

## The Role of Guilds in Chinese Copyright History: A Comparative Approach

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*European guilds played an important and complicated role in social, commercial and political life in the pre-industrial time. The legal privileges and as a result the monopolistic control over particular industry enabled the guilds to influence the political and legislative discourse in favour of their private interests. In European and especially English copyright history, the active involvement of publishers' guilds, such as the Stationers' Company in England, has been well documented in scholarship that looks at the history of the first copyright legislation, the Statute of Anne 1710. While the making of modern copyright law is a result of combined forces and efforts, the role of publishing guilds which represented the commercial interests of private publishers, printers, and booksellers as well as writers was an important one. In Chinese copyright history, however, the existence of publishing hanghui, a similar concept to guilds, did not help to create a counterpart to copyright law in imperial dynasties. This paper examines the general evolution of Chinese hanghui, with a focus on the publishing industry, and then analyses the insignificant role of publishing hanghui in Chinese copyright history. It concludes that while commercial publishing hanghui was formed in late imperial time, two distinct features determined the weakness of hanghui in influencing the law making process: one is the relative separation of private groups from public activities and the other is the limited economic status because of less monopoly in the national market.*

COPYRIGHT law concerns the rights of authors as well as the interests of publishers. The origin of copyright law lies in the protection of publishers' rights to print and reprint, either under the printing privilege or the stationers' copyright.<sup>1</sup> Therefore, the role of publishers and their guilds in copyright history is too important to be neglected. Indeed, the scholarship on the pre-modern European history of copyright law must inevitably discuss the involvement of the publishing guilds in the making of copyright law, notably the Stationers' Company in England.

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<sup>1</sup> For a general discussion of the copyright history, see John Feather, *A History of British Publishing* 2<sup>nd</sup> ed., (London; New York: Routledge, 2006), 7-142; Thomas Edward Scrutton, *The Law of Copyright* 4<sup>th</sup> ed., (New Jersey: The Lawbook Exchange, Ltd., 2007).

As to Chinese copyright history, however, insufficient research has been done and even the question of whether there was copyright protection remains the subject of debate. William Alford examined relevant Chinese historical evidence and concluded that there was no copyright protection in imperial China and that the state orders forbidding piracy issued to individual publishers were no more than efforts to control the dissemination of ideas.<sup>2</sup> While this argument has been well cited in much subsequent scholarship, it draws criticism from a Chinese scholar, Chengsi Zheng. Zheng argued that the state orders where “the protected subject matter was not confined to publishers but extended to the author” can be seen as copyright protection in modern sense,<sup>3</sup> although there was no nationwide binding copyright law. Many other scholars hold the same position as Zheng.<sup>4</sup> More recently, Ken Shao went further to argue that “copyright conception and protection did emerge in China as a response to the boom of commercial publishing.”<sup>5</sup>

Setting aside controversies about whether there was a modern sense of copyright protection in imperial China, this paper is more concerned with the question of why China had no copyright law in the imperial history (221 BC to AD 1912) even though it has a legal tradition of written laws. Unfortunately even less research has been done on this aspect. The exception is Yufeng Li’s doctoral research where he identified three major factors that are

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<sup>2</sup> William P. Alford, “Don’t Stop Thinking About... Yesterday: Why There was No Indigenous Counterpart to Intellectual Property Law in Imperial China,” *Journal of Chinese Law* 7 (1993): 3.

<sup>3</sup> Chengsi Zheng and Michael Pendleton, *Copyright Law in China* (Sydney: CCH International, 1991), 14.

<sup>4</sup> Zhi Cao, ‘Zhongguo Gudai Zhuzuoquan Kaolue (Exploring the Copyright History in Ancient China)’ (1998) 1998 *Tushu Yu Qingbao (Books and Information)* 37.

Xiaoli Ma, *Jindai Zhuzuoquan Lifa De Kunjing Yu Jueze (Dilemma and Choice of Copyright Legislation in Modern China)* (Huazhong University of Science and Technology Press, 2011); Handong Wu, ‘Guanyu Zhongguo Zhuzuoquan Fa Guannian De Lishi Sikao (Review on Copyright Law Concepts in China)’ (1995) 3 *Fa Shang Yan Jiu (Law and Commerce Research)* 44; Mingyuan Zhu, ‘Lue Lun Ban Quan Guan Nian Zai Zhong Guo De Xing Cheng (The Development of Copyright Concept in China)’ in Copyright Society of China (ed), *Ban Quan Yan Jiu Wen Xuan (Copyright Research Articles Collection)* (The Commercial Press, First ed, 1995) 123.

<sup>5</sup> Ken Shao, “An Alien of Copyright? A Reconsideration of the Chinese Historical Episodes of Copyright,” *Intellectual Property Quarterly* 4 (2005): 400.

accountable: copying technology, the status of authors, and foreign forces.<sup>6</sup> The role of publishing guilds or *hanghui* in Chinese context in Chinese copyright history is left open to further study. Thus this paper is going to explore the relationship between publishing *hanghui* and the absence of copyright law in imperial China.

