

Legal Regulation & Education: Doing the Right Thing?

Chen Zhu

The University of Edinburgh

chenwei.zhu@gmail.com

Building the Relational Contract for Digital Scholarship: How Should A Three-Century Old Copyright Law Respond To The Development of Digital Humanities?

Modern copyright—which owes its origin to the Statute of Anne as promulgated in 1709—is an institution constantly facing challenges and changes. This three-century old legal regime, which has largely co-evolved with print culture, is again called into question by the latest development in digital humanities on a tumultuously large scale. In order to grasp the intensity and complexity of this new challenge to copyright law, this paper focuses on two prominent issues that have been surrounded by great legal uncertainty. The first one concerns the legality of Mass Digitisation (MD) of scholarly materials. Although MD can provide many benefits such as enablement of full-text search, digital preservation and access for print-disabled people (such as blind scholars), it is not clear whether it infringes authors' works that are still in copyright. The ongoing legal dispute between the Authors Guild and HathiTrust Digital Library is illustrative of this problem. This paper examines the relationship between MD and the “fair use” defence (or lack of “fair use” in some jurisdictions such as the UK) as well as the legal risk of digitising “orphan works” where copyright owners cannot be identified.

In close relation with MD, the second issue deals with the use of Text and Data Mining (TDM) technology in digital humanities research. TDM has been employed to conduct ground-breaking research through the process of deriving meaningful information from mining gigantic volumes of unstructured text files or structured data. However, despite its usefulness, TDM is not statutorily exempted from most countries' copyright law, which will limit the use of this technology to the corpuses of out-of-copyright or open-access works. This paper analyses the pros and cons of the proposed non-commercial TDM copyright exemption as recommended by the Hargreaves Report (2011) in a global perspective.

My analysis of the above two issues intends not only to inform digital humanists about the legal nature of their day-to-day research practice, but, more importantly, it also hopes to devise a new digital jurisprudence known as “Digital Relational Contract” (DRC) for understanding the hugely interconnected research activities in the digital community. Inspired by the late contract scholar Ian Macneil’s “Relational Contract Theory”, DRC will depart from classical contract law that is only good at understanding simplified non-connected discrete market transactions. It calls for a legal environment that is more sympathetic to the “copyleft” ethos, which has already been successfully practised by free and open source programmers to produce high-quality software for about three decades. Furthermore, DRC also seeks the opportunity of going beyond the (Ian) Macneilian relational contract among human parties, but it also intends to create intellectual room for a (Bruno) Latourian relation between human and non-human digital objects (or “actants”) in understanding digital humanists’ pursuit.