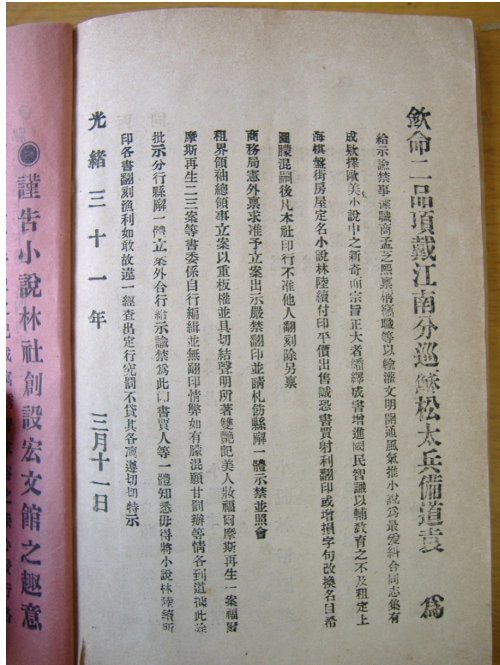


Unpacking a Generic Copyright Protection Order in Early Twentieth Century China

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Xiaoshuo lin (小說林, Fiction Forest) trans. & ed. *Huangjin Gu Fuermosi Zhentan An* (黃金骨福爾摩斯偵探案, Golden Bone: A Holmes Detective Story). Shanghai: Xiaoshuo lin, 1906. [Shanghai Library]

This is a proclamation issued by a Qing local official named Yuan Shuxun (袁樹勳, 1847-1915) to Xiaoshuo lin (小說林, Fiction Forest), a Shanghai-based Chinese publishing company, in 1905. In this order, Yuan, who was the Daotai (道台, circuit intendant) of the Suzhou, Songjian, and Taicang region at the time, acknowledged Fiction Forest's copyright of its Chinese translations of the Holmes series and prohibited others reprinting these books for profit. It was reproduced by Fiction Forest in every copy of books it published to announce that the copyright of its publications were now acknowledged and protected by local authorities. It is one of the hundreds of generic orders Qing officials granted to Chinese and foreign publishers who petitioned for copyright protection before a formal copyright law coming into being in China.

Historical Context

Although the first copyright law in China, Copyright Law of the Great Qing (*Daqing zhuzuoquan lü*, 大清著作權律), was not promulgated until 1911, the concept of "copyright," or *banquan* (版權) in Chinese, had become popular in Chinese book trade at the turn of the twentieth century. In the first decade of the twentieth century, which was also the last decade of the Qing regime, Chinese booksellers and

authors actively exercised this new concept to claim and justify their exclusive ownership of publications in a limited capacity before a written copyright law actually existed. One of the common practices booksellers employed to declare and protect their “copyright” was to petition to local or metropolitan officials for official proclamation prohibiting others from reprinting particular titles. This kind of individually-issued “copyright” protection orders was first issued by a circuit intendant to the Society for the Diffusion of Christian and General Knowledge among the Chinese (*Guangxuehui*, 廣學會), a Shanghai-based missionary press, in 1896 when its American missionaries asked Chinese authority for copyright protection. The history of Chinese officials issuing prohibition orders against reprinting of certain books could be traced back to the mid thirteenth century, but only very few of these early modern orders survived and it is still not clear how popular and common this practice was in late-imperial China. At the turn of the twentieth century, when Qing officials were asked by foreign publishers for copyright protection to combat piracy, they seemed to see this sort of reprinting prohibition orders as the equivalent to the “copyright” protection foreigners wanted. Combining the format and structure of the old reprinting prohibition order with the new concept of copyright, they issued a standardized copyright protection order prohibiting unauthorized reprinting of specific titles to please foreign publishers’ requests. Such orders were at first considered as the special privilege only foreigners were entitled to. Nevertheless, when more and more Chinese booksellers started to urge local officials to protect their copyright, the same standardized protection order was granted to them as well. As the result, the quantity of prohibition orders issued suddenly soared. By the end of 1903, this special “privilege” that previously was rarely seen seemed to have become a popular and common practice in the Chinese book trade. Reproduction of this kind of orders could be seen in many newly published books as well as in daily newspaper advertisements in a daily bases at the time.