The most similar concept to European guilds is *hanghui* which had existed for centuries, but the first publishers' *hanghui* did not come into being until the 17<sup>th</sup> century. Since the advent of printing technology, China's book trade flourished in major cities across the country. In addition to the government publishing houses, there were private publishers printing books to meet the vast demand of readers partly because the system of civil service examination required the reading of Confucian books. In the meantime, piracy became a serious problem for most commercial publishers as well as authors. In response, the publishers occasionally requested that the government grant orders forbidding the unauthorised reproduction of books. However, there was not an exact counterpart to the Stationers' Company in imperial China. The role of *hanghui* in political and legal settings is so insignificant that they could not have affected the law making process in a way that the Stationers' Company influenced the enactment of the Statute of Anne. This may be attributed to the tradition of social groupings which separated the private self-governance within the group from the public activities, including the making of law. Also, the absence of an economic monopoly, opposed to the monopolistic nature of European guilds, means that the *hanghui* could not gain as powerful an economic status as the Stationers' Company. As a result, the influence of *hanghui* on political and legal discourse had been weakened.

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<sup>6</sup> Yufeng Li, *Qiang Kou Xia De Fa Lue: Zhong Guo Ban Quan Shi Yan Jiu (The Law Under Gunpoint: A Chinese History of Copyright)* (China: Zhi Shi Chan Quan Chu Ban She (Intellectual Property Publishing House), 2004).

This paper examines the evolution of Chinese *hanghui* in section one, illustrating a very different story from the emergence of European guilds. The next section discusses the insignificant political and legal role of *hanghui* in general, pointing out the separation of private and public jurisdiction excluded the *hanghui* from engaging in the policy making process. Section three introduces the publishing practice in imperial China and the functions of publishing *hanghui*. The last section briefly presents an overall picture of the Stationers' Company and how it pushed for the making of copyright law in England. In conclusion, comparing the Chinese *hanghui* with the English guilds indicates that the absence of an economically and politically powerful association of publishers is one of the reasons why imperial China did not develop a written copyright law.

### **Historical evolution of Chinese *hanghui*: equivalent to guilds?**

Although *hanghui* had existed for centuries in China, the earliest study of *hanghui* by westerners was conducted in the late 19<sup>th</sup> and early 20<sup>th</sup> century when China was forced to trade with foreign countries under international treaties.<sup>7</sup> The surging curiosity about China produced a large volume of scholarly research on virtually every aspect of Chinese culture, economy and politics, including guilds. Lacking a thorough understanding of Chinese history, however, it is not surprising that many of them saw *hanghui* as equivalent to guilds in their home country.

While the development of human civilization in Europe and China shows certain similarities, it does not necessarily mean that there must be an equivalent in China to the guilds in Europe.

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<sup>7</sup> See e.g. John Stewart Burgess, *The Guilds of Peking* (New York: Columbia University Press, 1928); K., "Chinese Guilds and their Rules," *The China Review* 12 (1883): 5; Daniel J. MacGowan, "Chinese Guilds or Chambers of Commerce and Trade Unions," *Journal of the North China Branch of the Royal Asiatic Society* 21 (1886): 133; Hosea Ballou Morse, *The Guilds of China: With an Account of the Gild Merchant or Co-Hong of Canton* (London: Longmans, Green and Co., 1909).

Strictly speaking, there has never been anything exactly like “guild” in China until the Qing Dynasty (1644-1911). This is because there is great contextual difference, for instance, in the way of city building, market management and the unique role of the Chinese family system in passing on craft skills from generation to generation.<sup>8</sup> The only thing in Chinese that we find most functionally similar to “guilds” is *hanghui* which literally means trade association. Apart from economic functions, another reason why we see *hanghui* to be similar to guilds is the fact that both of them developed in the pre-industrial period and ended up being obsolete systems in face of the revolutionary movements of the industrial revolution in England, and the collapse of feudal imperialism in China.<sup>9</sup>

A historical review of the origin of *hang*, however, suggests that *hanghui* is far from being a trade association that functions similarly to guilds. The word *hang* originally means a line of vendors who sold the same category of goods in the designated market set up under the *Fang Shi* market system which lasted for around two thousand years until the Song Dynasty.<sup>10</sup> When the *fang shi* system declined and the lines of vendors were dismissed from the centralised market, the concept of *hang* was developed to represent the lines of trade in an

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<sup>8</sup> Gang Zhao and Zhongyi Chen, *Zhong Guo Jing Ji Zhi Du Shi (History of China's Economic System)* (Zhong Guo Jing Ji Chu Ban She (Beijing: China Economic Press), 1991), 316-317. (Zhao and Chen argue that as the family teaching system worked very well to pass on the craft skills, the European sense of guilds would not have much chance to develop in China.)

<sup>9</sup> For the discussion of the decline of English guilds, see Michael Berlin, “Guilds in Decline? London Livery Companies and the Rise of a Liberal Economy, 1600-1800” in S. R. Epstein and Maarten Prak (eds), *Guilds, Innovation, and the European Economy, 1400-1800* (Cambridge: Cambridge University Press, 2008), 316-341. For the discussion of what happened to Chinese guilds as a result of social changes happened in China, see John Stewart Burgess, “The Guilds and Trade Associations of China,” *The ANNALS of American Academy of Political and Social Science* 152 (1930): 72; Zhongping Chen, “The Origins of Chinese Chambers of Commerce in the Lower Yangzi Region,” *Modern China* 27 (2001): 155; Ying Zhu, *Jin Dai Zhong Guo Shanghui Hanghui Ji Shangtuan Xin Lun (Rethinking the Chamber of Commerce, Hanghui, and Collectives of Commerce in Modern China)* (Zhong Guo Ren Min Da Xue Chu Ban She (Renmin University of China Press), 2008).

