

Mr. Guan Jianqiang
School of International Law
East China University of
Politics & Law
No.1575 Wan Hang Du Road,
Shanghai, China200042
Email: guan58@sh163.net

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Dear Mr. Pierre Haski,

I hope this letter finds you well.

First of all, I would like to apologize for writing such an abrupt letter to you.

I am Guan, Jianqiang, associate professor, at school of international law, East China University of Political Science and Law. I have been a friend of Ms. Zhao, Dongling since long time ago. She has told that you and some French publishers expressed some discontentment because of the script she wrote for the film *The Story of Xiao-yan*.(The original Chinese name is *The Moving Story Road to School*.) She feels much undeserved for such discontentment. I have read all the correspondences between you and Ms. Zhao, and comprehended your claim.

The Core of your dispute with Ms. Zhao is whether the film script of *The Story of Xiao-yan* is adapted from *The Diary of Ma Yan*.

Your claim is that the author of the script for the film *The Story of Xiao-yan* has adapted from *The Diary of Ma Yan*, without your authorization. If the film script of *The Story of Xiao-yan* had been adapted from your original work and made into a film without the permission from you, author of the original work, it would also be illegal and forbidden in China.

I attach great importance to the claim you have putted forward. Therefore, I have carefully investigated the similarities and differences both in format and content between *The Diary of Ma Yan* and *The Story of Xiao-yan*. However, frankly speaking, I think that the film script, *The Story of Xiao-yan* has not at all violated any right or interest of the author of *The Diary of Ma Yan*. The reasons are as following:

1. The film script was written under the circumstances that without knowing the content of *The Diary of Ma Yan*, Ms. Zhao, Dongling completed her work independently. Ms. Zhao, Dongling was not able to read *The Diary of Ma Yan*, when she was writing her film script. The Chinese version of *The Diary of Ma Yan* was published in October 2003, and began to sell in book stores even later than that. However, the first draft of the film script was finished on September 6th, 2003. (Ms. Zhao, Dongling has evidence to proof the date.) I hope you can understand that *The Story of Xiao-yan* is not an adaptation from *The Diary of Ma Yan*.

2_ After its publication in Europe, *The Diary of Ma Yan* has aroused a lot of attention, and Chinese media has also reported the phenomenon that foreign readers so much concerned about *The Diary of Ma Yan*. Those reports aroused Ms. Zhao, Dongling's attention to the difficulties in schooling for the children in rural areas of the western China, as well as her passion for writing on the issue. In order to let more people understand such difficulties in schooling that the children in rural areas of the western China are facing, she went to Ningxia, and interviewed many children including Ma Yan. The content in the film script of *The Story of Xiao-yan* was from Ms. Zhao, Dongling's investigation, selection and abstraction from her living with the locals there. The content of *The Story of Xiao-yan* is not from the scheme, plan or idea of *The Diary of Ma Yan*. Therefore, the film script has no direct relation with the content in *The Diary of Ma Yan*.

3_ The main character in *The Story of Xiao-yan* is not the Ma Yan in *The Diary of Ma Yan*.

4_ The difficulties in schooling that describes in *The Diary of Ma Yan* are very common in rural areas of the western China. The film script of *The Story of Xiao-yan* is a refinement and artistic creation on the difficulties in schooling there. I think it is of no legal foundation to claim that because of the publication of *The Diary of Xiao-yan*, no one else have the right to write and publish on the difficulties in schooling in rural areas of the western China. Referring to *Berne Convention for the Protection of Literary and Artistic Works, Intellectual Property Code*, France or *Copyright Law*, P. R. China, none of the above mentioned limits people's freedom of mind, freedom of production or freedom of expression.

Here it may be necessary to explain "adaptation" and "concept".

"Authors of literary or artistic works shall enjoy the exclusive right of authorizing adaptations, arrangements and other alterations of their works.(Article 12 in *Berne Convention*)". Adaptation is based on the original work, to produce an original new work through changing the forms and re-present the content of the original work. Anyone, other than the author should acquire the permission from the copyright holder to adapt from the original work, or else, it is infringement.

