

Overview of Seminar on Legal Issues Relating to Computer Fonts Bases and Fonts of Chinese Characters

The issue of protection of computer fonts bases and fonts or typeface of Chinese characters was raised in *Founder v Procter & Gamble Company (P&G)*. Founder is a business initially devoted to development, manufacture and distribution of computer software for type-setting of Chinese characters, and users of its products are mostly publishers and printing houses. The Founder's fonts bases (including Chinese characters fonts bases) are usually sold together with its type-setting software. In recent years, Founder began to claim damages selectively from some businesses that had allegedly put to commercial use of a particular Chinese character font on the ground of provisions disallowing commercial use in the Chinese characters font base products sales contracts. Where an alleged user did not pay the damages claimed, Founder would resort to law. In the lawsuit Founder instituted against P&G two years ago, Founder accused P&G of using the Qian-typeface characters contained in the computer fonts base of Chinese characters in writing the word of its Chinese trademark “飘柔” (the two Chinese characters pronounced as “piao rou” and standing for its English trademark “Rejoice”) used in respect of goods of shampoo, and requested the court to hold P&G liable for paying damages at the amount of RMB 1.5 million yuan. On 20 December 2010, the Beijing Haidian District People's Court concluded, in its decision, that Founder's Qian-type font or typeface possessed originality to a certain extent, and met the requirements of the Chinese Copyright Law on the protection of artistic works, so the font or typeface was eligible for the protection as a whole; but each individual character in the Chinese characters fonts base was not susceptible to the protection as works of art; hence the court rejected all Founder's litigant claims. On 1 April 2011, the case of appeal was heard by the Beijing No.1 Intermediate People's Court. Now the case is pending.

After the court of appeal was called to session to hear the case, a seminar was held, as initiated by the business, in the name of discussion on the matter of protection of the in-

tellectual property right in Chinese characters fonts or typefaces, calling for enacting a law for the specific copyright protection of Chinese characters fonts or typefaces and Chinese characters fonts bases. The discussions were, for a time, a highlighted topic in news reports in the relevant media. It was against this backdrop that the Law School of the Remin University of China organised the Seminar on Legal Issues Relating to Computer Fonts Bases and Fonts of Chinese Characters on 28 May 2011, and invited experts and scholars in the field to attend. The host of the Seminar noted: “our attitude is that we are not to take anything for granted, not act dishonestly and conceitedly, rid ourselves of all selfish considerations, remain neutral, try to seek the truth, and understand and interpret the issue we are facing with the knowledge and logic of science and rationality.”

Following are the main points of view presented at the Seminar:

Chinese characters fonts bases, fonts or typefaces and particular characters are eligible for copyright protection

Characters fonts bases, fonts or typefaces and individual characters should not be excluded from the protection of the Copyright Law. Primarily, the Law does not say they are not subject matter eligible for protection, so they are all susceptible to the protection under the Copyright Law.

Secondly, suppose that Chinese characters fonts bases are results of creation, the entire Chinese characters fonts base industry should be an industry of creation that requires protection under the IP laws, particularly the Copyright Law. From the perspective of the essential theory, the copyright law is believed by many to protect private rights. But the practice of copyright law protection in more and more countries tends to show that it is a protection based on industrial development. This thinking is not very rational, but it is a reality the whole world now has to face. In different historical periods, different countries and different industries, what the law excludes, what it includes and what view the courts tend to take all depend on the development of industry.

Furthermore, do the copyright laws protect creative ideas and works, or do more and more copyright laws protect investments? To date, there are more and more signs showing the protection of investments. We notice that the property right in works of cinematography and television directly goes to investors. This is protection of industry. Works like databases or those of compilation have limited or no creation. Sometimes, there is hardly any originality in their compilation. But why is it possible to include them in the domain of the copyright law? This is just because they involve such tremendous investments that it is impossible for people of average means to create such huge works. Now, it is not expressly provided whether such works are copyrighted ones. But according to the condition of works of compilation, it is very much possible for databases to be eligible for the copyright law protection. (Zhang Ping from Peking University)

Fonts or typefaces are not works of art

The writing form of over 300 characters in the Qian font or typeface designed by Qi Li, a font or typeface designer, is possibly a work of art. But the Qian-type Chinese characters fonts base is not a work derived from Qi Li's writing form. When designing the Qian-type Chinese characters fonts base, Founder have to take the non-standardised or irregular part away from Qi Li's writing form of the Qian font or typeface to change the characters in it into font or typeface in the Chinese characters fonts base. This is a process of taking the creativity (individuality) away from what is required of a work of art. Including fonts or typefaces in the computer Chinese characters fonts base as subject matter of the copyright law is, essentially, to include a standard of act or writing into the copyright law protection. Claiming the copyright in Chinese characters fonts base is to exercise control over standard by virtue of technical means. (Zhang Junhao, China University of Political Sciences and Law)