<sup>10</sup> *Fang shi* market system was designed to regulate the trade market. It designates a certain area as the market and divides it into many square spaces with vertical and horizontal lines. Vendors who sell same category of goods would be arranged in the same line. The market is only open in specified times and anyone who would sell goods here has to register with the government and pay the entrance fee. See Qian Yang, “Wo Guo Gu Dai De Fang Shi Zhi (The Fangshi Market System in Chinese History),” *Journal of Beijing Technology and Business University* 1 (1983): 66; Gang Zhao and Zhongyi Chen, *Zhong Guo Jing Ji Zhi Du Shi Dun (An Examination of the History of China's Economic System)* (Beijing: Xin Xing Chu Ban She (New Star Press), 2006), 351-358.

abstract way.<sup>11</sup> Since in Chinese *hui* means the assembly of something, the phrase *hanghui* gained the meaning of assembly of people from the same line of trade. Basically *hanghui* at the time included associations in a wide range of sectors which could be divided into three types: craft *hanghui*, trade *hanghui*, and professional *hanghui*.<sup>12</sup>

The earliest trace of guilds can be found in the *hang* leader system in the Song Dynasty (960-1279). At the same time as the decline of *fang shi* system, the government saw it urgently needed to find a new method to regulate the expanding trade market. Thus, a leader from every line of trade was selected to enforce the government policy, supervise the market price and collect taxes on behalf of the government.<sup>13</sup> Although there were some minor differences in the leader's role in the following dynasties, the *hang* leader system remained unchanged until the Qing Dynasty. Nevertheless, the *hang* leader was the government representative rather than acting on behalf of the *hang* members and therefore *hanghui* at the time were unlikely to influence the policy making process in favour of private interests.

With the implementation of a relatively liberal economic policy since the late Ming Dynasty (1368-1644), goods trade expanded significantly across China, especially in Anhui and Shanxi. Given the huge geographical area of China, delivery of goods produced in one place to another had become one of the most profitable businesses ever, though it came with high risk. Consequently, there was the need to establish and maintain merchant networks. Then *huiguan*, which literally means meeting halls, were formed as a fixed place in every trading city where the travelling merchants could settle down and store their goods, such as Shanxi

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<sup>11</sup> Huilian Sheng, "The Fangshi Market System in Tang Dynasty," *Journal of Capital Normal University (Social Sciences Edition)* 3 (2000): 99.

<sup>12</sup> Hansheng Quan, *Zhong Guo Hang Hui Zhi Du Shi (History of Hang Hui System in China)* (China: Baihua Literature and Art Publishing House, 2007), 51-54. This categorization was also used by Burgess in his sociologist study of Chinese guilds. See John Stewart Burgess, "The Guilds and Trade Associations of China," *The ANNALS of American Academy of Political and Social Science* 152 (1930): 72.

<sup>13</sup> Yanbin Qu, *Hang Hui Shi (History of Hang hui)* (Shanghai: Shanghai Literature and Arts Publishing House, 1999), 6.

*Huiguan* for merchants from Shanxi Province.<sup>14</sup> Later, *huiguan* was not only used to facilitate trade but provide accommodation for people from the home region, such as those who came for the civil service examination.<sup>15</sup>

While undeniably there were some *huiguan* organised for the interests of artisans and merchants, they were not equivalent to European guilds. A place of assembly, written regulations and recognition by the local administration were said to be the three characteristics that symbolize the transition to formal organizational status for the *hanghui*.<sup>16</sup> But there was no evidence to show that *huiguan* at the time had written regulations or recognition by local government. On the contrary, empirical research by a Chinese historian Nansheng Peng suggests that “trades without associations and associations without regulations” were a common phenomenon.<sup>17</sup> Furthermore, from the functions of *huiguan* at the time, it can be inferred that in general *huiguan* was mainly a physical representation of an informal commercial organization of merchants from common geographical origins, with a view to providing mutual support in relation to trade and society.

It is assumed that nostalgia for the spirit of mutual help is rooted in the traditional family consciousness of the Chinese. Reflected in the Chinese proverb that “one relies on parents at home and friends out of home”, the family consciousness when applied to the case of

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<sup>14</sup> For a detailed introduction of how *huiguan* operated in practice, see Hansheng Quan, *Zhong Guo Hang Hui Zhi Du Shi (History of Hang Hui System in China)* (China: Baihua Literature and Art Publishing House, 2007), 92-120.

<sup>15</sup> Civil service examination is a system devised to select talented people to serve on government positions. It is divided into several levels and only those who passed the lower level of examination could be eligible for the higher level which is usually held in provincial cities or the capital city. Thus, the examiners need to travel for most examinations. See L. Eve Armentrout Ma, “Fellow-Regional Associations in the Ch’ing Dynasty: Organizations in Flux for Mobile People. A Preliminary Survey,” *Modern Asian Studies* 18 (1984): 307.