Format and Content

The example shown here is a typical generic copyright protection order issued during this period. It was issued by Circuit Intendant Yuan Shuxun to Fiction Forest in 1905 and reproduced by the publishing firm in its publications. It reads as follow:

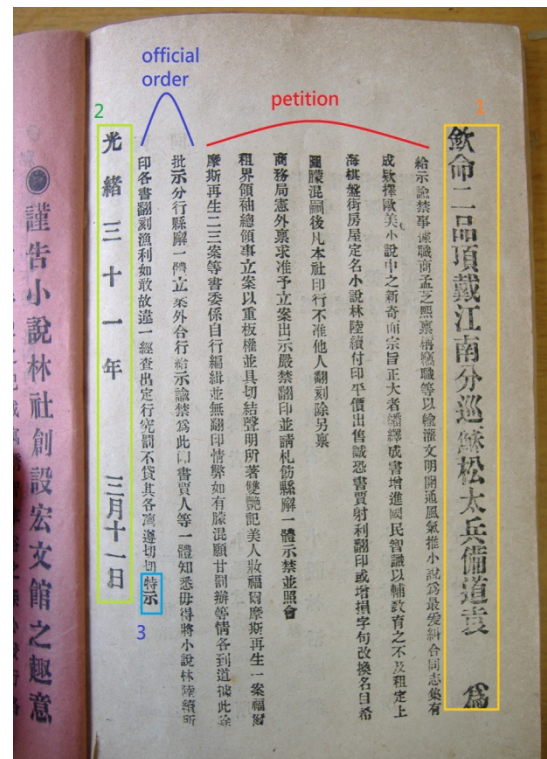
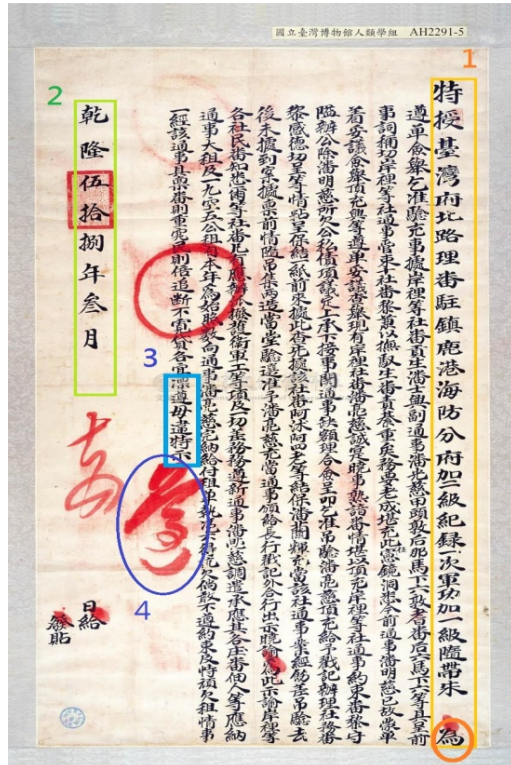
Imperial Appointed Circuit Intendant of the Suzhou, Songjian, and Taicang region in Jiannan, Yuan [Shuxun] has issued the following prohibition as requested:

Merchant Meng Zhixi (孟芝熙) petitioned: “We believe that fiction is the best way to infuse civilization and to enlighten society. We gather together and raise capital, and we translate and publish the novel and honorable fiction of Europe and America, in order to enhance the Chinese’s intelligence, as well as to assist the inadequate education system. We rented a house on Checkerboard Street in Shanghai and named our company Fiction Forest. We continually publish fiction [works] and sell them at reasonable prices. We are in great fear that other booksellers might reprint our books for profit, change the content of our books, or change their titles to confuse readers. Thus, we plead to prohibit other people from reprinting our publications from now on. In addition to requesting the Office of Commerce for registration permission and strict prohibition of reprinting, we also plead for your protection. To protect and secure banquan, please issue a prohibition to the county offices,

and inform concession leaders and consul-generals in Shanghai of our registration. We also provide a recognizance to guarantee that our books, *Story of Two Beauties* (Shuang Yen Ji, 雙艷記), *Beauty's Adornment* (Meiren Zhuang, 美人妝), *Return of Holmes I, II, and III* (Fuemosi Zaisheng an er an san an, 福爾摩斯再生案二案三案) and etc., are all compiled by us and not pirated from others. We are willing to be punished if our statement is found false." Responding to this petition that has come to my office, I instruct all the branch offices and county offices to acknowledge the petitioner's registration and issue a prohibition. Thus booksellers should be informed that they cannot reprint various books published by Fiction Forest to gain profit. If people violate this prohibition, once found, they will be punished without mercy. Do follow this order and not violate it.

Announced on the eleventh day of the third month in the Thirty-first year of Guangxu

This order/proclamation was composed in the format of *yushi* (諭示). *Yushi* was a kind of official document widely used by imperial officials to announce an order, a ruling, or a prohibition, to civilians under their jurisdiction, or by higher-ranking officials to instruct their subordinates. When the word *yu* (諭) was used in the main body of an *yushi*, it was usually issued to instruct specific individuals; if the word *shi* (示) was used, then it was issued as a official proclamation to the general population. When responding to civilians or gentries' petitions, officials often responded these petitions in a *yushi* order, like the one we see here. A typical *yushi* would contain the following components:



1. In the first line of a *yushi*, the official who issued it would identify himself with his full title and surname. Usually the first line would end the word *wei* (為) /for to introduce the main body of the order or proclamation. The scripts of this line are always bolder and larger than the main text.
2. The last line of a *yushi* is always the date when it was issued.
3. The main body of a *yushi* could simply be an order or instruction about a specific subject. If the order or instruction was the official's response to a petition, the petition would most likely be the first part of the main text, followed by the official's order or instruction. The official order would end with the fixed phrase *teshi* (特示, specially notify) to emphasize the seriousness of this *yushi*.
4. In authentic copy of a *yushi*, below the phrase *teshi*, there would usually be the word *zun* (遵, obey) marked in red ink. It was the recipient (subordinate offices)'s response that he/they would obey the order or instruction stated in this *yushi*.