In the *Intellectual Property Code*, France(L.111-2), it states: "a work shall be deemed to have been created, irrespective of any public disclosure, by the mere fact of realization of the author's concept, even if incomplete ". According to this, concept is also regarded as a part of copyright in France. But the "concept" mentioned, is not the concept in common sense. It refers to the thinking during the process of producing a writing or art work, and it is the whole set of scheme, plan and idea of the work.

The main character in *The Story of Xiao-yan* is not the Ma Yan, and film does not describe the stories in Ma Yan's personal diary, but presents the current existing difficulties in schooling in rural areas of the western China with artistic refinement and creation, and all the difficulties happen to the main character in *The Story of Xiao-yan* in a comprehensive way. The plot in *The Story of Xiao-yan* is common in rural areas of the western China, not Ma Yan's unique personal experience. The film script of *The Story of Xiao-yan* is neither an adaptation from *The Diary of Ma Yan*, nor borrowing the scheme, plan or idea of *The Diary of Ma Yan*. The film script is an

independent work by Ms. Zhao, Dongling.

Copyright law cannot exclude others from finishing their similar work independently. For a better explanation, I would like to make a comparison between copyright and industry property right. For the art works with the same theme, there can be two or more copyrights existing. Comparing to copyright, industrial property right is more exclusive. No matter how many same concepts are generated, the law will only protect the one with such exclusive right. The copyright laws in different countries allow the existence of several copyrights of independently completed works; therefore, copyright is usually generated automatically. On the contrary, because industrial property right is entitled to one person or group, it is authorized through a country's administrative process. Thus it can be seen that as long as it is not adapted from other people's work or concept, according to the copyright law in different countries and international convention, it is lawful that there are two or more copyrights existing. The film script, *The Story of Xiao-yan* is completed independently by Ms. Zhao, Dongling, and she has not infringed any rights or interests of *The Diary of Ma Yan*.

Mr. Pierre Haski, you have mentioned the following in your letter to Ms. Zhao, Dongling: "I have forwarded your letter to the publishers, and they cannot understand how any lawyer can say to the Ningxia government and the company in Shandong that they do not need to have the permission from the publisher. Copyright has been in effect since October 1, 2002, when the book was first published. The copyright is valid globally, including China. No one wants to go to the court, but the law will be on the publisher's side. Now all they ask is not to export the film outside of the mainland China. I hope that you understand the publisher's position. Moreover, there is no much room for negotiation." (Translated from Chinese.) I do not know if French publishers had watched the film *The Story of Xiao-yan* before they manifested their standing. In spite of this, I still hope that you can show the sample film of *The Story of Xiao-yan* to the specialists and lawyers in the publish house. They may lack of the foundation for judgment, if they have not watched the film.

Both you yourself and French publishers should understand, according to law, *The Story of Xiao-yan* has not violated the copyright of *The Diary of Ma Yan*, no matter it is France or elsewhere. Therefore, your objection to the international release of *The Story of Xiao-yan* is of no legal evidence.

In the article 5, Unesco Universal Declaration on Cultural Diversity, it states: "Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent. The flourishing of creative diversity requires the full implementation of cultural rights as defined in Article 27 of the Universal Declaration of Human Rights and in Articles 13 and 15 of the International Covenant on Economic, Social and Cultural Rights. All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, and particular in their mother tongue". In addition, article 6 indicates that: "... Freedom of expression, media pluralism, multi-lingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity". Therefore, I think you should not set obstacles

against the release of *The Story of Xiao-yan*.

As Ms. Zhao, Dongling's friend and legal consultant, I have made the explanations above in an abrupt way, and I hope you can understand. Please excuse me for any possible disrespect.

Though we may still share different views on the issue, I would like to express my respect to your long time concern and assistance to the children in rural areas of the western China.

Sincerely yours,

Guan Jianqiang