<sup>16</sup> Cited in Christine Moll-Murata, “Chinese Guilds from the Seventeenth to the Twentieth Centuries: An Overview,” (Supplement) *International Review of Social History* 53 (2008): 213; William T. Rowe, *Hankow: Commerce and Society in a Chinese City, 1796-1889* (California: Stanford University Press, 1984), 257.

<sup>17</sup> Nansheng Peng, *Hang Hui Zhi Du De Jin Dai Ming Yun (The Fate of Hanghui in the Modern Era)* (Ren Min Chu Ban She (People's Publishing House), 2003), 22.

merchants away from their hometowns transformed into the common origin bond. Burgess referred to this as “group individualism”, an outstanding characteristic of Chinese ancient groupings including the family or clan, the village and the guild (*hanghui*).<sup>18</sup> As one of the basic units in Chinese society, admittedly family and clan had played a very important not only in maintaining state governance and social stability<sup>19</sup> but also in passing on craft and arts skills through the family teaching. Based on this view, some scholars claim that the origin of Chinese *hanghui*, at least *huiguan*, was the custom of teaching family members the hereditary knowledge of craft skills, which usually were kept secret from outsiders.<sup>20</sup> While the origin of *hanghui* remain a subject of debate, it is plausible to say that the tradition of family and clan system had influenced the way *hanghui* was organized and limited the role it played in political and legislative settings.

The most guild-like *hanghui* did not come into being until the late Qing Dynasty. Based on the *huiguan* system, some purely commercially oriented organizations, known as *gongsuo*, were developed among those with the same occupation for the mutual benefits of all the members. This does not mean that the previous form of *huiguan* ceased to exist in Qing. Rather, it is very likely that various forms of *hanghui* co-existed at the same period. Although not the same as European guilds, *gongsuo* shaped similar economic, social and religious

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<sup>18</sup> John Stewart Burgess, “The Guilds and Trade Associations of China”, 72. Burgess states that “these three organizations had much in common. They were ruled by the elders. They were the servants of ancient custom and precedent. They were purely local in interests.”

<sup>19</sup> William Alford, in his famous work on Chinese copyright history, discussed the state’s reliance on family system to regulate the Chinese society. See William P. Alford, *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilization* (California: Stanford University Press, 1995), 10-12.

<sup>20</sup> Cited in Hansheng Quan, *Zhong Guo Hang Hui Zhi Du Shi (History of Hang Hui System in China)* (China: Baihua Literature and Art Publishing House, 2007), 5-11; Harold M. Vinacke, *A History of the Far East in Modern Times* 6<sup>th</sup> ed. (United States: Appleton-Century-Crofts, 1959), 316-317; Gang Zhao and Zhongyi Chen, *Zhong Guo Jing Ji Zhi Du Shi (History of China's Economic System)* (Beijing: Zhong Guo Jing Ji Chu Ban She (China Economic Press), 1991).

functions to guilds, such as regulating wages and prices and securing monopolies in the local (but limited) market.<sup>21</sup>

In summary there are three main forms of *hanghui* developed throughout the imperial history: *hang*, *huiguan* and *gongsuo*. The earlier form of *hang*, derived from the *fangshi* market system, was narrowly understood as the categorization of trade associated with particular type of goods. The leaders of *hang* were selected by the government to assist in market regulation, thus representing a bridge connecting the government and the traders. While *hang* was the association of people engaged in trade of the same type of goods, it is not the same as guilds either in scale, structure or functions. With the demise of the *hang* leader system and the rise of interregional travelling merchants, another form of association *huiguan* was developed as a voluntary assembly of common origin merchants. It was not necessarily recognized by the government and the functions were limited to providing accommodation, storage of goods, and meeting places for members. The really guild-like *hanghui* was *gongsuo* which emerged in the late 17<sup>th</sup> century based on the previous *huiguan* system but comprised people from common trade sectors. Generally *gongsuo* had written regulations stipulating membership, apprenticeship, and rules for trade and price, etc. To the turn of 20<sup>th</sup> century, *gongsuo* had evolved into an important organization that sought benefits for its members through monopolistic (although limited) control of the market.

### **The political and legal role of Chinese *hanghui* in general**

Christine Moll-Murata points out that a comparison of European guilds and Chinese *hanghui* finds most similarities on the economic side while the difference seems greater in the political

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<sup>21</sup> Christine Moll-Murata, "Chinese Guilds from the Seventeenth to the Twentieth Centuries: An Overview," (Supplement) *International Review of Social History* 53 (2008): 213.

and legal setting of the guilds.<sup>22</sup> This is mainly reflected in the relationship of *hanghui* with the government, but there is little evidence that such relations had political and legal effects.

