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## Wang Zhirong v. Hunan University Press

*Citation: The Supreme People's Court's Civil Judgment No. Minshenzi 823/2008*

*Date of judgment: October 21, 2008*

### **Procedural history**

On December 25, 2007, Wang Zhirong (Wang) sued, in the Hunan Province Changsha City Intermediate People's Court, the Hunan University Press (HUP) for IP dispute with the latter. In the first-instance judgment was rejected Wang's litigant claims. Wang appealed to the Hunan Province Higher People's Court. In the second-instance judgment, his appeal was rejected, and the former judgment upheld. Wang then requested the Supreme People's Court for retrial of the case.

### **Issue**

The application of the Provisions on Remunerations for Publication of Literary Works (the Provisions) or the Contract Law in handling the dispute over a publication contract.

### **Facts**

In April 2007, Wang asked the HUP to publish his two books entitled *Talk to Beginners on Writing* and *A Guide to Practical Writing*, and mailed the CD of the manuscripts thereof to the HUP.

In July 2007, the HUP phoned Wang, telling him that his manuscripts were not acceptable, and returned the same to Wang by express mail in November of the same year.

Wang, saying he had not received the CD, sued in the Hunan Province Changsha City Intermediate People's Court for IP dispute over the lost manuscripts with the HUP.

The first-instance court determined the case as having the nature of a dispute over publishing contract, and rejected Wang's litigant claims in the absence of publication contract concluded between the two parties and for lack of evidence from Wang showing the economic injury inflicted thereto because of the HUP's failure to return said manuscripts to him in time.

The second-instance court re-determined that the case was a dispute over publishing contract, so rejected the appeal and upheld the former judgment.

In his request for retrial of the case, Wang argued that the case was not a publication contract dispute, but an IP-related dispute; hence the Provisions, not the Contract Law, should apply.

**Rule of law**

Article 42 of the Contract Law

**Reasoning**

The Provisions were formulated in 1999 by the National Copyright Administration under the Copyright Law entering into force on June 1, 1991 and its Implementing Regulations. Given that the relevant provisions of the former Implementing Regulations of the Copyright Law were deleted when they were being revised in September 15, 2002, the Provisions were legally groundless.

Besides, considering that conventional manuscripts were common before 1999, it was somewhat due to require publishers to return them within six months if they decided not to publish them to facilitate the copyright proprietors to exercise their right. But, to date, manuscripts were mostly in e-form. In this case, Wang sent his manuscripts to the publisher in an e-text format. Even if the publisher did not return them to him, it would not affect his exercise of his copyright in the works by contributing the work to another publisher. Accordingly, the relevant provisions of the Provisions were not applicable in the present case.

**Holding**

The present case should be decided by application of Article 42 of the Contract Law rather than the Provisions.