Chinese characters fonts base is not product of software, only database

Now what is debated on is nothing but protection of individual characters or a Chinese characters fonts base as a whole. A characters fonts base is a database, (databases are further divided into those with originality and those without). First of all, fonts or typefaces are manually designed by those physiologically capable of creating, then scanned by machines for rectorisation, and finally shaped truthfully to the original design as much as possible. Next, a fonts base contains a part of software, which is non-substantial in an entire

characters fonts base, and the substantial part is the fonts or typeface. If a fonts base were protected as software, it would have terrible results. Now, for all IP products, except software, liability is imposed only on production and market distribution. For example, acts of piracy and infringement of a trademark or a patent right are held legally liable for manufacture and market distribution. We do not hold users liable. Software is an exception. A user is also held liable if he uses a piece of pirate or unauthorised software. This is the only exception. (Xu Chao from the National Copyright Administration)

Founder's Chinese characters fonts base is not result of creation, so not eligible for IP protection

A result of creation generates an IP right, and a result of labour is accorded the property right in the traditional sense and the right to receive remuneration. In the process of Founder's design of the Chinese characters fonts base, combination of Chinese characters is a process of production to remove individual features, to ensure the desired quality by way of characters revision and quality inspection. These processes actually involves physical labour without creation. Chinese characters fonts bases and character typefaces are practical tools of the Chinese characters all generated in a definite planning and having mutual rules of uniformity and unity. A Chinese characters fonts base is a toolkit, and Chinese characters are the tools. A toolkit is not a work, nor an individual character. (Liu Chuntian from Remin University of China)

Font or typeface in a Chinese characters fonts base is not reproducible, so not eligible for copyright protection

There are two elements rendering a subject matter eligible for copyright protection: originality and reproducibility. The two Chinese characters for P&G's "Rejoice" are written, and somewhat similar to those in Founder's fonts base, but there is no direct contact involved, the two Chinese characters for "Rejoice" are not visible in the CD, with no reproducible carrier, so lack the element of reproducibility in the sense of the Copyright Law. (Zhang Yurui from the China Academy of Social Sciences)

Protection is only accorded to character-making tools under the laws of many countries

In the Vienna Convention for the protection of fonts or typefaces, a font or typeface is essentially protected as a character-making tool, namely, the functionality is protected. In other words, you should not infringe others' right when use a word-making tool. But any product made with such a tool is

not copyrighted work at all. (Jin Wuwei from the Legal Affairs Office under the State Council)

Relating to font or typeface, Article 54 of the UK Copyright Law provides: "Use of typeface in ordinary course of printing. It is not an infringement of copyright in an artistic work consisting of the design of a typeface: to use the typeface in the ordinary course of typing, composing text, type-setting or printing". (Xu Chao)

The protection under the UK Copyright Law purports to protect font or typeface as a character-making tool. A product made with the tool is basically excluded from the copyright protection. My understanding is that even if your use of such a tool *per se* is infringing, what you have written with it are not. This is the relatively express convention and law provision I have so far read. The provision only protects character-making tools (Jin Wuwei)

Founder's Chinese characters fonts base is essentially sold as a tool, and what it requires is the protection as accorded to copybooks of calligraphy

As for a way for a Chinese characters fonts base to achieve its value, the business has made a choice. That is, it serves as a mould to seek the value. The character font is different, or distinguishable. What does the distinction mean? It makes it possible for people to choose this, not that, Chinese characters fonts base. When they buy your Chinese characters fonts base, the value of your mould has been achieved. This is all you seek to achieve. If you consider a character of yours a work of calligraphy, you should not take it as a tool. You can directly produce a copybook and sell it. You have chosen to sell it as a tool, and, at the same time, seek copybook protection for it. It is unfair (Li Chen from Remin University of China)

At the discussion, experts and scholars present were so active to present their views that it is impossible to include all their presentations here in this very short article. Present at the Seminar, except experts and scholars in the community, were also judges from the Supreme People's Court, the Beijing Higher People's Court, the Beijing No.1 Intermediate People's Court, and the IP Tribunal of the Haidian District People's Court.

It is a pity that the participants of the Seminar did not look into the matter of whether Founder's way of "enforcement" was lawful or not. That is, in the absence of express law provisions on the matter, Founder sent letters of warning, claiming that others infringed its right, and threatened them with lawsuit for damages. Is this practice lawful? Meanwhile,

Founder bound and sold together its use-restricted, licensed products with no clear indication to remind users, nor giving buyers a chance to make a choice. Once a buyer or any other party uses (or puts to commercial use as Founder describe it) a use-restricted product, it immediately begins to claim damages therefor. Is this a decent or lawful act of doing business? All such fundamental issues are yet to be addressed by the academic community. ■

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