I think at least in two aspects the different political and legal role of Chinese *hanghui* could be illustrated. First, the political tradition of relying on social groupings in state governance determined the “private” nature of these commercial associations. As discussed before, *hanghui* was one of the social groupings that constituted the framework of civil governance in imperial China, in addition to the various levels of governments in the administration system. The implication of such social groupings lies in the self-governance over internal affairs within the group, such as trade disputes.<sup>23</sup> The government recognized the group leader’s power in dealing with all the matters arising from the group members, partly because of the limited bureaucratic resources.<sup>24</sup> The social groups were, however, excluded from engaging in public events of the government, including law making. As Hosea Morse observed, “the guilds (*hanghui*) were never within the law: they grew up outside the law; and as associations they neither recognized the law nor claimed its protection.”<sup>25</sup>

Another feature of *hanghui* that stands in marked contrast to European guilds is the absence of economic monopoly.<sup>26</sup> It is agreed by most of scholars that Chinese *hanghui*, whatever form they had taken, were very local in interests. This is attributed, some Chinese economic historians asserted, to the existence of a giant united market and the high mobility of

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<sup>22</sup> Ibid.

<sup>23</sup> In many cases, the leader or board of *hanghui* also served as the arbitrator, mediating disputes among members. See Hansheng Quan, *Zhong Guo Hang Hui Zhi Du Shi (History of Hang Hui System in China)* (China: Baihua Literature and Art Publishing House, 2007), 118-120.

<sup>24</sup> This does not mean that the group governance was exempt from state control. Rather, the local customs and laws were usually embedded in the family rules and *hanghui* charters. Therefore, the group self-governance was actually applying laws and customs to all the group members. This not only catered for the Chinese tradition of family and *hanghui* system but also resolved the problem of scarce administration resources. See Chang Jianhua, *Ming Dai Zong Zu Yan Jiu (The Family and Clan System in Ming Dynasty)* (Shanghai: Shanghai People’s Publishing House, 2005), 259; William P. Alford, *To Steal a Book Is an Elegant Offense: Intellectual Property Law in Chinese Civilization* (California: Stanford University Press, 1995), 10.

<sup>25</sup> Hosea Ballou Morse, *The Gilds of China: With an Account of the Gild Merchant or Co-Hong of Canton* (London: Longmans, Green and Co., 1909), 27.

<sup>26</sup> Ken Shao, “The Promotion of Learning in Chinese History: Discovering the Lost Soul of Modern Copyright,” *Columbia Journal of Asian Law* 24 (1) (2010-2011): 63.

population across China.<sup>27</sup> Unlike the “city states” in Europe, it was impractical to maintain monopoly in such a huge area of China. The non-monopolistic character is also reflected in the annually rotational leadership adopted by some Chinese *hanghui* which indicates some “rudimentary democracy”.<sup>28</sup> Another Chinese scholar Ken Shao, who has published a few remarkable works on Chinese copyright history, argued on the ground of some judicial attitudes towards guilds monopoly in the Qing Dynasty that “monopoly was heavily criticized and indeed prohibited where early modern capitalism flourished and free competition was a necessity.”<sup>29</sup> On the contrary, a guild in Europe usually grew into a national monopolistic entity controlling the entire trade,<sup>30</sup> and the sources of that monopoly are said to have been charters of towns, charters of guilds, parliamentary statutes, and judicial precedents.<sup>31</sup> Even though we concede that there were a few attempts of some maturely developed *hanghui* in the late Qing Dynasty to seek monopolistic control over a certain market, they were doing so by including newcomers into the *hanghui* (although forcing them to do so) rather than excluding them from doing the business.<sup>32</sup> Without a strong monopolistic status it is unlikely that Chinese *hanghui* would achieve economic dominance in a nationwide market, which connects with the weakness in political influence.

So far I have explained the evolutionary process of *hanghui* in imperial China and the insignificant role in political and legal settings in general, the following discussion will turn to the publishing practice and *hanghui* and their role in copyright protection.

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<sup>27</sup> Gang Zhao and Zhongyi Chen, *Zhong Guo Jing Ji Zhi Du Shi (History of China's Economic System)* (Beijing: Zhong Guo Jing Ji Chu Ban She (China Economic Press), 1991), 321.

<sup>28</sup> Nansheng Peng, *Hang Hui Zhi Du De Jin Dai Ming Yun (The Fate of Hanghui in the Modern Era)* (Ren Min Chu Ban She (People's Publishing House), 2003), 32.

<sup>29</sup> Ken Shao, “The Promotion of Learning in Chinese History: Discovering the Lost Soul of Modern Copyright,” *Columbia Journal of Asian Law* 24 (1) (2010-2011): 63.

<sup>30</sup> Thomas B. Nachbar, “Monopoly, Mercantilism, and the Politics of Regulation,” *Virginia Law Review* 91 (2005): 1313.

<sup>31</sup> Gary Richardson, “Guilds, Laws, and Markets for Manufactured Merchandise in Late-Medieval England,” *Explorations in Economic History* 41 (2004) : 1.

<sup>32</sup> William T. Rowe, “Ming-Qing Guilds,” *Ming Qing yanjiu (Ming Qing Review)* 1 (1992): 47.

