知识产权制度,让创新和创造惠及每个人。根据《WIPO 公约》,WIPO 于 1967 年正式成立。

particular product or service, or it might arise from having been in the right place at the right time with a certain set of capabilities. But at its core, your organization probably relies on intellectual property (IP) far more than you imagine. Intellectual property is just another way of describing valuable knowledge—knowledge about the way that you do business, knowledge about the way that you make your products, your business processes, even your customer lists. How would it affect your business if your closest competitor knew precisely how you carry out your business and had access to your internal operating procedures and customer lists? The knowledge that you have—and your competitor does not—is a source of competitive advantage and is likely to be a key factor in your success. That knowledge is frequently the difference between organizations that succeed and those that fail. Physical assets and traditional sources of competitive advantage such as manufacturing capability or location have far less relevance. The value of many of the world's largest companies is increasingly invested in knowledge-based, intangible assets. An economy based on these assets is often known as the “weightless economy”¹. Some organizations recognize that innovation plays a role not just in product development but in every part of the organization and institute formal processes to think about the generation and capture of knowledge wherever work is performed. They address each part of the business in terms of what is the best practice and make commercial buying versus building decisions based on their particular corporate needs. Given the increasing economic relevance of knowledge, it is **imperative** to focus on the identification of that knowledge, its value and its management. Most people have some concept of what an “invention” is, but the management of knowledge or intellectual property is far more than the patenting of inventions. It is an understanding of what intellectual property is, when intellectual property has been created, the value of the created knowledge, and of how to protect intellectual property that has value. It is the use of systematic processes to understand the intellectual property of others and to generate your own. This last point is a critical one. Many young organizations are surprised to find how much has been “done before”—usually so much that it is difficult to make a product without relying on previous work. Much of that work is protected and may not be used

1 无重量经济 (Weightless Economy), 也有人称之为知识经济、无实体经济、非物质经济或者“新”经济。它包含四个重要元素:

- 有资讯和沟通的科技和网络;
- 智慧财产 (不仅包括专利和版权, 还包括更广泛的品牌、商标、广告、金融和咨询服务、医疗资讯、教育);
- 在线图书馆和资料库、影视娱乐、广播;
- 生化科技、传统的图书馆和资料库及药学。

legally without obtaining a licence from the owner. However, knowledge of what has been done before can also **refine** a view of where your competitive advantage may come from and what your competitors are doing. It can provide **substantial** commercial opportunities. By licensing the knowledge of others and collaborating with them, you can focus on your **core competencies** and make your investments go much further. It is preferable to be aware of the IP landscape and your competitors before investing significant resources in the development of new products. So, how to identify and manage intellectual property is crucial to organizations.

3. Intellectual Property Management

Intellectual property/capital are terms used to describe intangible assets¹: the results of human endeavour that have value and are original, such as designs, publications, inventions, computer software and music. These assets are increasingly making up a large proportion of a company's net worth². The protection and management of these assets has become a commercial imperative, requiring the development of a set of practices that are encompassed within the field of Intellectual Property Management (IPM).

IP is a valuable strategic and financial asset for every organization. Like any other resource, IP should be carefully managed. Without appropriate management, an organization may be unaware of its IP, its value or benefits, or may expose itself to unnecessary risks. The management of IP is an ongoing task which lasts throughout the life of the IP, until expiry. The list below illustrates the **lifecycle** of an IP asset, and the decision points you may need to consider at each stage of its life for the effective management of your IP.

- 1 无形资产 (Intangible Assets) 是指企业拥有或者控制的没有实物形态的可辨认的非货币性资产。无形资产有广义和狭义之分, 广义的无形资产包括货币资金、应收账款、金融资产、长期股权投资、专利权、商标权等, 因为它们没有物质实体, 而是表现为某种法定权利或技术。但是, 会计上通常将无形资产作狭义的理解, 即将专利权、商标权等称为无形资产。
- 2 资本净值 (Capital Net Worth/Net Worth) 是指资本减去负债的总额, 是影响公司价值的重要的决定性因素。其公式为: 资本净值 = 资本 - 负债, 资本净值是公司的实在价值。累积的盈余都会使资本净值增加, 而亏损使资本净值减少。股票为出资的凭证, 资产净值为决定股价的重要因素之一。净值增, 股价涨; 净值减, 股价跌; 不过, 股价有时会与净值脱节甚至差距很大, 然而在长期趋势中, 股价还是随净值变动的。

● **Identify Existing IP and the Need for New IP**

Identify the organization's need for an IP asset and how it may be obtained.

● **Record Existing and New IP**

Identify and record any new IP:

- √ researched & developed by the organization
- √ acquired through inward licensing
- √ acquired & developed by re-using existing designs, and/or
- √ acquired from third parties.

● **IP Protection Decision**

Identify the available forms of protection for the IP asset, and decide on the most appropriate way, which may be:

- √ registered protection, e.g. patents, trade marks, registered designs, and/or
- √ unregistered protection, e.g. copyright, **circuit layout**, confidential information, database rights.

● **Use the IP Asset**

Decide on whether the IP asset will be:

- √ commercialized by the organization
- √ used internally on an operational basis
- √ licensed out to the public, and/or
- √ offered to the public for free.

● **Evaluate the IP Asset**

Periodically evaluate the IP asset, and decide whether to:

- √ maintain the present form of IP protection for the IP asset
- √ vary the form of IP protection
- √ allow the IP rights to **lapse**, and/or
- √ further modify and develop the IP asset to enhance its strength or create new IP.

4. Issues to Consider before Undertaking IP Commercialization

Is the IP ready for commercialization? Successful commercialization of IP¹ is often one of the primary goals of an organization's IP strategy. However, not all IP created will be ready for commercialization immediately, nor should all IP created be exploited for profit—it may be used internally on an operational basis, or licensed out to the public for free use or for design re-use. There are a range of issues that need to be considered before commercializing an IP asset. You may consider referring to your organization's IP strategy for direction on dealing with the IP asset generated. Outlined below are some questions that may assist you to assess whether a certain IP is ready or suitable for commercialization.

● Ownership of IP

Does the organization own the IP and, if so, are there any joint owners?

Does the organization have the necessary rights to commercialize the IP?

Are there any contracts relating to the IP restricting the organization's rights to commercialize?

● Nature of IP

Are the IP rights valid?

What is the strength of the IP?

What is the remaining IP life?

Has the IP got broad **claim coverage**?

Is the IP formally protected?

Will the IP asset require further development?

What is the estimated commercial life of the IP (as opposed to its legal life)?

1 知识产权商业化 (Commercialization of IP) 是指知识产权人为使其智力成果发挥最大的经济效益和社会效益而制定各项规章制度、采取相应措施和策略的经营活动。知识产权商业化涉及的内容比较广泛,与知识产权涵盖的范畴相对应,某一个人或组织将其各种智力创造比如发明、文学和艺术作品,以及在商业中使用的标志、名称、图像以及外观设计,为扩大其经济效益所采取的行为,均可视为其知识产权的商业化,如:专利的利用、技术的转移、产权的交易、版权的授权等等,它与个人和组织对其智力劳动成果的创建、保护、管理、运用以及交易都息息相关。在日常工作和生活中,人们所熟知的技术研发、技术入股、技术授权、商标买卖、版权授权等都是知识产权的商业化行为。