Chinese Justifications for Copyright Protection

Because petitions were commonly included in the *yushi* orders/proclamations local officials issued to respond to them, historians would be able to uncover both the petitioner's and the official's voices in one document. This copyright protection order, for example, provides us a nice account of how a late-Qing bookseller justified the copyright of his publications. *Banquan*, the Chinese term for copyright, was used by the petitioner to refer to the subject of protection; nevertheless, the argument the petitioner made had not much do with creativity or originality, which people would generally associate with copyright and intellectual property now. Indeed, he stated briefly at the end of his petition that Fiction Forest were the original translator and publisher of those fictions. However, the two main reasons he emphasized for why their *banquan* should be protected remained (1) careless reprinting incurs mistakes and would mislead readers, and (2) Fiction Forest produced excellent books to serve society. Although Fiction Forest did make the point that piracy was threatening their business and investment, the petitioner stressed that they "gather together and raise capital" to publish foreign fictions not for profit but "to enhance the Chinese's intelligence" and "to assist the inadequate education system." On the other hand, pirates were just reprint Fiction Forest's books "for profit."

The same argument could also be found in other similar orders issued at the time. For example, Shanghai Circuit Intendant issued an order to "protect [Nanyang Public School's] *banquan*" and asked booksellers not to reprint their publications because they were "carefully and minutely proofread, beautifully and delicately printed" and Nanyang Public School invested "a fortune" to publish these translations but only sold them at "low prices" to enlighten the public. The Hygiene Society (衛生學會, *Weisheng Xuehui*) in Shanghai also urged Circuit Intendant Yuan to issue a protection order for the *banquan* of their books and periodicals because they "gathered the best books and studies of physiology and other sciences" and presented them "in good and clear orders". Furthermore, they did all this to "encourage everyone to take care of his/her own life so that they could collectively protect the national body."

Although, in these orders, both the bookseller's petition requesting prohibition and the official's reply portrayed *banquan* as a special privilege for those who produce outstanding titles for the benefit of society, when the intellectual contribution or textual excellence argument was too frequently stated, it was in danger of becoming generic verbiage. As the proprietor of Fiction Forest stated, they translated and published "the novel and honorable fiction of Europe and America, in order to enhance the Chinese's intelligence, as well as to assist the inadequate education system," but could *Return of Holmes* really "infuse civilization and to enlighten society"? In addition, supposedly only outstanding and useful books deserved to be protected from unauthorized reprinting, but if all booksellers could make the case of how beneficial their publications were to Chinese society, then this privilege might no longer be special.

Credibility Problem

The credibility of these individually-issued "copyright" protection orders is another problem. In principle, by petitioning local officials to request "copyright" protection, the bookseller left an official record in the government's register. His ownership of the book was then certified in this way and acknowledged by the government. In addition to getting the state's credibility to back their possession of the "copyright," theoretically the bookseller also brought in the state's power to crack down on pirates. Yet these orders were issued by different officials separately without some sort of coordination. Although one might assume that before issuing these protection orders, officials checked the authenticity of petitions requesting "copyright" protection orders, reviewed the titles addressed in the petition, and ensured that their quality was outstanding, it seems that, in reality, local officials did not seriously research these petitions. If Circuit Intendant Yuan really took time to review Fiction Forest's petition, he would have found that the petitioner "merchant Meng Zhixi" was not a real person but a fictional figure. He was created by the three major partners who established Fiction Forest: Ceng Mengpu (曾孟樸), Ding Zhicun (丁芝孫), and Zhu Jixi (朱積熙). They combined characters from their names and made up this name when they registered their company in 1904 and petitioned Circuit Intendant Yuan for "copyright" protection in 1905.

Although the quick popularization and inflation of these individually-issued "copyright" protection orders made them less special and less prestigious, they nevertheless promised booksellers one thing: since their *banquan* was authorized by the state, the prohibition against reprinting would also be enforced by the state. Pirates would be subjected to the state's punishment. In the *banquan* protection order Intendant Circuit Yuan issued to Fiction Forest, for example, Yuan displayed the state's authority by stating the harsh warning: "If people violate this prohibition, once found, they will be punished without mercy." But, would pirates really be punished without mercy? And if the state violated this kind of "copyright" protection, would those responsible be punished as well?