## No publishing *hanghui* until 17<sup>th</sup> century: the publishing practice in imperial China

While the *hanghui* system had existed for centuries in China, book publishers had been spread across the country, and not organized until the 17<sup>th</sup> century. Before the emergence of publishing *hanghui*, the book market had consisted of state and private publishers, booksellers and printers since the invention of printing technology. The government set up official publishing houses in national and local levels responsible for editing and printing books, recruiting as many talented intellectuals as possible to proof-read and annotate the Classics as well as creating their own works from time to time. Because of the abundance of financial and labour resources as well as their political power, government publishers, although emerging later than private publishers, soon gained dominance in the publishing industry.<sup>33</sup> As to private publishers in imperial China, it is noteworthy that in many cases the author was at the same time the publisher, bookseller, and printer. There was one type of publisher who printed books not for profit. They were usually private book collectors with good financial conditions and some officials (usually talented intellectuals) who wished to create literary works and publish them.<sup>34</sup> As the advocates of literature and Confucian followers, they saw the dissemination of knowledge and promotion of learning as social responsibilities. Another type of private publisher was the bookseller who printed others' books for commercial purposes. Some of them were authorized publishers who usually had personal relations with the authors and thus acquired permission to print their works<sup>35</sup>, while others printed books without permission. It is the latter that provoked the hostility of authors not because they failed to ask for permission but because they were less concerned about the

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<sup>33</sup> Yonggui Wu (ed.), *Zhongguo Chuban Shi(Shangce.Gudaiban) (The History of Publishing in China: the Ancient Part)* vol. 1 (China: Hu'nan University Press, 2008), 225.

<sup>34</sup> *Ibid.*, 267.

<sup>35</sup> Xueqiang Ma, "Jian Nan Xi Jia Yu Sao Ye Shan Fang (Xi's Family in Southern Yangzi and the Publishing House "Saoye Shangfang")," *Shi Lin (Historical Review)* 6 (2009): 11. This article examined a well-known publisher, Xi's family, in Southern Yangzi who started off doing business and then opened the publishing house "Saoye Shufang" in Suzhou. Not only the publisher printed books but also recruited many intellectuals to create new works.

quality and accuracy of the books. It was claimed that erroneous printing damaged the reputation of the authors, which was regarded as more important than anything else; while to the original publishers the unpermitted printing of books affected their reputation for good quality printing of books as well as their economic interests in book market.<sup>36</sup> While piracy of books had been a problem for a long time, there was no sign of any alliance or association among publishers that should have been established to act collectively against piracy.

The first publisher's *hanghui* in the recorded history, known as Suzhou *Chongde Gongsuo*, was founded in 1671 by the local publishers in Suzhou.<sup>37</sup> However, its function had been limited to "a meeting place where the member publishers discuss matters as to correcting errors of printing and repairing texts of ancient books, and providing assistance in dealing with private affairs of members, such as arranging funeral when members who come from other regions suffer death in Suzhou".<sup>38</sup> This suggests that the basis of the *Gongsuo* is no more than a common sense of cooperation and mutual help among publishers, like the *huiguan*. For a time after its establishment, the publishers' *Gongsuo* had fallen into stagnation. In 1837, one hundred and a half years later, the function of the *Gongsuo* was retained in a movement for forbidding obscene novels. The Suzhou publishers united to request that the list of all novels imported into Suzhou from other regions should be examined by the *Chongde Gongsuo* and any forbidden novels found should be delivered to the government to be destroyed.<sup>39</sup> While the *Gongsuo* had taken some moves to protect the member publishers' interests, it did not have written rules to regulate the local publishing industry until 1845.

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<sup>36</sup> Ken Shao, "An Alien of Copyright? A Reconsideration of the Chinese Historical Episodes of Copyright," *Intellectual Property Quarterly* 4 (2005): 400.

<sup>37</sup> Xiumin Zhang, *Zhong Guo Yin Shua Shi (History of Publishing in China)* (Shanghai: Shanghai Ren Min Chu Ban She (Shanghai People's Publishing House), 1989), 553.

<sup>38</sup> Jinmin Fan, 'Ming Qing Di Yu Shang Ren Yu Jiang Nan Wen Hua (Local Merchants and Southern Yangzi Culture in Ming and Qing Dynasties)' in Bozhong Li and Shengchun Zhou (eds), *Jiang Nan De Cheng Shi Gong Ye Yu Di Fang Wen Hua (Urban Industry and Local Cultural in Southern Yangzi) (960-1850)* (Beijing: Tsinghua University Press, 2004), 95-116, 98.

<sup>39</sup> Jianguo Pan, "Ming Qing Shi De Shu Si (Booksellers in Ming and Qing Dynasties)," (2006) <http://www.pubhistory.com/img/text/0/1980.htm>.

What's worse, the *Gongsuo* was destroyed in 1861 in the war of the Taiping Heavenly Kingdom rebellion. The efforts to rebuild the *Gongsuo* all failed either because of the warfare or financial problems. As the Suzhou publishers gradually moved to *Shanghai* to escape the war, finally the new *Gongsuo* was established in 1899 as *Shanghai Book Trade Association*.<sup>40</sup>

As the historical evidence suggests, the role of publishers' *hanghui* in imperial China was limited to some economic aspects and maybe very occasionally involvement in political discourse. But the idea of a copyright law, seems to involve the state rather than any individual groups. While Suzhou was one of the most prosperous regional book markets in imperial China and the printers' *hanghui*, named *Jijue Gongsuo*, was also formed there in 1739, it was the only place where such publishing *hanghui* could be found. Therefore, even though the Suzhou publishers' *hanghui* could have influenced somewhat the government's attitudes towards copyright protection, the influence would have been limited to this single city out of thousands of others in the entire country. In another word, the making of copyright law was a national activity which was beyond the reach of a few private publishing *hanghui* in a local city.

To prevent piracy without a formal copyright law, the common practice is to indicate the publisher or printer's name in the book, warning against piracy. The earliest example of this was found with the book "*Dong Du Shi Lue (Stories of Eastern Capital)*" in around 1190 to 1194. In the public notice page of the book, it reads "This book is printed by the family of Secretary Cheng from Mei Mountain and has been registered with the government. No copy

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<sup>40</sup> Shanghai Archives Department, *Documents on the Rebuilding of Chongde Gongsuo in Shanghai Book Industry* (Qing Dynasty).

is permitted.”<sup>41</sup> Another example is the book “Fang Yu Sheng Lan (The Geography of Fangyu)” which included the state ordinance in the notice page that recognized the exclusive right of printing of the private publisher of the book.<sup>42</sup> The ordinance was approved by the King<sup>43</sup> and published at Qu’zhou and Wu’zhou in today’s Zhe’jiang Province, according to which the publisher might complain against anyone else who printed the book and all such pirated books should be destroyed. In the following dynasties after Song, it had become the custom to include in the public notice page the publisher’s name and the warning that nobody would be permitted to copy. This pattern of separate requests for copyright protection was to last from Song Dynasty until the end of imperial era when Qing government signed the Renewed Treaty of Commerce and Navigation in 1903.

### **Publishing guilds in England: an actor in pushing for the making of copyright law**

In contrast, the enactment of the first copyright law in England, the Statute of Anne, illustrated the significant role of publishing guilds in actively claiming copyright protection in the form of law. While the scholarship on the history of the Stationers’ Company is tremendous, the role of such guilds in economy and politics remains controversial.<sup>44</sup> So here I am outlining a general picture of its role in the legal sphere of copyright protection.

#### **A: The stationers’ company**

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<sup>41</sup> Lin Zhou and Mingshan Li (eds), *Zhong Guo Ban Quan Shi Yan Jiu Wen Xian (Materials for China Copyright History Research)* (Beijing: Zhong Guo Fang Zheng Chu Ban She (China Fang Zheng Press), 1999), 3.

<sup>42</sup> *Ibid.*

<sup>43</sup> This is implied by the title of the ordinance where “Lu Bai” refers to orders orally approved by the King and then published by the responsible authority.

<sup>44</sup> For criticism of the conventional view that guilds’ monopoly impeded the development of economy, see S. R. Epstein and Maarten Prak (eds), *Guilds, Innovation, and the European Economy, 1400-1800* (Cambridge: Cambridge University Press, 2008).

The Stationers' Company originated from the printers' guild in the 15<sup>th</sup> century and became the Company in 1557 under the royal charter that conferred a monopoly over publishing within England. Before the incorporation of the Company, book publishing was protected through the printing privileges granted by the Crown in the exercise of royal prerogatives.<sup>45</sup> With the growing influence of the printers' guilds as well as the government's desire for press censorship, a partnership between them seemed inevitable. To the stationers, however, the cooperation with the government was "a means to an end, not an end itself: it was but one incident of many in the Company's expansion."<sup>46</sup> While the press censorship of the English government was reminiscent of the Chinese dynasties' efforts to forbid hereditary publications, the situation of publishers in imperial China was enormously different in that there was no such national institution that controlled the entire publishing industry.

Indeed, the monopolistic status of the Stationers' Company was reinforced by a series of acts, such as the Star Chamber Decrees and the Licensing Acts. But the Company did not passively accept what was granted. Rather it also actively pursued support from law. For example, during the interregnum in 1640s, the abolition of Star Chamber and its decrees meant that the Company was facing the loss of monopoly over publishing. Thus, it petitioned "parliament to reinstitute some form of press regulation both for the good of the State and for the good of the stationers."<sup>47</sup> The efforts of the Company to seek copyright protection led to the issue of the Licensing Order of 1643. Until the final lapse of the Licensing Act in 1695,

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<sup>45</sup> Ronan Deazley, *Commentary on early Tudor printing privileges 1559*, [http://copy.law.cam.ac.uk/cam/tools/request/showRecord?id=commentary\\_uk\\_1559b](http://copy.law.cam.ac.uk/cam/tools/request/showRecord?id=commentary_uk_1559b).

<sup>46</sup> Graham Pollard, "The Early Constitution of the Stationers' Company" 4<sup>th</sup> series, *The Library* 18 (1937-1938): 235-260.

<sup>47</sup> Mark Rose, "The Public Sphere and the Emergence of Copyright: Areopagitica, the Stationers' Company, and the Statute of Anne," *Tulane Journal of Technology and Intellectual Property* 12 (2009): 123.

the Stationer's Company maintained its dominant control over publication through registration of books and grant and enforcement of the copyright to members.<sup>48</sup>

## **B: Booksellers in court**

The role of publishing guilds in pushing for the making of copyright law was most clearly represented by the stationers' (especially booksellers)<sup>49</sup> fight for copyright protection. As the publishing monopoly was endangered with the expiry of the Licensing Act, the stationers attempted to persuade the Parliament to reinstate the Licensing Acts. Unsuccessful with this, they started petitioning the Parliament to enact new laws of copyright protection.<sup>50</sup> Coupled with the authors' claim for authorship,<sup>51</sup> the stationers convinced the legislature to enact the Statute of Anne 1710. However, the statutory limitation to the term of copyright protection (fourteen to twenty eight years) was to the stationers still unacceptable because Stationers' Company copyright was unlimited.<sup>52</sup> They continued to ask the Parliament for an extension of statutory protection of their copyright. When these efforts turned out to be a failure, they sought to restore a perpetual copyright in common law by arguing that "a copyright, quite independent of any statutory support, had been recognized by common law before 1710."<sup>53</sup> And they did succeed in the case of *Millar v Taylor*<sup>54</sup> 1769 where the King's Bench ruled in

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<sup>48</sup> Jeffrey M. Gaba, "Copyrighting Shakespeare: Jacob Tonson, Eighteenth Century English Copyright, and the Birth of Shakespeare Scholarship," *Journal of Intellectual Property Law* 19 (2011): 21.

<sup>49</sup> "In the eighteenth century, the power of the book trade had passed from the Stationers' Company to the hands of a few booksellers, called the Conger, who controlled the trade through their monopoly of copyrights." See Lyman Ray Patterson, *Copyright in Historical Perspective* (Nashville: Vanderbilt University Press, 1968), 151-152.

<sup>50</sup> Ronan Deazley, *On the Origin of the Right to Copy: Charting the Movement of Copyright Law in Eighteenth-Century Britain (1695-1775)* (Oxford: Hart Publishing, 2004), 1-6.

<sup>51</sup> Peter Jaszi, "Toward A Theory of Copyright: The Metamorphoses of "Authorship"," *Duke Law Journal* (1991): 455.

<sup>52</sup> Justin Hughes, "A Short History of "Intellectual Property" In Relation to Copyright," *Cardozo Law Review* 33(4) (2012): 1293.

<sup>53</sup> James Raven, "Booksellers in Court: Approaches to the Legal History of Copyright in England before 1842," *Law Library Journal* 104(1) (2012): 115.

<sup>54</sup> *Millar v Taylor* (1769) 98 ER 201.

favour of common law literary property,<sup>55</sup> before the House of Lords finally revoked the decision in *Donaldson v Becket*<sup>56</sup> 1774. After a few up and downs, this famous battle for perpetual copyright by booksellers ended with the ruling by “the House of Lords in *Jeffreys v Boosey* (1854) that there never had been such a thing as a common-law copyright after publication”.<sup>57</sup> Although the result was not what the booksellers had hoped for, it is undeniable that the booksellers as a politically powerful group had played an indispensable part in the process of making copyright law. Sherman and Bently illustrated the significant role of the stationers as proponents of literary property in resolving the problems with justification, identification, and the scope of copyright, which constituted the fundamental ground of modern copyright law.<sup>58</sup>

## Conclusion

While the making of law generally is the product of combined forces, if we compare the history of copyright practice in Europe and in China, we would realize that the missing of a single part of the combined forces, publishing guilds, may probably lead to entirely different outcomes. It is true that the political ideology and legal tradition in Europe differ a great deal from that in imperial China. This could explain why there are so many differences between the two major civilisations in the construction of social institutions. Apart from the principal differences, however, there must be others that may have performed critical role in causing the disparity of courses they charted.

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<sup>55</sup> William Cornish, “Conserving Culture and Copyright: A Partial History,” *The Edinburgh Law Review* 13 (2009): 8.

<sup>56</sup> *Donaldson v Becket* (1774) 17 Parliamentary History 953.

<sup>57</sup> Edward S. Rogers, “A Chapter in the History of Literary Property: The Booksellers' Fight for Perpetual Copyright” *Illinois Law Review* 5 (1910): 551.

<sup>58</sup> Brad Sherman and Lionel Bently, *The Making of Modern Intellectual Property Law* (Cambridge: Cambridge University Press, 1999), 19-42.

So far as copyright law was concerned, the guilds of publishers, printers, booksellers, or authors could be among those. After all, the copyright law is in their interest. No one knows what they need better than themselves. Even though the Crown granted the royal charter to establish the Stationers' Company, the purpose on the government's part was obviously to exercise press censorship, with less concern about who actually owned the copyright. Despite the attempts to prevent piracy, the publishers in imperial China were still too weak to influence government policy at all. The first publishers' association, *Chongde Gongsuo*, only appeared as late as 17th century, but the purpose of the *Gongsuo* was simply for cooperation rather than exercising monopolized control over the publishing industry. Certainly the fact that China had a huge united market also rendered it impracticable to maintain such a monopoly. Nonetheless, without monopolized control over the book trade, it is not surprising that the publishers' *hanghui* was unable to exert much influence on the policy making process. Without push from the industry, therefore, the imperial government would have no motive to *change* the original institutions and create a copyright law to protect the interests of publishers or authors.